Restitution in Criminal Justice

Edited By: Joe Hudson
Minnesota Department of Corrections
St. Paul, Minnesota

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CONTENTS

FOREWORD

For far too long, the victim of crime has been the neglected party within the administration of criminal justice. This neglect has been far from benign. Citizen confidence in the criminal justice system has diminished and as greater numbers of citizens become victims of crime or fear the same, a perilous skepticism of this system develops.

As the papers in the volume indicate, increased attention is being paid to the concept of offender restitution to crime victims as well as to state compensation programs for victims of violent crime. The idea that the criminal offender should be made to pay for the damages done appeals to common sense. Why shouldn't the crime victim receive remedy for losses sustained? Making the offender pay or work to restore damages done would seem to be a logical policy for sentencing and correctional practices.

In this volume, the concept of offender restitution is examined from a wide variety of perspectives. For the first time, I believe that we are provided with a collection of articles that focus on significant issues, research needs and findings and descriptions of operational restitution programs. I expect that this volume will be useful to criminal justice practitioners and administrators interested in further considering the place of restitutive justice within the administration of criminal law.

Kenneth F. Schoen,
Commissioner
Minnesota Department of Corrections

PREFACE

The papers in this volume aim at contributing to the continuing assessment of the place of restitution within the administration of criminal law. While restitution by the offender to the crime victim has a long history, it is only within the past few years that formalized restitution programs have been implemented at different points in the criminal justice system. Yet, even in recently developed programs, rigorous evaluative research components have been frequently lacking. Consequently, criminal justice practitioners have a limited basis from which to make conclusions about the potential utility of the concept.

Growing attention is being paid to the idea of offender restitution to crime victims as evidenced by the growing number of operational programs and projects as well as by a number of recent policy statements from national criminal justice organizations. For example, the National Advisory Commission's standards on Sentencing identify restitution as one of the factors warranting withholding a sentence of incarceration for non-dangerous offenders and recommend that fines not be imposed when the fine would interfere with the offender's ability to make restitution. The second revision of the Model Sentencing Act explicitly recognizes restitution as a sanction to be used alone and/or in conjunction with other sanctions. Restitution has also been recognized in standards articulated by the American Bar Association and was explicitly recommended as an alternative to prison by the 1972 Annual Chief Justice Earl Warren Conference on Advocacy in the United States.

The complexity of the issues involved in the implementation and assessment of restitution are presented in these articles. The contributors are from such fields as anthropology, political science, psychology, social work, law, and sociology. Each, to varying degrees, has had experience in implementing, assessing, or investigating the idea of restitution within these different substantive areas. This wide cross-section helps to assure an overview of sometimes divergent perspectives on the place of restitution within the administration of criminal justice. As will be evident to the reader, the contributors often take contrasting positions on common issues and frequently raise more questions than they answer. Quite deliberately, they view restitution with caution and certainly not as a panacea for the ills of the contemporary needs of either the victim, offender, or system of justice.

With the exception of the papers by John Stookey and Steven Chesney, these papers were first presented in summary form at the International Symposium on Restitution held in Minneapolis on November 10 and 11. The Symposium was funded jointly by the Law Enforcement Assistance Administration and the Minnesota Department of Corrections as part of an ongoing effort in both agencies to focus attention upon and assess the utility of restitution to crime victims. Increasingly, Law Enforcement Assistance Administration funds in the various states have been allocated to programs designed to address the needs of both crime victims and offenders. Restitution programs should be viewed as one element of this overall funding strategy. Perhaps more than any other state corrections agency, the Minnesota Department of Corrections under David Fogel and Kenneth F. Schoen has emphasized leadership and initiative in translating concern for the crime victim into operational programs. Major program and research efforts have been initiated within

the Department dealing with victims of sexual assault, female property offenders and their victims, as well as research and program efforts associated with the Minnesota Restitution Center, the assessment of restitution within the probation services of the State, and the assessment of remedies utilized by crime victims.

The principle aim of the Restitution Symposium was to stimulate the conduct of more and improved research and program formulations in the area of restitution to crime victims. To date, this area has been one in which individual scholars, practitioners and administrators have contributed as individuals, with little attempt to cumulatively build upon the work of each other. This volume aims at providing new information and analyses that will encourage the building of ideas and the development of intellectual dialogues about program issues and research needs and findings.

This volume has been divided into five major sections. In turn, each of these sections include several articles which focus upon specific issues or programs relevant to the evaluation or implementation of restitution programming.

Part I consists of three articles designed to provide a contemporary view of the place of the victim within the criminal justice system and to acquaint the reader with the historical and cross-cultural context of restitution to crime victims.

Part II consists of two articles dealing with research, operational, and legal issues pertinent to the use of restitution within the administration of criminal law.

Part III deals with the use and assessment of restitution as a condition of probation.

Part IV presents three papers dealing with the use of restitution within the context of residential community correctional programs as well as the way in which a restitution program could be implemented within a prison setting.

Part V consists of a concluding paper which essentially summarizes some of the major issues and perspectives raised in many of the earlier papers.

We are grateful to the contributors for a stimulating collection of papers as well as to Marlene Beckman of the Law Enforcement Assistance Administration and the Commissioner of the Minnesota Department of Corrections, Kenneth F. Schoen, for the generous support and assistance that made an idea a reality.

Contributors

Mr. Steven Chesney,
Research Analyst,
Minnesota Department of Corrections,
St. Paul, Minnesota

Ms. Elaine Combs-Schilling
Department of Anthropology,
University of California
Berkeley, California

Mr. Herbert Edelhertz,
Battelle Institute
Seattle, Washington

Dr. Albert Eglash,
Psychologist in Private Practice,
San Luis Obispo, California

Professor Burton Galaway
School of Social Development
University of Minnesota at Duluth,
Duluth, Minnesota

Dr. Gilbert Geis, Professor,
University of California
Irvine, California

Mr. John Harding
Probation Department
Exeter, Devon,
United Kingdom

Dr. Joe Hudson,
Director, Research & Development
Minnesota Department of Corrections,
St. Paul, Minnesota

Professor Bruce Jacob
College of Law,
Ohio State University
Columbus, Ohio

Mr. Bob Mowatt, Director
Minnesota Restitution Center,
Minneapolis, Minnesota

Contributors (cont.)

Dr. Laura Nader,
Department of Anthropology,
University of California,
Berkeley, California

Mr. Bill Read,
Georgia Department of Corrections and
Offender Rehabilitation,
Atlanta, Georgia

Ms. Kathleen Smith,
Cylnnog Caernarvon,
North Wales,
United Kingdom

Mr. Bernard Vogelgesang, Director,
Department of Court Services
Des Moines, Iowa

Mr. John Stookey,
Research Analyst,
Minnesota Department of Corrections
St. Paul, Minnesota

SECTION I

The papers in this section by Elaine Combs-Schilling and Laura Nader, John Stookey and Bruce Jacob provide anthropological, sociological, and historical perspectives on the place of the victim and the role of restitution. John Stookey's paper deals with the potential dangers inherent in the continuing neglect of the crime victim within the contemporary administration of justice. Restitution as one way of addressing the need of crime victims is considered by Stookey and largely found wanting because of the funnelling effect in the criminal justice system: the volume of crimes committed as compared to crimes reported as compared to criminal apprehensions as compared to convictions. In order to more effectively meet the needs of crime victims, Stookey proposes a combined restitution/compensation scheme. This proposal is similar to the one made by Kathleen Smith in Section Four. In both, a central compensation fund would be drawn upon for crimes which failed to result in convictions while convicted offenders would be required to make restitution to their victims.

The paper by Laura Nader and Elaine Combs-Schilling presents a rather comprehensive review of the alternative ways in which a restitution sanction has been utilized in different cultural settings. Particular attention is placed upon the process by which different cultural groups implemented restitution as well as the functions and purposes of this sanction. Several points raised in this paper need to be carefully considered. First, what is the purpose of a system of restitution? Is it designed to benefit the victim, offender, legal system, or the larger community? Nader and Schilling note that in a number of cultural groups, restitution was used primarily for the benefit of the victim. They also note, however, that a number of additional purposes were commonly met: The prevention of further, more serious conflicts; the rehabilitation or social reintegration of the offender; the restatement of societal values; and as a regulatory or deterrent sanction. A central question that then arises is the extent to which the potential purposes of a contemporary restitution program are compatible, in conflict, or even feasible.

Nader and Schilling also raised the important issue of the extent to which it is appropriate to have individual offenders make restitution to corporate victims when little practical consideration is paid to holding large corporations liable for the damages they do to individual citizen/victims. These authors forcefully argue for a broader view of what constitutes criminal behavior and the use of a restitution sanction for corporate offenders. They suggest that to fail to do otherwise is to continue adminstering justice from a model of "internal colonialism."

The paper by Bruce Jacob traces the historical development of offender reparations in Anglo-Saxon law and identifies some likely future directions for the contemporary system of criminal justice. Several major historical stages in the transformation of offender reparations are noted: Private vengeance; collective vengeance and the blood feud; a system of composition or restitution; the displacement of the system of offender restitution by the sovereign. In short, the State assumed responsibility for, and became the representation of, the victim. The reason why restitution was displaced as

a sanction in Anglo-Saxon law may not be totally attributed to the greed of the sovereign. In both this paper by Jacob and in the last paper in this volume by Gilbert Geis, the point is made that the disappearance of the concept of restitution to the victim and the complete shift to the state's control over the criminal law may have been largely a function of restitution causing some extreme hardships on offenders.

THE VICTIM'S PERSPECTIVE ON AMERICAN CRIMINAL JUSTICE

John A. Stookey

Introduction

It has become almost a platitude to suggest that the crime victim is the neglected party within the administration of criminal justice. The major contention of this paper is that the very persistence of the American Criminal Justice System demands that more concern be given to crime victims. We shall attempt to show theoretically the potential consequences for the criminal justice system of continued failure to consider the plight of the victim and will argue that restitution in its present form is not totally an adequate solution.

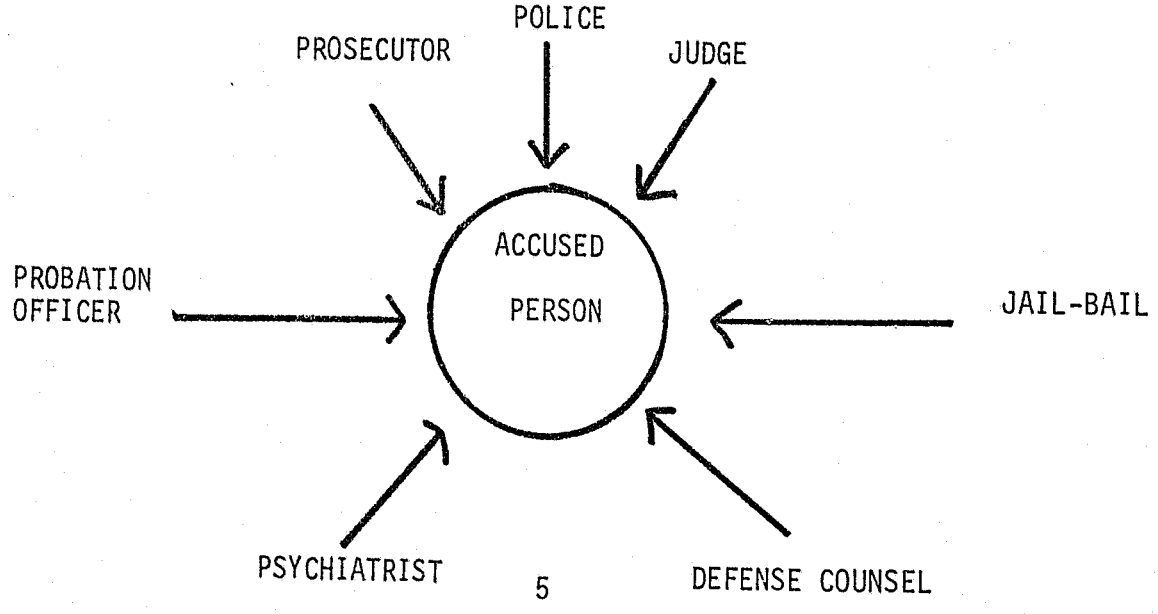
The Need For a Victim Oriented Model of Criminal Justice

Briefly, our argument is that the act of victimization will cause the victim to question seriously the legitimacy and usefullness of the criminal justice system. The rationale behind this is that the individual will consider his/her victimization a consequence of the system's failure to serve its function of protection. Therefore, the unresponsive system is not worthy of support. We will further discuss the serious systemic consequences of such a feeling among a large victim subpopulation. Finally, we will argue that short of reducing the crime rate, which seems unlikely, the only way to regain the support of the victim subpopulation is for somemeans to be devised to make the victim "whole" again after the victimization.

Most of the scholarly work dealing with the administration of criminal justice has centered on the plight of the offender. This is natural and appropriate inasmuch as it is the offender who may lose his freedom as a result of the criminal justice process. Concern for the offender is exemplified by the models of the criminal justice process that have been constructed. Most follow the lines of the one developed by Blumberg, presented here:[1]

FIGURE I

BLUMBERG'S MODEL OF THE CRIMINAL JUSTICE SYSTEM



As can be seen from Figure I, the offender is conceptualized as the hub of a wheel to whom all other agents and agencies in the system are related. Analysis of the other actors in the system usually takes the form of examining the way in which their behavior will affect the offender. For example, most literature about the prosecutor has dealt with the time constraints he faces and how these pressures affect the quality of justice received by the offender.[2] According to the literature, the prosecutor is pressed for time and therefore the offender becomes the ultimate loser by being relegated to no more than a number within an over crowded bureacracy. Similarly, study of the defense attorney has primarily discussed the job constraints of this position and how they affect the treatment of the offender. As with the prosecutor, the defense attorney is pictured as being motivated by organizational and time constraints. He must be concerned with terminating as many cases as possible in the shortest period of time in order to insure, (1) an adequate income and (2) needed long term good will with the prosecution staff.[3] In this instance, the offender is described as being betrayed and sold out not only the state, but also by the very person who is supposed to be his one and only protector: his attorney. Finally, research has revealed that even the arbitrator between the prosecution and the defense, the judge the person who is to guarantee an impartial hearing, is motivated largely by organizational, rather than due process consideration.[4]

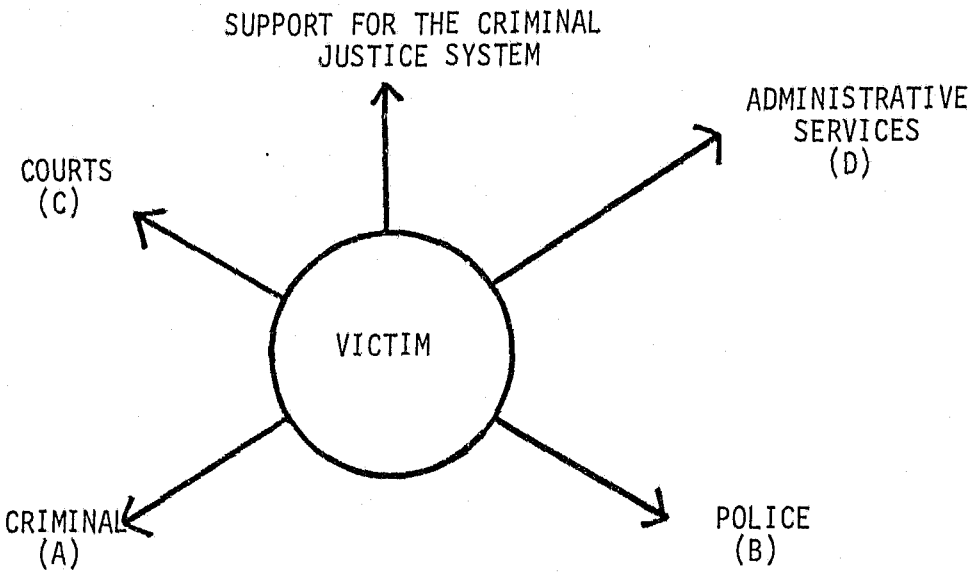
As is clear, the plight of the offender within the administration of criminal law has been studied from numerous perspectives. This is not to say that no further research is needed in this area. Manifestly, this is not the case, if for no other reason than that almost all of the work concerning the offender has been totally descriptive and devoid of theory.[5] However, the near total devotion of criminal justice research to the offender has masked the fact that there is another consumer of the criminal justice system; the crime victim.[6]

With the exception of some recent LEAA funded projects and several sociological studies of the relationship between the victim and the offender[8], the place of the victim within the criminal justice system has been ignored. As a way of introducing a justification for consideration of the victim, it may be asked why this subject has been so neglected. We believe that the reason for this ommission cannot be found in the insignificance of the subject, but rather in another variable. As we have noted, the victim may be considered a consumer of the criminal justice product. Therefore, it does not seem strange that the general growing concern for consumers would result in a concomitant increase in concern for the victim.[9]

However, while there has been growing concern with the victim, there have been no scholarly attempts to theoretically delineate the relationships between the victim and the other actors in the criminal justice system. We hope here to remedy this ommission, for only if all of the various relationships within the criminal justice system are elaborated can we fully understand the way in which the victim is treated in the post-victimization period.

FIGURE II

A VICTIM ORIENTED MODEL OF THE CRIMINAL JUSTICE SYSTEM



Thus, in Figure II above, we have borrowed the wheel analogy from Blumberg and applied it to the victim. Each spoke in the wheel indicates one of the actors or agencies which a crime victim confronts as a result of victimization. In terms of the logical sequence of events, the first actor the victim comes into contact with is the criminal, (A). After the perpetration of the crime, the next actor confronted by the victim is the police, (B). After the police have concluded their investigation, the victim then may be linked to two other actors/agencies. The first is the court (C), where the victim may serve as a witness in his/her case or attempt to use tort proceedings to gain payment, from the criminal for damages, and/or receive court ordered restitution. Finally, victims may seek other methods of achieving services and/or reparations to compensate them for the effects of the crime to which they have been subjected. We have labeled this linkage "administrative services" (D). An example of this type of linkage is the existence in many states of compensation boards, which are administrative agencies that serve the function of allowing victims to petition for financial compensation for criminal loss. Additionally, there are various types of administrative aid given to victims in most states. For example, counseling for the victims of rape is a common administrative type of linkage between a victim and a governmental body.

As we have implied in relation to the wheel model of the offender's perspective, a mere descriptive analysis of the relationships between

a consumer of the criminal justice system and the components of that system does not tell us anything about the significance of those relationships. This is also true in relation to the victim. We suggest that the significance of the criminal justice system/victim linkages can be found in their impact upon the support of the victim for the criminal justice system. To explain this hypothesis we need to borrow from general systems theory.[10] In systems terms, each of these linkages from the criminal justice actors/agencies to the victim can be considered a type of output from the criminal justice system, which the victim consumes.

In its generic form, systems theory states in part that satisfaction with systems outputs will at least partially determine the degree of support for the system in question.[11] In the present case, the output of the system is the nature of the post-victimization linkages between the criminal justice system and the victim. Support is conceptualized as the victim's support for the local criminal justice system. Thus, if we can assume that victimization results in loss of support for the criminal justice system on the part of the victim, possibly the quality of the post-victimization linkages might be able to regain that lost increment of support. In other words, by making the victim partially or totally whole again, for example by the police recovering lost property or by the compensation board ordering victim payment, the criminal justice system may be able to regain the support that it lost as a result of victimization. Thus, on a theoretical level, we suggest the significance of post-victimization linkages. That significance lies in the relationship between these linkages and support. However, the question remains as to why support is of concern. This requires the answer to two questions: (1) Why is support <u>generally</u> important to the criminal justice system and (2) Why is the support of victims <u>specifically</u> for the criminal justice system worthy of individual consideration.

Almost all studies of public support for judicial institutions have dealt with the Supreme Court.[12] However, we would argue that support for the local criminal justice system is of greater importance inasmuch as support for the Supreme Court would appear to have little meaning, because there is usually no direct behavioral component to such support.[13] Conversely, there would seem to be some directly observable and important behavioral consequences which we might expect to vary with support for the criminal justice system. The local criminal justice system is to a large degree based upon and perpetuated by lay citizen participation. Only with the help of witnesses, for example, can the courts and police (the primary components of the criminal justice system) effectively operate. Thus, because we would expect that support would be related to the willingness to undertake this type of lay citizen behavioral participation, it is contended that the concept of general support for the criminal justice system is significant.

In addition to the need for lay participation as a justification for studying support for the criminal justice system, it seems clear that in a democratic society support for a governmental institution is important as an indicator of the extent to which the system is meeting the needs of relevant populations. Support for the criminal justice system can be considered important because it is a monitor

of the need to maintain the present system or reform it. This decision is fundamental to any democratic institution, and, therefore, worthy of study.

As to the question of why support for the criminal justice system by victims is worthy of particular attention, the answer lies in the rapidly increasing crime rate. For example, a recent victimization study shows that about one out of every three households in urban areas have been victimized in the last year. When it is realized that not entirely the same group of people are being victimized each year, it becomes clear that a majority of households in urban areas have been victimized in the last five years.[14] As the size of the population of crime victims grows, its importance as a determiner of system persistance or reform becomes ever greater.

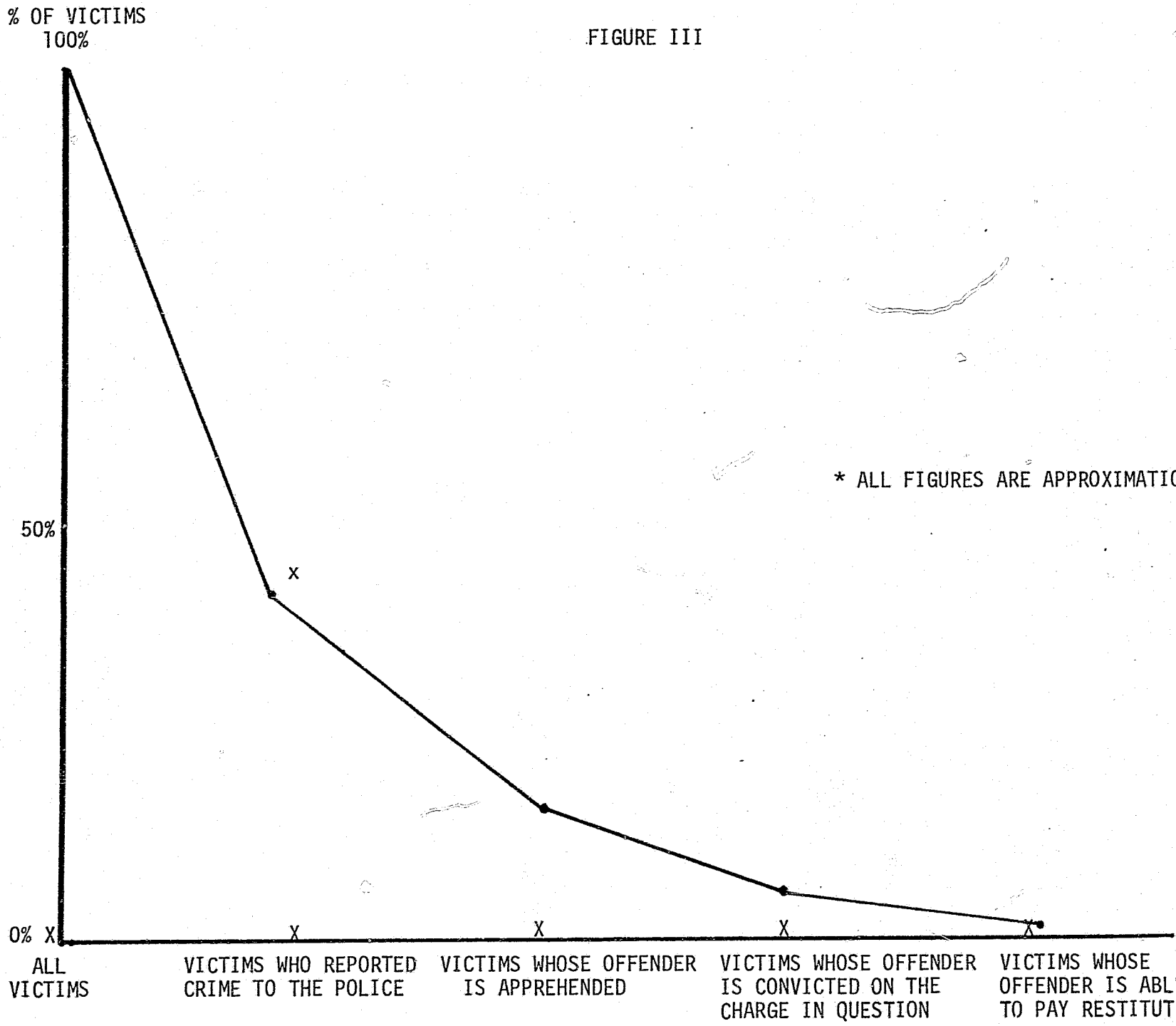
Given this demonstrated importance of concern for the victim, the question then arises as to how well restitution meets this goal. As illustrated in Figure Three, restitution is not a very effective way of compensating the victim. As is apparent, only a relatively small number of crime victims would be eligible to receive reparation under a restitution program. Therefore, restitution in its present form is a very ineffective way of making the victim "whole" again or regaining victim support for the criminal justice system.

Given the failure of restitution schemes to meet the needs of the victims, we may ask about alternatives which might be more useful. The most mentioned and most logical method is a state sponsored compensation program which would not be tied to the apprehension of the offender or the offender's ability to pay. This type of program would clearly best meet the needs of the victim. It may be asked, however, what affect this type of program would have upon the rehabilitative functions of restitution. While a strict compensation program would eliminate the participation of the offender, a hybrid somewhere between the pure models of compensation and restitution could be developed. If the offender was caught and could afford to pay, a restitution program would be used. In other circumstances, the state compensation program would be used.

A compensation program would allow for the immediate payment of the victim in all cases. As soon as a victimization has been determined, the compensation board could pay the victim. If the offender were caught, and was able to pay, then the offender could be ordered to pay restitution to the compensation board as some offenders are now ordered to pay restitution to insurance companies. In this way the rehabilitative goals of restitution could be maintained along with the goal of compensating the victim.

In conclusion, we would argue that increased concern with the victim is a necessity if the present criminal justice system is to persist. Additionally, it seems clear that restitution in its present form does not meet this need. Therefore, we would urge that alternative means be developed and tested which would allow for both the rehabilitation of the offender and the compensation of the victim.

FIGURE III



* ALL FIGURES ARE APPROXIMATIONS

NOTES

1) Abraham S. Blumberg. Criminal Justice. Chicago: Quadrangle Books, page 296.

2) For example, see: A Alschuler, "The Prosecutor's Role in Plea Bargaining." University of Chicago Law Review 36 (1968), 50, and George Cole, "Decision to Prosecute." Law and Society Review 4 (1970), 331.

3) Abraham S. Blumberg. "The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession." Law and Society Review 1 (1967), 15. A Battle, "In Search of the Adversary System - The Cooperative Practices of Private Defense Attorneys." Texas Law Review 50 (1971), 60.

4) George Cole. Politics and the Administration of Justice. Beverly Hills: Sage Publication, page 195. Abraham Blumberg. Criminal Justice. Chicago: Quadrangle, pages 117-142.

5) While the Blumberg model is insightful, it has no theoretical component. As a result, its utility as a generator of new hypotheses is limited.

6) Our use of the concept of consumption in relation to the criminal justice system comes from Herbert Jacob. Debtors in Court: The Consumption of Governmental Services. Chicago: Rand McNally.

7) For example, See: "Criminal Victimization Surveys in the Nation's Five Largest Cities", U. S. Department of Justice; and Task Force on Assessment, The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Crime and It's Impact - An Assessment (Washington, D. C.: U. S. Government Printing Office, 1967).

8) Marvin E. Wolfgang, "Victim-Precipitated Criminal Homicide." Journal of Criminal Law, Criminology and Police Science 48 (1975), 1; Michael Fooner, "Victim Induced Criminality." Science (1966), 1080.

9) Concern with the victim has been associated to a degree with the "Law and Order" movement. The argument has been that the system needs to care less about the offender and more about the victim. It seems clear that in many cases, this position was taken by politicians because they perceived it to be politically popular. Our concern with the victim is not motivated by such considerations, but is given impetus by the desire to understand all actors in the criminal justice system.

10) For a general discussion of the systems model, see: David Easton. A Systems Analysis of Political Life. New York: Wiley.

11) David Easton. A Framework for Political Analysis. Englewood Cliffs, New Jersey: Prentice-Hall, page 124.

12) For an example of studies of support for the Supreme Court, see: Walter Murphy and Joseph Tanenhaus, "Public Opinion and the U. S. Supreme Court" in Joseph Tanehaus and Joel Grossman. Frontiers of Judicial Research. New York: Wiley, page 273.

13) This is not to say that support for the Supreme Court has no behavioral component. Expressions of public opinion are often made as a result of lowering support for the system. For example, it seems clear that public against the economic conservation decisions of the 1936-1937 court led in part to the "switch in time that saved nine". Our contention here is merely that in most cases there is not a behavioral component to support for the Supreme Court.

14) Criminal Justice Digest 3 (August 1975), page 9.

RESTITUTION IN CROSS CULTURAL PERSPECTIVE

Laura Nader
Elaine Combs-Schilling
Department of Anthropology
University of California, Berkeley

INTRODUCTION:

This paper will illustrate how the restitution process works in certain non-Western societies, to what aims and purposes it works, and in what variations it may appear. In the discussion at the end of this paper we will deal with the question of whether such information is of any practical use to those interested in expanding the use of restitution as a sanctioning mechanism in modern Western society. It is expected that a knowledge of process and of the various types of restitution schemes in other societies will alert us to the importance of a contextual or ethnographic perspective whereby we see restitution programs in a wider scope than that of an additional program for managing lower income criminals.

We should like to stress that we believe the historical perspective is important, if well constructed, in order to understand how, why, and where restitution has changed over time. In addition we would like to caution the reader that many of the references made to restitution in past or contemporary primitive or preliterate societies are just plain wrong and full of misconceptions. As we shall illustrate, it is important to realize these errors in part because 'other societies' are often used as justification for what we do or as illustration that something is 'natural' since it appears to be universal. For example, although it is widely held to be true, it is unlikely that the theory of an eye for an eye ever really held for preliterate people. It is not retaliation but rather a desire to replace the loss with damages that characterizes preliterates. And still today it is restitution, not social retaliation or retribution that is widespread.

A few more words about the literature in anthropology may help those who wish to go beyond this paper. Materials on compensation or restitution are scattered in anthropological monographs. There is often no reference to the subjcect matter in the indexes. The topic is usually discussed in conjunction with sanctions used in law, supernatural systems, or in other social control processes. Restitution is also discussed in reference to kinship or political systems which may influence whether they are disbursed by the offending party or the state. Materials are often found embedded in case materials.

Terms are inportant to agree upon. We will warn the reader of anthropological materials that terms such as restitution, compensation, and damages may be used interchangeably. In this paper we will respect the usage presently accepted in America, whereby compensation refers to monies or services paid by the State to the victim or, we might add, by the offender to the State. Restitution, in turn, refers to monies or services paid by the offender to the victim (whether directly to the victim or through intermediaries such as insurance companies). The term symbolic

restitution is a confusing term and we suggest it be dropped; restitution or compensation can be made in money or in service terms (see chart 1).

It is important for us to explore the non-western literature for examples, living laboratory examples of how restitution works in situ. In this paper we discuss examples as ideal types. The components of the restitution process which we emphasize are the following: 1) the dominant liability pattern, i.e. collective or individual; 2) the nature of the crimes or acts for which restitution was applicable; 3) the critical determinants of the type and amount of restitution -- whether in kind (e.g. a life for a life) or equivalence (a wife for a life); 4) the process by which a given restitution is agreed upon; who pays, to whom is it paid, and who shares in the process; and 5) the functions of the restitution process.

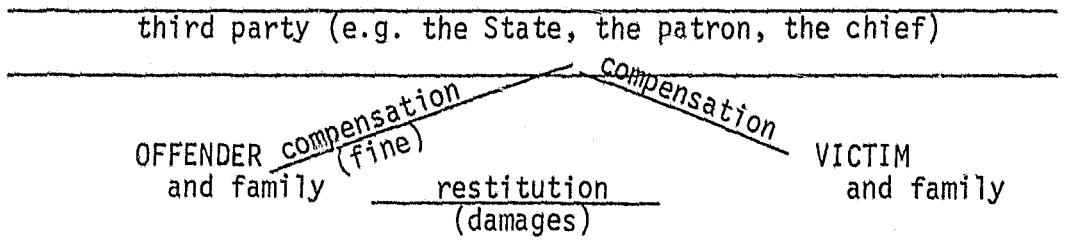


Chart 1.

Restitution in Societies With Collective Liability

Let us begin with a brief descriptive sketch of the system of reparation as found among the Berber tribes of the Middle Atlas mountains of Morocco. This system of restitution is illustrative of that in societies where liability is predominantly collective. These tribes were most recently studied by Ernest Gellner. His findings are published in the book Saints of the Atlas (1969). The case of murder will serve as illustration, as the process of arriving at a settlement to a murder case is representative of the process used, in varying degrees, in other serious cases of rule-breaking.

The process. If a murder was committed, it might immediately be followed by retaliation, but this reaction was typically avoided, especially by those in frequent social contact, as its destructive aspects (i.e. the feud) were often perceived as mutually destructive by all parties concerned. Traditionally, murder was followed by the flight of the murderer and ten agnates. "This flight would aim at safety by distance, or by flight to the tribes' traditional enemies, or to the sanctuary of the saints" (Gellner, 1969:126). The flight to the sanctuary of the saints was particularly advantageous, as the saints' household was considered a sacred place where no blood could be shed without the offender incurring the severest of earthly and supernatural sanctions. Refuge in the saint's household was also advantageous

from the standpoint that it was the saints who began negotiation proceedings in this society, and it was on their sacred property that negotiations were carried out. The saints in these Berber tribes were and are believed to be descendents of the Prophet and endowed by Allah with supernatural powers. One of the most important functions of saintly shrines was to provide sanctuary which worked in two ways for dispute settlement: 1) they were secure places where rival tribes or groups in conflict could meet to negotiate in safety, and 2) the lodges were safe places for murderers and their kin during the period before blood-money is agreed and accepted (Gellner 1969:136).

After an initial "cooling off" period, negotiations would be opened through the saints. After some days the group of the murdered man would allow the family of the killer, though not the killer, to return home. Next came the prolonged period of negotiations with the saint serving as mediator between the group of the victim and the group of the offender.

If the murderer admitted guilt, then the question of amount of compensation due to the victim's group could immediately be considered. If not, there was a complex procedure of collective oath-taking at the saint's shrine which would be used to determine guilt. Once the question of guilt was determined, negotiations would center upon the amount of reparation to be paid to the victim's family. The status of the victim as well as the type of crime committed were the most important variables in determining the appropriate sum.

Finally, the victim's family and the offender's family would agree upon the amount of compensation. Peace would be restored when the amount of compensation was paid. Usually the murderer was also exiled, a condition which might later be reversed by the group whose member had been killed. The rule governing the payment and distribution of blood-money was that the culprit pays one half and the rest of his close agnates pay the remaining half, while the sons (or if no sons, the brothers) of the murdered man receive one half, and his close agnates the other half (Gellner 1969:126).

If, in the negotiation process, no amount of compensation would be agreed upon, the family of the victim had the alternative of resorting to the feud to sanction the offender and his family. However, this alternative was seldom resorted to, as its consequences tended to be mutually destructive for all parties concerned. (As Gellner states, the direct resort to violence was only feasible for larger and more distant groups 1969:126). The threat of the feud, in and of itself, served as one of the most powerful sanctions for bringing about compromise, for inducing the parties to settle upon a mutually acceptable amount of reparation. Evans-Pritchard, in his study of the Nuer draws this same conclusion (1940:150-151). Colson (1974), in her extensive review of the literature on the feud, notes the pervasiveness of the threat of the feud serving as a powerful force for compromise and peaceful settlement among disputing parties in traditional societies.

Components Of The Collective Restitutuion Process

In this section we will briefly look at the main components of the restitution process among the tribes of the Middle Atlas, noting some of the variation in procedure which exists in other traditional societies. No attempt is made to be comprehensive, rather we have chosen societies which highlight the most important variables in the restitution process. For those familiar with the anthropological literature, it will have already been noted that the settlement process described above is similar to that described by Evans-Pritchard in his classic study of the Nuer (1940:150-177), a segmentary tribal group in the Sudan. Among the Nuer, the leopard-skin chief occupied a structural position much like that of the saint of the Middle Atlas. He too was a sacred figure, endowed with supernatural powers. It was to him that rule breakers, especially murderers, fled in order to find sanctuary.

The main components of both the above restitution systems are the following:

1) the committing of the rule-breaking act.

2) a "cooling"off period with some mechanism for refuge of the culprit while the case was being evaluated. As noted among the Middle Atlas tribes and among the Nuer, the culprit, with close kinsmen, fled to the households of the sacred leaders (the saints or the leopard skin chiefs) where they were provided with sanctuary. Among tribes lacking sacred leaders who provided sanctuary, other mechanisms existed to provide for the safety of the culprit during the cooling off period. The culprit and his close kinsmen might entirely flee the area, or as among the Tong of Zambia (Colson, 1962, Chapter 4) there might be an initial period of severance of all social relations between the family of the victim and the family of the offender. Members of the two groups would scrupulously avoid one another until negotiations for settlement of the dispute were begun, an effective way of avoiding immediate resort to retaliatory violence.

3) a period of negotiation between the two parties of the dispute to arrive at some mutually acceptable compensation.

a) the negotiations -- This period of negotiation between the victim's and the offender's group (often a kin-based group) can either be conducted 1) by specialized mediating personnel, or 2) by the concerned parties themselves. As noted, the Nuer and the Middle Atlas tribes have permanent specialized mediating personnel while the Ifugao have a "go-between" selected for each separate conflict by the two parties themselves (Barton, 1967). Among the Yurok of California (Kroeber, 1925), and among the Tonga of Zambia (Colson, 1962), negotiations are carried out by members of the disputing parties themselves. It is those people who have cross-cutting ties, with both groups who typically begin the negotiations. This is illustrated by the case of the Tonga (Colson, 1962) cited above. As we noted initially, all social relations between the offending

and the offended parties would be severed. This situation proved most difficult for those with close ties to both groups, e.g., women who were members of the culprit's clan (the most important kinship unit in this society) but wives of men in the victim's clan. Because clan membership was the determining criteria of ultimate allegiance in this society, these women were forced to sever their social relations with their husbands and his kinsmen. Needless to say they were anxious to get the dispute settled so that normal social relations could be resumed. It was these people with cross-cutting ties who initiated negotiations and pressed for compromise.

b) the amount of compensation. In terms of the amount of compensation to be given to the victim's group, there is usually some form of compromise made by the offending and the offended group. However, this compromise is not arbitrarily arrived at, but rather is an adjustment off of an ideal standard of what the compromise should be, given the seriousness of the crime, the status of the victim, and several other variables. The following studies illustrate:

(1) Kroeber's account of the Yurok Indians (see Kroeber, 1925, and Bohannon 1967:9-10). Kroeber's account makes it clear that among these Northern California Indians "it was well understood that 'every possession and privilege, and every injury and offense' could 'be exactly valued in terms of property'; and that 'every invasion of privilege and property must be exactly compensated'" (Kroeber, 1925 quoted in Bohannon, 1967:9). Restitution took the form of various types of wealth and service, and the amount of restitution was dependent upon the harm done to the victim, rather than the economic status of the offender. In fact it was the harm done to the victim, plus the status of the victim that served to determine the amount of compensation in any given case. "For killing a man of social standing the indemnity was fifteen strings of dentalium, with perhaps red obsidian, and a woodpecker scalp headband, besides handing over a daughter. A common man was worth only ten strings of dentalium. A seduction followed by a pregnancy cost five strings of dentalium or twenty woodpecker scalps ... " In short, as Bohannon points out (1967:9-10) "these Indians had a strong feeling for the definition of rights and obligations, and recognized certain appropriate damages for any private delicts."

(2) Barton's study of the Ifugao (1967). Of the Ifugao, Bohannon states:

> An even more elaborate unwritten code of indemnity, with a sliding scale of payment depending on the social position of the injured party is recognized by the Ifugao of Northern Luzon...These people, like the Yorok, are also without tribal organization, and settlement of claims is effected simply by means of negotiations between the parties. But among the Ifugao the negotiations are carried on not by the parties themselves but by a compromiser, or go-between, selected for the

> purpose by the parties. The go-between has no authority and no force behind him; there is nothing to support his efforts to secure a settlement by acting for both parties except the fact that the only alternative to settlement is a long-drawn feud, which is wanted by neither party and nobody else. (1967:10)

In speaking about restitution for homicide Barton notes the following pattern:

> The rank of the slain has something to do with the amount of the labod /fine assessed for homicide/. The amounts given above are those that would be collected in the case of the killing of a Kiangan man of the kadangyang class. If the slain were a middle class or poor man the amounts would not be so great. If the slayer were a middle class, or poor man, the amounts above might be lessened somewhat, but not very much. If the slayer be unable to pay, he is saddled with the rest as a debt. If he cannot pay the debt during his lifetime, his children must pay it. (1919:75)

In the same work Barton also reminds us of similar practices of our Saxon forefathers.

(3) Pospisil's study of the Kapauku (1967). Among the Kapauku, "The amount of indemnity varies according to the damage done to the other party. It seldom varies with the status of the plaintiff. A rich defendant, however, may be charged a higher indemnity than an objective estimate of the damage would suggest" (Pospisil 1967:39). It is also important to note that the sanction of restitution was only one part of a much larger sanctioning system among the Kapauku, which consisted of corporal, psychological and other economic sanctions according to Pospisil.

(4) Among the Nuer, the Middle Atlas tribes, and the Egyptian Bedouin of the Sinai and Western Desert, again, it is the nature of the crime and the status of the victim that are the primary determinants of the amount of restitution to be given, not the economic status of the offender. Austin Kennett (1968, second edition) describes the process of restitution in cases involving killings, debts, and wounds. He also depicts the general rules used in determining the proper amount of restitution. For instance, the restitution for wounds varied according to the following typology of wound inflicted.

> Arab Law in Sinai, under the headings of Damages for Wounds, is divided into four distinct sections:
>
> 1. Loss of Limbs;
> 2. Broken bones;
> 3. Wounds on the face;
> 4. Wounds not on the face;
>
> and a distinct code dealing with each of these headings is to be found. (Kennett, 1968:116)

However, Kennett reminds us that there is a discrepancy between the presence of general rules and the use made of them. "The fact must not be lost sight of that the primary and fundamental idea at the back of all Bedouin Law is to make peace between the conflicting parties and to obviate the possibility of reprisals." Hence, "each case is legislated for separately (1968:116)."

Much of the above data are in direct contradiction to Edelhertz's statements that:

> The economic status of the offender influences the remedy imposed to a greater degree than does the harm to his victim...the threat of punishment is traded off for dollars or equivalent services, with victims only incidental parties (1975:1).

The data are also relevant to Edelhertz's conclusion, noted by Galaway (1975), that "in its historic connotation restitution was designed to benefit the offender rather than the victim (1975:9). This statement is contradicted by the preceding data which indicate that, at least in these cases, the amount of restitution was decided in consultation with and to the benefit of the victim and/or his kinsmen. Undoubtedly, it also benefited the offender and his family, but not in the way specified by Edelhertz. Galaway, again summarizing Edelhertz's conclusions states, "Restitution, historically, became the mechanism whereby the offender and his kin group make amends to the victim and his kin group and thus avoid a more severe sanction which the victim's kin group could legitimately impose (Galaway, 1975:9)." The nature of restitution in the societies we have examined contradicts the presumed historical universality of this statement. In the first place, it is often questionable that the victim's kin group could impose any other sanction (legitimate or illegitimate), and even if they could impose another sanction (which was most often the resort to force) it is doubtful that the imposition of this sanction (which typically led to the feud) would benefit the victim and his family. Feuds were mutually destructive and thus the resort to restitution greatly benefited the victim and his family as well as the offender and his family, and the society at large.

There are two further components of the restitution process that need to be noted:

4) <u>The decision on the part of the victim's group to accept or reject the offered restitution</u>. The alternative, as we have just noted, was usually that of resort to force, which in turn often led to the feud -- an alternative which from the standpoint of all concerned had serious drawbacks, and which not atypically would eventually lead full circle back to negotiations.

5) <u>The actual giving of the restitution</u>. In the case pf the Middle Atlas tribes and the Nuer (as well as many other cases where liability is collective), it is usually the group (usually kin-based) of the offender which pays the compensation, and the

group of the victim which receives the compensation. There are important ramifications for the reparation process of the fact that it is the group of the offender which pays the compensation and the group of the victim which receives the compensation. This fact means that it is in the interest of the group of the victim to have him accept and abide by the negotiated decision, avoiding attempts at further conflict with the offender and his group (as this would cause the group to forfeit their rights to compensation, and would most likely draw them into a feud). This group can use a variety of informal sanctions in implementing these goals.

From the standpoint of the group of the offender, it is in their interests to keep the offender in line. If the offender again breaks the rules of the game, and brings his life in danger (or is actually killed) then the compensation paid by the kinsmen has been naught. Furthermore, if the guilty kinsman should persist in violating the rules of the game, the group will again be called upon to pay further compensation. All this encourages the group to use whatever sanction available to keep their deviant kinsman in line. Again these kinsmen have a wide variety of flexible sanctions they can use to accomplish this purpose. They can make the life of the offender very uncomfortable.

It should be noted that since his kinsmen are those who best know the victim, it is also they who can best appraise the victim's culpability and the likelihood that he will commit the same crime again. If, in the group's evaluation, the person is a bad lot, they may prefer to give him over to the victim's group to do with as they will, or even to do away with him themselves in order to avoid further conflicts. Gellner notes this occurence among the Middle Atlas tribes of Morocco. He states (1969:116-117):

> The tribesmen...distinguish two kinds of fratricide, good and bad. Bad fratricide is such as is held to have been unjustified by the acts or character of the killed brother, and it calls for the payment of blood-money by the killers to the wider group of which both they and the killed man are members. Good fratricide is the killing of a brother who is recognized to be a nuisance to his kin and to others, and through being a nuisance to others, he automatically is a nuisance to his kin, for they will have to 'bail him out' by testifying, or by contributing to a fine, or by getting engaged in a feud. Informants remember cases of such 'good'fratricide: men taken off into the woods by their own kin and killed.

Purpose and Functions of the Restitution Process in Traditional Small Scale Societies

By analyzing the ethnographic examples mentioned thus far, what can the analyst conclude about the function and purposes of these reparation systems? We submit the following ideal function and purposes as important:

1) prevention. One purpose of the reparation system is to avoid further, more serious conflicts, particularly to avoid the fued. Since through the restitution -- the reparation -- system, wrong has been in some sense righted, the balance or status quo has been restored (Nader 1972b), and more serious consequences have been avoided.

2) rehabilitation. It is particularly important in small subsistence societies to provide mechanisms for reintegrating the offender back into society without too much stigmatization, so that he can again become a useful participant of that society.

3) restitution. Most simply put, this is a means of providing for the needs of the victim. Again there is a recognition that the offense against the victim needs in some way to be righted if the society is going to effectively function (by maintaining a belief in its justice by the members of that society). This function is intimately related to the following one:

4) the dramatic restatement of values. In the process of reparation, the society is indicating the rules of the game, as well as the values to which it adheres. If the reparation process addresses the needs of the victim as well as those of the offender, the society is indicating its desire to achieve some kind of justice for all its members.

5) socialization. By indicating the rules of the game, as well as by dramatically restating societal norms and values, the reparation system functions to educate the members of a society in terms of these rules, norms and values. An internalization of this experience is a vital part of any social control system.

6) regulation and deterrence. As we mentioned earlier, there is a wide variety of flexible sanctions that result from the reparation process in small-scale societies. Since the negotiation process is a public one, the sanctions of public opinion, ridicule, gossip and ostracism are brought to bear upon the participants. Also, in societies with collective responsibility, it is usually the group of the offender which is involved in the payment of the restitution, and the group of the victim which is involved in receiving that restitution, these groups can use a wide range of sanctions available only to close associates of the offender and victim, to keep these disputants (particularly the offender) in line. This multiplicity of sanctions provides for regulation as well as deterrence.

It is clear that restitution has many functions in these societies, and that restitution is one among many sanctions operating in the social control system of such societies. It is also apparent that as this type of society is brought within a nationally based legal system one of the strongest areas of conflict between local law and national law has been the absence of restitution in national law. Results of the Berkeley Village Law

Project illustrate that this conflict can be observed in countries as different as Zambia, Sardinia, Mexico, and Lebanon. One of the clearest examples of the consequences of removing restitution as a possible sanction and/or means of settlement in the criminal law comes from Zambia and the work of R. Canter (1972). Canter focuses upon the Mungule tribe and the problem of cattle rustling. Prior to the imposition of state law, cattle rustling cases were settled by restitution. With state law, people accused and convicted of cattle rustling were sent to jail. To make matters worse, jailing people did not decrease the incidence of cattle rustling. The Mungule measure whether the legal system is competent or not by whether there is a decrease in recidivism, by which they would mean a decrease in cattle rustling cases. Since they lost confidence in the state legal system the consequences were self-help and rioting.

Discussion of Variation in Traditional Small Scale Societies:

All societies have some form of collective and some form of individual liability for, as we have noted, even in societies where collective responsibility plays a dominant role, collective liability is used sparingly and mainly functions in defining relations between groups; not in all cases, as husband-wife quarrels, for example, is restitution required. As we would expect then, in societies such as the Nuer where joint liability obtains when a murder takes place outside the kinship group, rarely does the same level of collective liability obtain in dealing with killings within the kinship group; the same people who usually pay the restitution would be the receivers as well in such cases. On the other hand, where individual liability is predominant, such as among the Zapotec Indians of Mexico, there have been cases where the whole town pays collective compensation to the State for the killing of a non-townsman. In our own society, although individual liability operates for crimes such as killing, joint responsibility often operates in the corporate business field.

At times the predominance of collective liability has been linked with the form of kinship system. Cohen (1964) has demonstrated the presence or absence of kinship groups such as clans or lineages does not automatically mean that joint liability is present although he agrees that such organizations are conducive in socializing adults in joint liability patterns. In his survey of the cross-cultural literature he finds that clan societies are not automatically associated with collective responsibility, and indeed contends that where collective responsibility is found it is never found throughout the legal system, but is usually restricted to one, two, or three kinds of criminal actions.

There are a few general observations that can be made from the literature. Restitution is but one remedy among many remedies in a society. The same society that uses restitution as a strategy may also use retaliation (such as restrained killings), raids, property seizures, and fines. Often the range of possible procedures

are seen on a scale from least to most likely to result in escalation of disputes. Restitution is often but not necessarily associated with the presence of a clan system. Restitution can be used in societies where liability is collective and in those where liability is individual. Fines and compensation are by definition associated with the presence of centralized political authority. Restitution and/or damages can be found in both state or stateless societies. Third parties such as mediators or go-betweens are common facilitators of the restitution process, but sometimes the process is negotiated directly between two parties. We have found societies that do not have formalized political systems, such as the Yurok tribe in California, the Ifugao in the Northern Luzon in the Phillipines, or the Bedouin of the Western Desert, can have very sophisticated unwritten codes of indemnity. Such substantive law can develop independent of legal procedure, of courts, and complex tribal organization or one can have a formal system of courts and not use them. Among the Japanese the system of restitution is almost entirely settled by extra-judicial agreements (Kawashima, 1973); the Japanese prefer extra-legal decisions because they do not focus on the conflict, as with judicial decisions, but rather on the negotiating process. The Tyroleans (Pospisil, personal communication) prefer to settle a car accident at the time and on the spot of the accident, rather than proceed legally through the courts. In several societies it was noted that spatial distance increased the propensity of an aggrieved party to resort to retaliation rather than restitution (e.g., Koch, 1974; Evans-Pritchard, 1940; Gellner, 1969). Finally, it appears that restitution is used sparingly in most societies, most often in cases dealing with killings, theft, debt, adultery, or property damage.

Let us move to a consideration of the process whereby the decision is made either to restitute or not to restitute. Among the Zapotec Indians of southern Mexico (see Nader, 1964) the predominant pattern is individually allocated responsibility. Most Zapotec villages have courts where cases are heard and where decisions are made using the principle of situational justice; the components of a particular case lead court participants to favor one decision over another. Usually a disputant reports a case to court officials whereupon the police are sent out to collect the other party (parties) to the case. There is a process of direct confrontation and venting of spleen in most cases. The head court official, the presidente, listens trying to figure out which of a variety of strategies would best cool the case and satisfy a sense of justice. He sometimes asks the disputants what they would like as a settlement; other times he listens long enough to decide for himself. Once the decision is stated there is a haggling process whereby the decision is either accepted and dealt with on the spot, or rejected whereupon the case will be appealed to the next level. The decision may be a punitive one (e.g. the defendant goes to jail), a restitutive one (damages are paid to the plaintiff), or a compensatory one (e.g. a fine is paid to the town treasury); the decision may also contain all of these components.

Whether the judge uses restitution or a fine is determined by what is to be accomplished in a case. Among the Zapotec, settlement and prevention are the tasks of the court, and even punishment is meted out with this in mind. When the Zapotec speak of prevention they are usually referring to the danger of a case escalating and thereby causing division and strife in the village. In analyzing some cases recorded on film some years ago, Nader (1969) pointed to the kind of considerations observed in making the decision to restitute or fine which indicate the situational aspects of "making the balance" among the Zapotec:

> The best way to "make the balance" in the policia case was to fine rather than ask for damage, which the defendants would have interpreted as adding insult to injury. The punitive fines go to the third party -- the presidente's office. In this same case the presidente sought to re-establish a relative condition of peace between the litigants and at the same time to prevent escalation of the conflict to feud proportions. In the Chile case and the case of the little boy with fright, damages were the best way to restore the earlier conditions of peace...In the case of the bossy wife, the presidente thought that neither damages nor punitive fines would aid restoration of peace.

In another case that a father had brought against his son, both punitive damages and fines were sought. In all of these cases it was the individual offender that had to pay.

However, restitution and compensation are not always individually based in Zapotec society. For instance, there was the case of a band of thieves who stole from various villages. When the leader of the thieves was caught the villagers wanted to kill him. When the state heard of the capture, various state representatives were sent to collect the leader in order to try him in the state court. When the villagers announced that they were going to kill him the state officials said that such action might be against state law, but it wasn't against village law, and proceeded to kill the leader by stoning right in front of state officials. The state response was punitive, either they would jail the presidente of the town (as collectively representing the village) or in lieu of such jailing accept the payment of a large fine to the state. The village cooperated in collecting the fine. Although such cases are rare they do happen and reflect the corporate make-up of these villages.

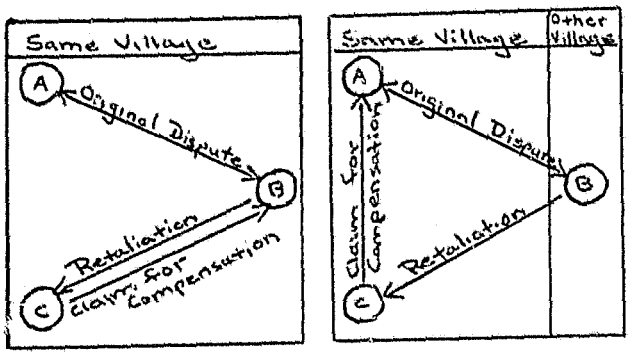
There are some patterns which override the use of situational justice and the desire for peace. Increasingly in these Zapotec towns as they become bi-cultural as well as bi-lingual (Mexican-Zapotec) the decision or outcome of a case is likely to be a fine (offender compensation to the state) rather than damages (offender restituting the victim). Increasingly the plaintiff is the village and the outcome of such village-citizen cases is either fine or community services, or both. If an offender has no money to

pay a fine then he donates his labor as community service. The offenders in these villages are often proud of the work they have done: building roads, building the church, the municipal buildings, the schools, and later the clinic. Fines have taken over from damages as the towns have come to realize that their civic pride and self-interest can be enhanced by court outcomes which serve to enrich the town as an entity. The victim may receive damages, public shaming and confession, and in addition shares in the offender's contribution to the town's well being through the use of fines in town.

The factors which influence the type of outcome sought in decision-making are varied. Duane Metzger who (1960) worked in Chiapas, Mexico, was interested in where and under what conditions restitutive as versus penalizing sanctions were used. In comparing the outcomes of cases handled extra-judicially with those handled judicially, by the courts that is, he found that in private extra-judicial settlement restitutive outcomes were more frequent in family cases, and penalizing outcomes were more frequent in non-family cases. In public court settlement however, the reverse was true. The outcomes were penalizing in family cases and restitutive for non-family cases. He also found that restitutive solutions were used in conflicts involving property but not in conflicts involving persons. These people, unlike the Zapotec, see goods as replaceable and amenable to assessment in money or in kind, whereas people in their view are unique and no amount of money can serve as the basis for a judicial decision on outcome. The Zapotec made no such distinction between person-property cases.

Among the Jalẽ of New Guinea (Koch 1974) the residence of the parties in conflict determines the strategy of the victim in retaliation and/or requests for restitution. This is a society which does not have an authority capable of adjudicating disputes.

> Let us assume two cases where A and B are the principals in a dispute and B steals a pig from C in a retaliatory action against A. If all three parties belong to the same village, C tries to negotiate restitution from B. If, on the other hand, A and C belong to the same village and B to a different village, C demands restitution from A. A man follows the same strategy in his attempt to obtain the customary compensation from the abductor of his wife. He will demand a pig from the woman's agnates if they live in a neighboring ward and if a state of hostility with the abductor's village or an expected violent confrontation makes direct negotiations with the abductor a perilous endeavor. (1974:130)



(Koch 1974:131)

Koch also found that strategies of retaliation or reconciliation (e.g. by means of restitution) were at the local intra-ward level also dependent largely on residential proximity of the parties. If the residence of the parties in conflict was separate there was more likelihood of retaliation and less of restitution or compensation. Social relationships between parties is a good part of what defines the pattern of legal liability in society, and among the Jalē social relationships are reflected in residential distance patterns. Similar observations have been made elsewhere in the literature about the part played by social proximity in assessing legal liability (Evans-Pritchard, 1940; Howell, 1954; Gluckman, 1965 and Moore, 1972).

It should also be pointed out that the decision to restitute is in addition to other variables often related to the decision to take a case to a formal body such as a court for settlement. As was pointed out earlier Kawashima (1963 , reprinted 1973) points to the traditional preference that Japanese people have for extra-judicial, informal means of settling a controversy and illustrates that preference by noting that of the 372 accidents that one railroad had in 1960, not a single case was brought to court and only one case was handled by an attorney. Apart from the traditional preference to settle extra-judicially Kawashima points out that "monetary compensation awarded by the courts for damage due to personal injury or death in traffic accidents is usually extremely small."

Discussion and Thoughts About Devising and Implementing Restitution in the United States:

It is a fact that the social, ecological, economic, political context of most of the societies examined in this paper is widely divergent from that of 20th century Western post-industrial societies. Most of the societies referred to in this paper would be called small-scale; most members of the societies being connected to other members by multiple ties of kinship, friendship, ritual group, work association, etc. These societies had traditional economic systems with a relatively simple technological base. Furthermore, it was often the kinship system which provided the

main political organization for these peoples. Authorities typically did not have a monopoly on coercive force and so could not enforce unpopular decisions. They rather relied upon their skills of mediation and presuasion in trying to implement decisions.

Though these societies radically differ from our own, an examination of their reparation system is useful in highlighting variables, options, and possibilities that we, because of a limited conceptual framework shaped by our own culture, might overlook.

The cross-cultural materials suggest that we are an odd society in the way in which we view offender and victim. For the anthropologist it is an obvious question to ask why it is that our society has been more interested in the offender than in the victim. Is our interest in the offender related to the difference between what we say we are and what we are? We are a country where everybody, we say, is equal before the law. Yet our jails are full of the poor and downtrodden. It is clear from the evidence at hand that there are at least two legal systems operating in the United States -- one for the upper income groups, and the other for lower income peoples. Our jails are filled with poor people. The model may be one of internal colonialism. At any rate the colonial model helps us understand why there has been so much interest in the incarcerated offender and until recently so little concern with the victim. Is it the guilt which accompanies the realization that the laws in our democracy do not apply equally, and is the disinterest in the victim related to the evolution of nation state legal system whereby the plaintiff role is assumed by the state, a situation which undermines the position of the victim, once plaintiff. This is not to say that offenders should not be punished, but rather that our selective application of law along income lines sabotages the basis of respect for law and justice that is so necessary to prevention and/or rehabilitation by law.

Most actual and potential legal problems in this country are between people who do not know each other and never will. Our professionals have not yet faced this problem head-on -- the problem of order in a faceless society (Nader, 1976). As critics of the legal system since the turn of the century have shown there is a price tag on legal rights in this society; who can afford a lawyer. This is a central problem for victims.

In small-scale society, the victim is a key component throughout the reparation process. This factor is important from several angles, particularly from the standpoint of the dramatic restatement of values. When a society does nothing to compensate its members who have been innocent victims of crime, it is doubtful whether its members will perceive the society's social control system as being a just one worthy of respect. That it is beneficial for a society's members to perceive their legal system as just seems to be especially critical from the viewpoint of socialization and internalization, two vital facets of any social control process.

No system can rely on "catching" and forcefully sanctioning all violators, and on instilling fear in all would-be violators.

Restitution in preliterate societies is just one of the many mechanisms used to sanction violators and resolve disputes. It is not a cure-all. In some societies, as we saw, it was used for patterned types of offenses such as homicide. In others it was used when it was thought that restitution would work to settle a dispute better than other alternatives. We should beware not to over-sell restitution as another crime cure-all, but attempt to devise experiments that would help us find out where it does work. We already have a system of restitution working in the civil area of American law. How well does it work and in what situations and among what kinds of people? Is anything from the civil area applicable in the criminal?

Our society is a mixture of collective and individual responsibility as Moore explains:

> To be sure, the kind of collectivity which is collectively liable has changed very much from pre-industrial society to industrial society, but collective economic liability is an extremely important feature of Western law. For example, if one thinks of personal injury and homicide as exclusively cases for individual liability in Western law, has one not forgotten the importance of insurance companies, business and government corporations, Workmen's Compensation, and public health and welfare agencies? (1973:93-94)

What we are finding here that is rare, if existent elsewhere, is a relationship in restitution that is grossly unequal. Individuals are being made responsible to collective, corporate groups. It may work if you call it a fine, but there is no reciprocity here when we call it restitution. In devising restitution systems we must be cognizant of this dual (i.e. collective and individual) nature. In planning restitution systems, we too often proceed as if restitution would only be used in cases involving a single offender and a single victim. In these cases mutual benefits are not difficult to envision. However, if examples from Iowa today teach us anything it is that it may be corporations who make full use of restitution systems, with individuals being found principally on the paying end (as offender). If the victim, for example, collects from an insurance company and the company then collects from the offender we have individuals being made responsible to collective groups. If, in turn, we do not also have insurance companies restituting individuals when caught in illegal dealing, then our restitution system is grossly unequal, and it is doubtful that the cause of "reducing the crime rate" is in any way advanced by its implementation.

We need to be wary. At the turn of the century small claims courts were devised to meet the needs of the 'little guy'. By the 1960's we found that these small claims courts were being mainly used by business for the collection of debts. We could be devising a system for compensating victims, thinking of victims as individual citizens and end up by compensating victims that aren't individual citizens at all, but large scale organizations such as insurance companies. In this case the function of the restitution system may well be class-control.

In societies where offenders belong to a single economic class, as for the most part of the United States, the burden of control may become economically intolerable. Restitution is seen as a way whereby the offender can contribute to his own rehabilitation, to the cost to the victim while at the same time allowing the continuance of what appears to be class control. When the victim is a member of the power class, as with the example of insurance company 'victims' in Iowa the control function is complete and efficient.

In Iowa the offenders may object because restitution is serving the interests of the rich in a legal system where the criminal law or at least the implementation of the criminal law is income biased against the poor and indigent. Restitution may have either healthy or detrimental consequences for society and for the participants in the process in a pluralistic, stratified society.

If attempts to do something about crime in America are to be anything more than a WPA Program for middle class and middle range professionals, or public relations for politicians, we have to face the possibility that our ambivalence about offenders stems from our awareness of the discrepancies in equality before the law in a democracy. If we are going to have restitution we at least have to formulate it within a vertical slice -- up and down the income ladder. We are working on restitution programs solely affecting lower-income groups when more people are dying of known harmful drugs every year than the total number of homicide cases reported. Maybe it is the "least worst" way to treat offenders, but it probably will not decrease the crime rate. We need a more holistic perspective on the question of crime throughout our society.

Any analysis of the crime problem that focusses on lower income offenders to the exclusion of other kinds of offenders is diversionary at best. Ghettos in this country are illegal. They are the heart of the crime reported but they are not the heart of crimes committed. Why have professionals decided to focus on one illegal actor rather than another? The workers of Hopewell, Virginia, poisoned by Kepone have no criminal and proportionately little civil remedy available to them. If building codes and other municipal laws were enforced our slums would not be slums. We are suggesting here that many of the problems that now are coming to restitution might better be handled through prevention and that some problems

not being handled through restitution might be handled by restitutive means. As we noted when commenting on the comparative literature in all preliterate societies where restitution is used, it is used to handle the most serious disputes, not all disputes that are made public.

By virtue of our bureaucratized society, problem solving in the United States has been piecemeal and patchy. Professionals are used as agents of change, but our professionals are trained to see, in a detailed way of course, only one part of the problem. Our problem solving then is not only patchy, it is skewed. As a result, change is often additive, and if responsive, mainly responsive to the needs of the bureaucratic part of the system. If we really intend to do something about offenders and victims in this society present restitution 'programs' must be set in a wider context with attention paid to vertical rather than horizontal slices of American society.

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THE CONCEPT OF RESTITUTION: AN HISTORICAL OVERVIEW

Bruce Jacob

Brief Historical Background of the Concept of Restitution

In primitive cultures the victim of crime punished the offender through retaliation and revenge.[1] Gradually, with increasing social organization in the form of kin groups, clans, and tribes, private vengeance was replaced by vengeance regulated by the collective order. When an act was committed against a familial group or one of its members by an outsider, the entire group joined in the process of retaliation. This pattern of vengeance between kinship groups is known as "blood revenge" or the "blood feud."[2] The fact that social control went over into the hands of the kindred and not some severe degree or bloody nature of revenge explains the use of the word "blood" in the term "blood feud."[3]

Though the blood feud was an expression of vengeance, this vengeance was by no means without regulations and rules.[4] Certain rules of retaliation became recognized as customary and proper. One of the simplest and earliest of these rules was the Lex Talionis, first formulated in the Code of Hammurabi, under which the wronged party was entitled to exact "an eye for an eye, and a tooth for a tooth."[5]

Blood feuds caused endless trouble. An injury once committed would start a perpetual vendetta.[6] As primitive groups settled and became stable communities, they reached higher levels of economic development and began to possess a richer inventory of economic goods. The goods themselves came to be equated with physical or mental injury. Gradually the harshness of the blood feud gave way to a system of compensation. Unregulated revenge was slowly replaced by a system of negotiation between the families of the offender and victim and indemnification to the victim through payment of goods or money. The process of negotiation and the payment to the victim has become known as the process of "composition." [7]

The transition or evolution from revenge to composition has apparently occurred in many primitive cultures or societies as they have settled down and become economically stable. As a striking example of this, in primitive areas of Arabia about one hundred years ago it was noted that blood vengeance was practiced among the nomadic tribes outside the towns, while those living in the towns utilized the composition process as the means of redressing criminal wrongs in order to avoid the socially disintegrating effects of retaliation.[8] In one form or another the system of composition prevails or has prevailed over a great part of the world, among the North American Indians, in the Malay Archipelago, in New Guinea, among the Indian hill tribes, among the tribes of the Caucasus, the Somali of East Africa, the Negroes of the West Coast of Africa and others.[9]

As the community became structured and its leadership more centralized, codes of law were enacted to serve as guidelines for acceptable behavior. The laws of these societies contained monetary evaluations for offenses as compensation or composition to the victim.[10] Composition under such codes was used as a means of providing indemnification for the victim among the ancient Babylonians (under the Code of Hammurabi), the Hebrews (under Mosaic law), the ancient

Greeks, the Romans, and the ancient Germans, and the English.[11] The law of Moses required fourfold restitution for stolen sheep, and fivefold for stolen oxen.[12] In ancient Roman law, according to the Law of the Twelve Tables, in the case of theft, the thief was obliged to pay double the value of the stolen property. In cases in which the stolen object was found in the course of a house search, he was to pay three times the value, or four times the value if he resisted the house search. He was to pay four times the value of the stolen object if he had taken it by robbery.[13] The Code of Hammurabi was notorious for its deterrent cruelty. In some cases under that Code the compensation amount was as much as thirty times the value of the damage caused.[14] Under the Germanic laws, the amount of compensation varied not only according to the nature of the crime, but also according to the age, rank, sex and prestige of the injured party: a freeborn man was worth more than a slave; a grown-up more than a child; a man more than a woman; and a person of rank more than a freeman.[15]

In England, under the system of composition, the offender could "buy back the peace he had broken" by paying what was called "wer" which was payment for homicide, or "bot," which was payment for injuries other than death, to the victim or his kin according to a schedule of injury tariffs.[16] The laws in effect during the time of King Alfred provided that if a man knocked out the front teeth of another man, he was to pay him eight shillings; if it was an eye tooth, four shillings; and, if a molar, fifteen shillings.[17] By Alfred's time, about 870 A.D., private revenge by the victim was sanctioned by society only after a demand for composition had been made by the victim and his demand had been refused by the offender.[18] An offender who failed to provide composition to his victim was stigmatized as an "outlaw," and this allowed any member of the community to kill him with impunity.[19]

In England, the king and his lords or barons required that the offender pay not only "bot" or "wer" to the victim but a sum called "wite" to the lord or king as a commission for assistance in bringing about a reconciliation between the offender and victim, and for protection against further retaliation by the victim and the victim's clan or tribe.[20] In the Twelfth Century as the central power in the community increased, its share increased, and the victim's share began to decrease greatly. The "wite" was increased until finally the king or overlord took the entire payment.[21] The victim's right to restitution, at this time, was replaced by what has become known as a fine, assessed by a tribunal against the offender.[22] The state, in the person of the king, came to be defined as the offended party in matters of criminal law and, as a result, the state's right to punish and exact compensation from the victim superseded the victim's right to recover compensation.[23] The disappearance of the concept of restitution to the victim and the complete shift to the state's control over the criminal law was apparently the result of a number of factors. One was the desire on the part of the king and his lords to exercise stronger control over the populace. Another was greed on the part of the feudal lords who sought to gain the victim's share of composition.[24] Undoubtedly, another reason was that the system of

composition was extremely harsh on offenders who could not afford to pay their victims, for such offenders were outlawed or placed in slavery.[25]

This shift from a system providing restitution to the victim to one involving complete state control over the criminal law occurred in many countries in addition to England. Schafer has said that, in continental Europe, the injured party's right to restitution grew less and less, and, after the dividing of the Frankish Empire by the Treaty of Verdun, was gradually absorbed by the fine which went to the state.[26] The system of composition only surrendered after a struggle. Even after the state had completely taken over the criminal law, and the system of composition had been officially abolished in Germany there are records of victims who were not satisfied with public punishment, and continued to claim personal indemnification as well.[27]

The ancient historical evolutionary process thus consisted of several stages: (1) private vengeance; (2) collective vengeance; (3) the process of negotiation and composition; (4) the adoption of codes containing pre-set compensation amounts which were to be awarded the victim in the composition process; (5) the gradual intervention of lords or rulers as mediators, and payment to them of a percentage of the composition-compensation award; and (6) the complete take-over of the criminal justice process and the disappearance of restitution from the criminal law. In this evolutionary process, the central government became stronger. Familial groups were replaced by the sovereign as the central authority in matters of criminal law. During this process the interests of the state gradually overshadowed and supplanted those of the victim. The connection between restitution and punishment was severed. Restitution to the victim came to play an insignificant role in the administration of the criminal law. The rights of the victim and the concepts of composition and restitution were separated from the criminal law and instead became incorporated into the civil law of torts.[28]

In the Anglo-American legal system, there is a strict separation of the criminal law from the civil law. In the case of a crime, which gives rise to both a criminal action by the state and a potential civil action by the victim, the two actions are kept completely separate. In theory, victims of crime have for centuries had available to them the civil remedy of a tort action against persons who have wronged them through the commission of crime, under the Anglo-American System. In practice, however, this remedy has been of little value. The offender was often unknown; and where he was known, the victim often could not afford the expense, in terms of money and time, of bringing a tort action against the offender.[29] Perpetrators of crimes were typically poor or financially destitute,[30] and a judgment against such offenders was often uncollectible. For all of these reasons the civil remedy was not a very effective means of obtaining restitution on behalf of the victim.

Instead of a separate civil proceeding, in some countries the criminal case and civil action were combined for purposes of procedural processing. In the German legal system, for example, there

is a process termed the "adhesive" procedure, which developed in the sixteenth and seventeenth centuries under which the judge of the criminal case was allowed, in his discretion, to make a decision on the claim of the victim for restitution within the scope of the criminal proceeding. In the German system, the criminal trial predominates, and takes precedence over the hearing of the victim's claim. The victim's claim for restitution is, for convenience sake, heard at the same time as the criminal charge, but the two hearings are, in fact, independent of each other. This procedure is used in Germany and in a number of countries today.31/

Even in countries such as Germany, which have an adhesive procedure, the victim seldom receives full compensation for the harm done to him by the criminal. As Stephen Schafer has said, after making a comparative survey of the methods for providing restitution to victims now in effect in the various countries of the world: "If one looks at the legal systems of different countries, one seeks in vain a country where a victim enjoys a certain expectation of full restitution for his injury."32/

For a number of centuries, the disappearance of the concept of restitution from the criminal law has been criticized by philosophers and penologists. Sir Thomas More suggested in 1516, in his book, Utopia, that restitution should be made by offenders to their victims amd that offenders should be required to labor on public works to raise money for such payments.33/ In the Eighteenth Century Jeremy Bentham took the position that, whenever possible, satisfaction should be provided by the offender as part of the penalty for the crime. He suggested that both restitution in money and restitution in kind be mandatory for property offenses. He identified the need for a public victim compensation fund to assist victims of offenders who were not apprehended or convicted. He recognized that a state system of compensation would have to be developed for victims of insolvent offenders.34/

Bonneville de Marsengy, an eminent French jurist, criminologist and reformer in 1847 proposed a compensation plan which would have combined elements of restitution and compensation according to whether the offender was apprehended. In his view, the victim's entitlement to restitution was part of the social contract, and he felt that society should rigorously impose the duty to provide restitution upon the offender. And, he said that, "if there is no known culprit, society itself must assume the responsibility for reparation."35/

At the International Prison Congress held in Stockholm in 1878 Sir George Arney, Chief Justice of New Zealand, and William Tallack, a British penal reformer, proposed a return in all nations to the ancient concept that the criminal offender should be required to make restitution to his victim.37/ Raffaele Garofalo raised the issue at the International Penal Congress held in Rome in 1885,38/ and it received consideration at the International Penal Association Congress held in 1891 at which the following resolutions, among others, were adopted:39/

> Modern law does not sufficiently consider the reparation due to injured parties.
>
> Prisoner's earnings in prison might be utilized for this end.

At the Sixth International Penitentiary Congress, held at Brussels in 1900, the restitution issue was the subject of exhaustive discussion.[40] Professor Prins, of the University of Brussels, proposed that restitution to the victim should be taken into account as a condition of suspension of sentence or of conditional release after imprisonment. Garofalo made a recommendation which was summarized as follows by the American delegate to the Brussels Congress in his subsequent report to the Congress of the United States:[42]

> In the case of prisoners having property, steps should be taken to secure it, and to prevent illegal transfers. As to insolvent offenders, other methods of constraint must be sought. The minimum term of imprisonment being sufficiently high, its execution should be suspended in the case of offenders who beyond the cost of the process have paid a sum fixed by the judge as reparation for the injured party, exception being made in the case of professional criminals and recidivists. The State Treasury would gain, since it would not only be spared the expense of supporting the prisoner, but would be reimbursed for all other expenses. The delinquent would be punished and the injured party reimbursed.
>
> In the case of serious offenses in which imprisonment is deemed necessary, Garofalo would make parole after a certain time of imprisonment depend on the willingness of the prisoner to reimburse his victim from his earnings saved in prison.
>
> He favors a public fund to assure reparation for those who cannot obtain it in any other manner.

The members of the 1900 Brussels Congress were unable to agree upon any specific proposal to require reparation or to apply earnings of prisoners to that end. Finally they passed a resolution merely readopting a mild resolution of a previous prison congress urging reforms of procedure to increase the power of the victim of crime to obtain compensation through his civil remedies.[43] It has been said that the Brussels conclusion "effectively managed to bury the subject of victim compensation as a significant agenda topic at international penological gatherings from thenceforth to the present time."[44]

Developments Between 1900 and the 1950's

Enrico Ferri advocated in 1927 that the State should impose as an element of the punishing process a strict obligation on the part of the offender to pay damages to the victim. He based this argument on the ground that society has a much greater interest in prosecuting a crime than does an individual victim, and noted that the necessity of bringing a private action for damages is a source of abuses and "demoralizing bargains between offenders and injured persons."45/

As Garofalo, Prins and others at the international penal conferences held between 1878 and 1900 had recognized, raising the wages of prison inmates would be an absolute necessity in any scheme to require restitution by incarcerated offenders to their victims. However, history teaches us that this would be a monumental accomplishment. At various times in the history of the United States, for example, during periods when private businesses had difficulty in selling goods they have exerted political influence to prevent prisons from engaging in enterprises seen as competitive.46/ During periods when unemployment was extensive, labor unions have sought to restrict the use of convict labor for the reasons that goods produced by prisoners might undercut prices and wages of free labor, and employment of prisoners might decrease the number of jobs available to free labor.47/ Laws were adopted, both at the federal level and in the various states during the Great Depression in the United States, prohibiting the sale of convict-made goods.48/ As a result, prison industries are not nearly as extensive or as productive as they could be.49/ And, for those inmates who are fortunate enough to be employed in paying industrial programs, wages are extremely low.50/

Although restitution by prison inmates has been impossible because of the under-productivity of prison industries and low wages to inmates, restitution has become commonly used as a correctional device for non-incarcerated convicted defendants, as a condition of probation. Probation is a fairly recent development. In the United States, the first statute dealing with probation was enacted in 1878. That law authorized the mayor of Boston to annually appoint a probation officer as a member of the police force. The first statute in this country authorizing courts to grant probation was passed in 1898 by the Vermont legislature. By 1915, thirty-three states had authorized probation for adult offenders; by 1957, all states had done so.51/ Restitution is often imposed as a condition of probation, or in connection with the use of the suspended sentence. It is used chiefly in cases involving property crimes. It is not uncommon for a large probation agency to supervise the collection of millions of dollars in restitution for crime victims each year.52/ The victim's civil remedy remains unaffected by the existence of the probation condition. If the victim obtains a judgment against the offender, payments made under the probation order can be used to offset the civil damages awarded.53/

In addition to formal procedures providing for restitution to the crime victim, informal methods have evolved which achieve the

same end. For example, one of the prevalent methods used by a person who has committed theft, when arrested, is to suggest to the victim that the stolen property will be restored if the victim refuses to prosecute. Other types of prosecution are either never initiated, or terminated after being instituted, as a consequence of an informal arrangement under which the criminal has agreed to make restitution.[54] Almost everywhere restitution, performed before sentence, is considered as a mitigating circumstance in the imposition of the sentence.[55]

Recent Developments Concerning Restitution

During the last two decades there has developed throughout the world an increased interest in legislation to provide monetary indemnification to victims of crime. This concern for the plight of crime victims is largely attributable to the writings of Margery Fry, an English penal reformer, who set forth her views in her book entitled Arms of the Law, in 1951, and in a newspaper article entitled "Justice for Victims," printed in the London Observer in 1957.[56] Ms. Fry thought we have neglected too much the customs of our ancestors concerning restitution. She said that restitution to the victim would not only redress the injury, but it would have an educative value for the offender. Her writings clearly emphasized the rehabilitative potential of a restitution scheme,[57] and only secondarily considered the benefits of compensating the victim. However, due to the practical difficulties inherent in such an approach she later became disenchanted with this idea and instead advocated that society should assume this obligation and compensate victims of crime as a matter of social welfare policy.[58] The term "compensation," in this sense, means payments made from a state administered compensation fund to victims of crime, whereas the term "restitution" means payment made by the criminal offender to his victim as indemnification for the harm caused by the crime.

In 1959 a White Paper entitled Penal Practice in a Changing Society was presented to the British Parliament. The paper stated:

> The basis of early law was personal reparation by the offender to the victim, a concept of which modern criminal law has almost completely lost sight. The assumption that the claims of the victim are sufficiently satisfied if the offender is punished by society becomes less persuasive as society in its dealings with offenders increasingly emphasizes the reformative aspects of punishment. Indeed in the public mind the interests of the offender may not infrequently seem to be placed before those of the victim.
>
> This is certainly not the correct emphasis. It may well be that our penal system would not only provide a more effective deterrent to crime, but would also find a greater moral value, if the concept of personal repara-

> tion to the victim were added to the concepts of deterrence by punishment and of reformation by training. It is also possible to hold that the redemptive value of punishment to the individual offender would be greater if it were made to include a realization of the injury he had done to his victim as well as to the order of society, and the need to make personal reparation for that injury.59/

The committee which produced the above document emphasized that the concept of reparation or restitution could be successfully incorporated into modern correctional programs only if the convicted offender's earnings could be raised. The problem of achieving wages for prison inmates commensurate with those prevailing in the outside world will not be resolved, they indicated, "until society as a whole accepts that prisons do not work in an economic vacuum, and that prisoners are members of the working community, temporarily segregated, and not economic outcasts."60/ Furthermore, no solution could be reached, they said, "until the general level of productivity and efficiency of prison industry approximates much more closely to (sic) that of outside industry."61/

The writings of Margery Fry and the interest created in Parliament during the 1950's has led to the adoption of a number of victim compensation schemes, as opposed to restitution schemes. All of the victim-idemnification plans adopted in recent years in New Zealand, Great Britain, the United States, Australia, and Canada have been designed primarily to provide "compensation" rather than "restitution." A compensation scheme places the emphasis on the victim, while a restitution plan would place emphasis on both the victim and the offender. Compensation payments are civil in character, whereas restitution is criminal and punitive in nature. Compensation schemes reflect a societal responsibility for compensation injuries resulting from criminal acts. They are a method of spreading the losses resulting from criminal victimization. Ideally, the criminal would pay restitution to his victim, either directly or through an agency. But a larger proportion of criminal acts do not result in apprehension, let alone conviction, of the offender. Also, offenders, as a group, are one of the poorest segments of society and often would not be able to make restitution. Because of these factors, restitution plans are more difficult to implement, as a practical matter, and, as a result, recent schemes for providing aid to victims are primarily compensation schemes.

One of the legal theories which has been advanced in support of proposals for legislation involving compensation by the state to victims is that the state has a duty to protect its citizens from crime and that if it fails to do so it incurs an obligation to indemnify those who are victimized.62/ A second argument is that since the state imprisons offenders and thereby renders most of them unable to answer to their victims in terms of tort damages, the state should be responsible to such victims.63/ The third and most widely

accepted reason for adoption of compensation schemes is that the state should aid unfortunate victims of crime as a matter of general welfare policy.64/

The first of the recent compensation schemes was the New Zealand Criminal Injuries Compensation Act, which became effective in 1964.65/ It established an administrative tribunal which has power to hold hearings on claims for compensation and make awards. Compensation under the Act was limited to personal injuries resulting from certain crimes of violence. The government reserved to itself the right to collect from the offender after an award has been made to the victim.66/ In 1964 the British government introduced a non-statutory scheme establishing an administrative board to assess and award compensation to victims.67/ Beginning in 1965, California has provided compensation to crime victims through an administrative procedure.68/ Under the California law, a person who has suffered pecuniary loss as a result of a crime of violence may obtain compensation to the extent that he or she is not indemnified from other sources. When an award is made, the state becomes subrogated to any right of action accruing to the claimant as a result of the crime for which the award was made. The act also contains the following unique provision which applies during the sentencing phase of the offender's trial:

> Upon a person being convicted of a crime of violence committed in the State of California resulting in the injury or death of another person, if the court finds that the defendant has the present ability to pay a fine and finds that the economic impact of the fine upon the defendant's dependents will not cause such dependents to be dependent on public welfare the court shall, in addition to any other penalty, order the defendant to pay a fine commensurate with the offense committed, and with the probable economic impact upon the victim, but not to exceed ten thousand dollars ($10,000). The fine shall be deposited in the Indemnity Fund in the State Treasury, hereby continued in existence, and the proceeds of which shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to this article.69/

Compensation schemes have also been established during the past few years in such jurisdictions as Alaska, Alberta, Georgia, Hawaii, Illinois, Louisiana, Manitoba, Maryland, Massachusetts, Nevada, New Brunswick, Newfoundland, New Jersey, New South Wales, New York, Northern Ireland, Ontario, Quebec, Queensland, Rhode Island, Saskatchewan, South Australia, Washington, and Western Austrialia.70/ Almost every year, new jurisdictions are added to the list of those which have adopted victim compensation schemes.

These plans are based almost entirely upon the compensation approach rather than on the basis that the offender himself should be made to pay for his crime. It is true that the California act contains the provisions that fines may be imposed against offenders who are able to pay and that such fines are to be contributed to a victim indemnity fund, and that several of the statutory compensation schemes contain subrogation provisions; but in view of the economic status of most offenders, it is unlikely that the state or government will be any more successful in pursuing these remedies than private victims have been in the past in pursuing civil torts remedies against offenders.

Although Margery Fry had been discouraged in her attempts to promote interest in a scheme for providing restitution, and had decided, instead, to work for the adoption of compensation schemes, other writers have continued to urge for the incorporation of the concept of restitution the criminal justice process. In 1965, Kathleen Smith, who had some experience as a British penal official, advocated the adoption of what she termed the "self-determinate sentence" as a means of compensating victims of crime and rehabilitating offenders. Under her scheme, an offender's sentence would be set in terms of money owed instead of in terms of time as under present sentencing systems. The offender's earnings while in prison would be utilized to make restitution and, as payments were made, the sentence would be reduced. Thus, the length of sentence an offender served would be determined primarily by the effort he himself made to pay restitution to his victim.[71]

Under her plan, the court would direct what part, if any, of the sentence could be paid from private funds and what part would have to be paid from earnings while in prison.[72] The value of stolen property voluntarily restored might be deducted from the amount owed under the sentence. However, such voluntary restoration would not operate to automatically discharge an offender, because fines would also be levied in such cases.[73]

In cases involving an offender too aged or ill to work, the court would be free to impose a term of imprisonment instead of a sentence in monetary terms.[74] All other offenders would be required to work full-time while in prison. They would join labor unions and would be paid full union rates.[75] From their weekly earnings an amount would be deducted as compensation for the victim. As soon as the entire sentence consisting of the entire amount of compensation and fine due is paid, the offender would be discharged and released from further confinement.[76] Amounts would be deducted from wages in the following order or priority:[77]

1. money for prison board and lodging
2. national insurance contributions
3. income tax withholdings
4. pocket money (a limit would be placed on this amount)
5. compulsory savings (the purpose of this would be to

insure that the offender has money upon his eventual release from prison)
6. contributions to compensation to the victim
7. contributions to fine, if any, imposed by the sentencing court.

Monies paid for compensation would be poured into the victim compensation fund, from which the victim would receive his compensation.78/

The idea underlying the self-determinate sentence is that, since the length of time the offender would spend in prison would depend largely upon his own efforts, he would be motivated to work and improve his wage-earnings capabilities, and that the development of such attitudes would contribute to the rehabilitative process.79/

Another of these writers who has suggested that the concept of restitution be incorporated into the correctional process is Albert Eglash. Eglash, a psychologist interested in corrections, suggested as long ago as 1958 that restitution, if properly used as a correctional technique, can be an effective rehabilitative device.80/ He said that, since restitution requires effort by the inmate, it could be especially effective as a means of rehabilitating the passive-complaint inmate who adapts well to institutional routine without becoming trained for freedom, initiative, and responsibility. Restitution as a constructive activity could contribute to an offender's self-esteem. Since restitution is offense-related, it could redirect in a constructive manner those same conscious or unconscious thoughts, emotions, or conflicts which motivated the offense. Further, he believes that restitution could alleviate guilt and anxiety, which can otherwise precipitate further offenses. He makes particular reference to the use of restitution as a condition of probation and the rehabilitative benefits to be derived from this practice. Eglash is of the view that, although a convicted offender can be encouraged to participate in a restitutional program, the inmate himself should decide to engage in the program if it is to have rehabilitative value.81/

Restitution, in his view, ought not to be something done for the offender or to him. It requires effort on his part. Eglash aptly calls the type of restitution which he advocates, "creative restitution."

Stephen Schafer, the author of several works on restitution by the offender to his victim, conducted a research study during the early 1960's among inmates in the Florida correctional system to determine their attitudes on the subject.82/ He surveyed inmates who had committed three types of offenses--criminal homicide, aggravated assault, and theft with violence. His study indicated that the overwhelming majority of those who had committed some form of criminal homicide wished that they could make some restitution. The author could detect no attitude, positive or negative, in most of the offenders in the other two categories. Schafer believes that the high percentage among criminal homicide offenders is at least partially due to the fact that many of those surveyed were soon to be executed for their crimes, and that their desire to make reparation might have

been attributable to their proximity to death. In discussing the offenders sentenced for the other two types of offenses, Schafer said:

> These offenders, at least many of them, did not appear to be intropunitive and thus could not accept their functional responsibility. Their understanding of incarceration seemed limited to what they viewed as merely a normative wrong that has to be paid to the agencies of criminal justice, but to no one else.[83]

It is Schafer's position that the offender should be made to recognize his responsibility to the injured victim and that this can be accomplished through the process of restitution.[84]

Summary of Past History: Future Directions

The process of composition, which involved restitution to the victim, constituted a significant phase in the development of the criminal law. Restitution, thus, was an important concept in the history of the criminal law.

Later in history, the state began to take more and more of the composition award, and finally took over the criminal process entirely. The concept of restitution became separated from the criminal law and instead became a branch of the civil law of torts. The tort remedy, however, did not provide a satisfactory solution to the problem of providing adequate redress to the crime victim. To a large extent, the victim has been forgotten. As a result, penologists have urged for many years that we should again utilize restitution as a correctional device.

In recent years, there has been a reawakening of interest in the victims of crime. Schemes to compensate victims have developed in many jurisdictions. These have been compensation, rather than restitution, programs involving payment by the state to the victim. The offender is not involved in these schemes. Of course, subrogation claims by the state against offenders, to recoup amounts paid to victims, are possible under some of these plans, but such claims are rarely instituted.

During the past seventy-five years, the concept of restitution has become used increasingly as a condition of probation and the suspended sentence. It is used in this way primarily in cases involving property crimes, and not in cases involving crimes against the person or crimes of violence. At present, restitution has not been used to any degree as a correctional method to deal with incarcerated convicted persons.[85]

Should we be satisfied with the present stage of the development and use the concept of restitution, or should we seek to expand the use of the concept? In what ways will the concept of restitution be used in the future?

We can probably look forward to a continuing increase in the number of jurisdictions which will adopt statutory schemes for providing compensation to crime victims. It seems obvious that compensation schemes are necessary, but it is also true that the concepts of restitution and compensation are not mutually exclusive, and it is possible for them to exist side by side in a justice system. What is needed is a combination of both.

Undoubtedly, restitution will continue to be utilized more and more by courts as a condition of probation and a condition attached to the suspended sentence. In the future, perhaps this use of restitution will be expanded to include cases involving crimes against the person and crimes of violence as well as crimes against property.

In the future, should restitution be limited to cases involving offenders on probation and those under suspended sentences, or should it be expanded and used for other types of offenders, including those confined in penitentiaries? Expanding the use of restitution to include penitentiary inmates is an appealing idea, but an idea which is often criticized as being unrealistic and unworkable. It is clear that no large-scale plan to incorporate the element of reparation by the offender to the victim into current correctional practice would be likely to succeed unless earnings of prison inmates could be raised substantially. In order to raise wages it would be necessary to add new prison industries and work programs and increase the size and productivity of those already in existence. This is probably not possible unless we take certain steps: (1) repeal or modify the present federal and state statutory limitations in the United States which have for many years stifled the development of prison industries; (2) increase the market for prison-made or prison-grown goods and products; and (3) obtain the cooperation of labor organizations and private business and industry.

The first step has the support of the President's Commission on Law Enforcement and Administration of Justice, which recommended in 1967 that, "State and Federal Laws restricting the sale of prison-made products should be modified or repealed."86/ Should these restrictions be removed, prison products could be sold on the open market in competition with those produced by private enterprises.

Even under the present restrictions there are alternative means by which the market for prison products can be increased. State prison systems are generally allowed to sell goods and products to public agencies or institutions, and Federal Prison Industries is allowed to sell its products to federal agencies. At present only a small fraction of the potential of the public market has been exploited. Federal Prison Industries could produce many items needed by other federal agencies which are currently purchased from private business. This proposal is equally applicable to state prison industries and state agencies.

These proposals are likely to arouse varying degrees of opposition from business and organized labor. Governments should strive to cushion the economic impact on those businesses likely to be affected.

Perhaps tax incentives or advantages, both state and federal, could be given to any private corporation willing to utilize prison labor or to establish an industrial plant or other enterprise at a prison. Utilization of skilled union members in overseer and instructional positions in these prison industries might serve to minimize union opposition.

Another method of enabling penitentiary inmates to raise money for the purpose of making restitution would be to place greater numbers in work-release programs. An inmate in such a program would be able to work at full civilian wages and thereby raise sufficient funds to make restitution to his victim.

If restitution is to be more extensively used, we will need to develop procedures to be used in determining the amount of restitution which should be made by each offender. Probably the easiest and most effective way to do this would be to allow the judge in the criminal case to make this decision. The criminal trial judge or jury would find the defendant guilty or not guilty. The judge would decide how much the convicted offender should pay as restitution for his crime. Also, the court would set a term of imprisonment as the sentence for the offender as under the present system. The defendant would be allowed to appeal from the restitution decision of the court as well as from the judgment of conviction and the remainder of the sentence.

A number of factors should be considered by the criminal trial court in determining how much money the offender should owe as restitution for the crime. The basis for the determination could include medical bills for physical injuries or the value of property lost or destroyed. The criminal court should be free to make its own determination, even if in a separate administrative hearing compensation has already been awarded to the victim. The criminal court should be allowed to consider the physical pain and mental anguish suffered by the victim, and loss of earning capacity, regardless of whether the tribunal making the compensation award is allowed to include these items. Arguably, the inclusion of these items may contribute to the rehabilitative process by making the offender more fully aware of the harm he has caused. Ultimately perhaps some sort of system for judging the harm done, such as workmen's compensation schedules, will have to be devised.

Another question that must be answered in any system of restitution is whether the offender should pay restitution directly to the victim, or instead into a general compensation fund. The ideal solution to this is that in every nation or state a victim compensation fund should be established. All restitution payments by offenders would be deposited in the compensation fund, and the legislature would probably have to contribute additional monies from time to time.

Each state should enact laws to provide compensation to victims of crime. Such legislation could be similar to one or more of the compensation plans already in existence. The compensation procedure and the combination criminal trial-restitution proceeding should be

separate. The victim should receive compensation from the state regardless of whether the offender is apprehended or convicted. Compensation payments to victims would be determined by a specific administrative agency and paid directly from the fund.

How would the offender's sentence be reduced, if at all, as a result of compliance with the order requiring restitution in his case? From the prison inmate's earnings each week a certain percentage would be deducted and paid as reparation into the state victim compensation fund. Also, payments could be made from those earnings to the inmate's own family or dependents. Periodic statements would be given the inmate to show him how much of the total restitution owed to the victim has been paid at any given time. As the offender who has been "sentenced" to make restitution makes his payments, whether from earnings while on probation, prison earnings or work-release earnings, the length of his sentence should be correspondingly reduced. The judge who sentenced him should have the power to reopen the case and reconsider and reduce the sentence. The court could be given completely discretionary power to thus reduce sentences, or its power could be based on a statutory table which would contain a sliding scale requiring that the sentence be reduced by a given percentage whenever the offender shows that he has paid a given number of dollars in restitution payments and the amount paid represents a given percentage of the total amount owed. The decision on whether to parole an inmate would be based, in large measure, on the effort shown by him in making restitution payments while in prison. Also, restitution could be made one of the conditions of continuing parole.

Many problems must be solved in incorporating the concept of restitution into the criminal-correctional process, but it seems clear that the results will be worth the effort. LeRoy Lamborn has said:

> A renewed concern for a victim orientation in criminal theory does not mean a retreat from interest in the criminal; rather, the hope is that a substantial interest in the perspective of the victim will supplement the traditional criminal orientation and that the two together will increase the success of efforts to prevent crime, treat the criminal, and compensate the victim.[87]

FOOTNOTES

1. S. Schafer, The Victim and his Criminal 8, 10 (1968); Wolfgang, Victim Compensation in Crimes of Personal Violence, 50 Minn. L. Rev. 223, 224 (1965); See Comment, Compensation to Victims of Violent Crimes, 61 Nw. U. L. Rev. 72, 76-78 (1966).

2. S. Schafer, supra, note 1, at 8, 10; Wolfgang, supra note 1, at 224.

3. Schafer, The Victim and His Criminal-Victimology, in U. S. President's Comm. on Law Enforcement and Administration of Justice, Reference Documents 5 (1968).

4. Hobhouse, Law and Justice, in J. Hudson and B. Galaway, Considering the Victim 6 (1975).

5. Ib. at 6, 7.

6. S. Schafer, Compensation and Restitution to Victims of Crime 5 (2d ed., 1970).

7. S. Schafer, supra note 1, at 5, 11, 14; Wolfgang, supra note 1, at 224.

8. Wolfgang, supra note 1, at 225.

9. Hobhouse, supra note 4, at 9, 10.

10. Laster, Criminal Restitution: A Survey of its Past History, in J. Hudson and B. Galaway, supra note 4, at 20.

11. S. Schafer, supra note 1, at 11, 12, 15; S. Schafer, Restitution to Victims of Crime 4 (1960).

12. S. Schafer, supra note 1, at 11, 12.

13. S. Schafer, Restitution to Victims of Crime 4 (1960).

14. S. Schafer, supra note 6, at 4.

15. Ib. at 6.

16. J. Hudson and B. Galaway, supra note 4, at XIX; S. Schafer, supra note 6, at 7; Comment, supra note 1, at 78, 79.

17. S. Schafer, supra note 1, at 16.

18. Comment, supra note 1, at 78.

19. S. Schafer, supra note 1, at 17.

20. Id. at 18; Comment, supra note 1, at 78.

21. S. Schafer, supra note 1, at 19; Wolfgang, supra note 1, at 228.

22. Geis, State Compensation to Victims of Violent Crime, in President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Crime and Its Impact - An Assessment 157, 159 (1967).

23. S. Schafer, supra note 6, at 6; J. Hudson and B. Galaway, supra note 4, at XIX.

24. S. Schafer, supra note 6, at 8; Wolfgang, supra note 1, at 228; Comment; supra note 1, at 79-81.

25. Comments of Professor Gilbert Geis, at the International Symposium on Restitution, Minneapolis, Minnesota, on November 10, 1975; II F. Pollack and F. Maitland, The History of English Law 460 (2d ed., 1923).

26. S. Schafer, supra note 3, at 7.

27. S. Schafer, supra note 6, at 9.

28. J. Hudson and B. Galaway, supra note 4, at XIX, XXIV; S. Schafer, supra note 6, at 7.

29. Wolfgang, supra note 1, at 223.

30. Home Office, Compensation for Victims of Crimes of Violence, Cmnd. No. 1406, at 2 (1961); Geis, supra note 22, at 159.

31. S. Schafer, supra note 6, at 9, 103.

32. Id. at 117.

33. Sir Thomas More's Utopia 23-24 (J. C. Collins ed., 1904).

34. J. Hudson and B. Galaway, supra note 4, at XX, 3, 4.

35. Id. at XX.

36. Id.

37. Geis, supra note 22, at 160.

38. S. Schafer, supra note 1, at 24.

39. Id. at 114.

40. Id. at 24.

41. S. Barrows, Report on the Sixth International Prison Congress, Brussels, 1900 at 25, 26 (1903).

42. Id. at 23, 24.

43. Id. at 26.

44. Geis, supra note 22, at 160.

45. Comment, supra note 1, at 72, n. 2.

46. The Challenge of Crime in a Free Society: A Report by the President's Commission on Law Enforcement and the Administration of Justice 175 (1967); S. Bates, Prisons and Beyond 96, 97 (1938).

47. K. Smith, A Cure for Crime 91 (1965); Mohler, Convict Labor Policies, 15 J. Crim. L. & C. 530, 568 (1925).

48. See The Hawes-Cooper Act, 45 Stat. 1084 (1929); The Ashurst-Summers Act, 49 Stat. 494 (1935); and 54 Stat. 1134 (1940). These acts are still in effect. See 18 U.S.C. §§ 1761, 1762 (1964); 49 U.S.C. §60 (1964).

49. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections 55 (1967).

50. Jacob, Reparation or Restitution by the Criminal Offender to His Victim: Applicability of an Ancient Concept in the Modern Correctional Process, 61 J. Crim. L. C. and P. S. 152, 160 (1970).

51. Correction in the United States: A Survey for the President's Commission on Law Enforcement and Administration of Justice, 13 Crime and Delin. 1, 160 (1967).

52. Supra note 49, at 35.

53. Comment, Judicial Review of Probation Conditions, 67 Colum. L. Rev. 181, 183 (1967).

54. Wolfgang, Victim Compensation in Crimes of Personal Violence, 50 Minn. L. Rev. 223, 229, n. 21 (1965).

55. S. Schafer, Compensation and Restitution to Victims of Crime 108 (1970).

56. Fry, Justice for Victims, The Observer (London), July 7, 1957, at 8, col. 2, reprinted in Compensation for Victims of Criminal Violence, 8 J. Pub. L. 191, 192-93 (1959).

57. M. Fry, The Arms of the Law 126 (1951).

58. See Geis, supra note 22, at 160, 161.

59. Cmnd. No. 1406, supra note 30, at 4, 5.

60. Home Office, Penal Practice in a Changing Society, Cmnd. No. 645, at 17 (1959); Geis, supra note 22, at 163.

61. Cmnd. No. 645, supra note 60, at 17.

62. Culhane, California Enacts Legislation to Aid Victims of Criminal Violence, 18 Stan. L. Rev. 266, 272 (1965).

63. Id.

64. Cmnd. No. 1406, supra note 30, at 7.

65. Geis, supra note 22, at 161.

66. See Cameron, Compensation for Victims of Crimes of Violence, The New Zealand Experiment, 12 J. Pub. L. 367, 370 (1963). In 1972, New Zealand absorbed its crime victim compensation scheme into a comprehensive program to provide reparation to all injured persons regardless of the cause of injury. See Geis and Edelhertz, California's New Crime Victim Compensation Statute, 11 San Diego L. Rev. 880, 881 N. 4 (1974).

67. S. Schafer, The Victim and His Criminal 121-23 (1968).

68. See Cal. Govt. Code, §§ 13959-69 (West Supp. 1975).

69. Id. at §13967.

70. See recent lists of jurisdictions having compensation laws in Geis and Edelhertz, supra note 66, at 881 n. 6; Lamborn, The Scope of Programs for Governmental Compensation of Victims of Crime, 1973 U. of Ill. L. Forum 21, n.1.

71. K. Smith, A Cure For Crime 13 (1965).

72. Id. at 14.

73. Id. at 15.

74. Id. at 24.

75. Id. at 97.

76. Id. at 13, 14.

77. Id. at 18, 19.

78. Id. at 14, 15.

79. Id. at 28, 37-38.

80. Eglash, Creative Restitution, Some Suggestions for Prison Rehabilitation Programs, 20 Am. J. Correction 20 (Nov.-Dec., 1958).

81. Id. at 21.

82. Supra note 67, at 82, 83.

83. Id. at 83.

84. Id. at 127.

85. There are some exceptions to this general statement. For example, the South Carolina Department of Corrections is presently seeking companies which would be willing to locate industrial plants at or near penitentiaries, and would be willing to hire inmates at wages customarily paid in the non-prison world. Conversation with Robert L. Sanders, Jr., Project Director, Correctional Industries Feasibility Study, South Carolina Department of Corrections, November 10, 1975.

86. The Challenge of Crime, supra note 46, at 176.

87. Lamborn, Toward a Victim Orientation in Criminal Theory, 22 Rutgers L. Rev. 733, 735 (1968).

SECTION II

The two papers in this section by Herbert Edelhertz and Burton Galaway deal with issues relevant to the formal evaluation and assessment of restitution and the major legal and operational issues involved in the implementation of restitution within the criminal justice system.

The major issues dealt with in these papers supplement each other in suggesting the need for careful research and empirical assessment before the idea of offender restitution goes the way of so many "innovative" ideas that have been implemented within different stages of the criminal justice system. All too often, new practices have been briefly tried, over-sold and taken on the character of fads prior to either being scrapped or institutionalized in a different form. The usual pattern is then for the next in a long line of fads to take a turn in the circular process of programming by fad. Both Galaway and Edelhertz caution us against such an approach and succinctly identify what we know, what we need to know, and how we had best get about knowing it if we are to take seriously our responsibilities to the crime victim, offender and taxpayer.

Both Galaway and Edelhertz note that careful consideration must be given to the purpose behind a program of restitution. A common rationale that has been made by proponents of restitution programs is the greater consideration to be paid to crime victims. These authors note, however, that such a rationale is, at best, problematic. The papers by Stookey and Nader in the first section of this volume, have extensively dealt with this issue while the papers by Stookey and Kathleen Smith suggest one way in which a modified restitution-victim compensation scheme could be developed to more fully address the needs of crime victims.

Related to this issue of the need for carefully considering the purpose of a restitution program, is the need for conceptual clarity in formulating program goals and objectives. As Galaway notes, carefully conducted evaluation research is directly contingent on the thoughtful formulation of program objectives and the careful specification of linkages of program components and activities to the articulated objectives. All too frequently, program objectives are stated in vague global terms or, if articulated in operationally meaningful terms, not relevant to the actual life of the program itself.

In his paper, Edelhertz notes that it is the less serious criminal offender who is most commonly assigned the responsibility of completing restitution to crime victims, primarily as a condition of probation orders. The paper by Chesney in Section Three offers some empirical support for this proposition based on the experience of the probation services in Minnesota. Contrary evidence on this point is, however, available in the papers by Robert Mowatt dealing with the Minnesota Restitution Center program and John Harding on the British Community Services Program. In each of these papers, the point is made that these programs act to a great extent in lieu of incarceration. However, the danger which Edelhertz alludes to would seem to be very real and requires serious examination: Greater degrees of social control can be placed upon correctional clients

at greater costs in time and money on the part of practitioners without any benefits to the client and all under the guise of humaneness, economy and effectiveness. The case of pre-trial diversion programs in this country would appear to be a good case in point.

LEGAL AND OPERATIONAL ISSUES IN THE IMPLEMENTATION OF RESTITUTION WITHIN THE CRIMINAL JUSTICE SYSTEM

Herbert Edelhertz

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INTRODUCTION

The offender who commits a crime is rarely so overcome with remorse that he feels impelled to make restitution to his victim on the basis of his own free choice. The criminal justice systems in which arrangements for restitution are compelled and administered differ widely in their objectives and in the degree of their commitments to achieving restitution goals. The economic status of the offender influences the remedy imposed to a greater degree than does the harm to his victim. What we observe in both formal and informal restitution programs, therefore, are well choreographed and one-sided bargaining transactions in which the threat of punishment is traded off for dollars or equivalent services, with victims only incidental parties.

Since restitution transactions involve the denial or granting of liberty, the filing or non-filing of criminal charges, the collection and disbursement of monies, and amendments to the conditions of bargains already struck, these programs raise a broad range of operational issues. Each of these operational issues in turn raises a number of thorny legal questions. These operational and legal questions should first be considered against the background of the relationship of the restitution remedy to specific program goals and the stages of the criminal justice system where restitution requirements are imposed.

I. The Relationship of the Restitution Remedy to Specific Program Goals

In setting up any restitution program, hard decisions have to be made as to the objective of the program, or some mix of objectives. It is usual that some emphasis will be given to the degree of victim harm or loss, but this factor is necessarily subordinated to offender-related considerations simply because of the limited capacity of most offenders to adequately atone to their victims in a material way. Victim interests can be better served by victim compensation programs, which rely on state resources rather than those of offenders; further such resources are not hamstrung by stringent problems of criminal proof.[1/]

If the interests of the victim are given priority in restitution programs other program goals would become almost totally unattainable. Program emphasis would have to be put on squeezing every last penny out of the offender, regardless of the consequence to him and to his dependents. Pressures brought to bear could be so great that offenders could conceivably be motivated to commit further crimes in order to avoid penalties for failure to meet their restitution bargains.

Much of the current interest in restitution has been triggered by new developments in the field of victim compensation,[2/] and indeed there is often considerable confusion between these two types of programs. The political impetus for restitution programs is thus victim-oriented while the programs which are actually established are invariably focused on correction or rehabilitation

of offenders. No restitution program has come to my attention which had the delivery of benefits to victims as its primary or even very important operational goal.

One practical result, stemming from the offender orientation of these programs, is that program evaluators instinctively bow to this fact of life by largely assessing outcomes in terms of correctional objectives rather than in terms of benefits to victims.

II. The Stages of the Criminal Justice System Where Restitution Requirements are Imposed

The first distinction which must be made is between private and officially administered restitution programs. We sometimes overlook the very substantial number of instances in which restitution is made without the offenses coming to public notice by an arrest or the filing of a charge. These situations are rarely addressed in considering the restitution issue because there is little which any proposed restitution model can offer with respect to unreported crimes, and also because these restitution transactions may well be unlawful in and of themselves.3/ Less questionable, of course, are instances in which restitution is offered by the offender (or his family) with the usually well-founded expectation that the victim will forbear to complain or less avidly cooperate with a prosecutor. These cases are often difficult to identify as compounding violations because of the carefully orchestrated semantics of negotiations by attorneys for victims and offenders, and by surety companies.4/

While there are potentially negative aspects to private restitution transactions, they do have the advantage of speed and the maintenance of good will between parties, as in cases of property damage done by children and costs associated with minor assaults. In many instances they probably serve to divert cases from the criminal justice system which should not be there in the first place.

Turning from the private to the public sector, there is another distinction to be made--that between informal and formal restitution proceedings, though the two are often interlinked. At the police standard procedure, particularly in the case of juveniles. Police will simply drop a matter once the victim is satisfied with being made whole by the offender. Another and more recent form of restitution is one in which police departments refer offenders who admit guilt to social agencies, which then "arbitrate" a restitution settlement between the victim and the alleged offender as part of formal restitution programs. While there are obvious advantages to such procedures, there are also real problems. In these situations police exercise discretionary power or doubtful legality, and without regard to their limitations of training and experience.5/ There is also an obvious element of coercion in these cases, which may intimidate innocent persons to agree to make restitution rather than suffer arrest and the dangers of subsequent criminal proceedings.

Restitution may also take place informally, under the umbrella of what appear to be formal proceedings, after arrest and arraingment

but prior to the filing of formal criminal charges. This is usually done with the knowledge and consent of the prosecutor and is not, in theory if not in fact, a factor in prosecutors' decisions to exercise their discretion not to prosecute. In courts of limited jurisdiction, magistrates will often dismiss charges if the accused agrees to pay a victim for his medical bills, or a day's lost wages. In some instances, of course, there may be diversion to formal restitution projects.

Restitution activity outside formally administered restitution programs frees courts and prosecutors for other important responsibilities, e.g., makes possible the implementation of priorities. Nevertheless, they may involve elements of discrimination which should be carefully considered for their legal implications and for subtle effects on achievement of broader offender-related program goals. Offenders who have assets (or who still retain some of the profits of their crimes), may have special leverage with respect to the exercise of discretion by police to refer, by prosecutors to charge or consent to dismissals, or by judges to dismiss.

Much of what has been said of the pre-filing period applies to the post-filing stage -- with restitution emerging as a consideration in the plea bargaining process or in connection with dismissal of charges. After conviction, restitution is frequently a condition of probation.6/ Many states have made statutory provision for court-ordered restitution in conjunction with sentencing, and there is widespread statutory power to order restitution in juvenile courts.7/

The restitution remedy can be implemented in conjunction with incarceration, for example through allocation of prison wages to victims. (Note the paper in this volume by Kathleen Smith). Such programs raise a number of legal issues involving discrimination and coercion. Since prison wages are traditionally low, should higher wages be paid to prisoners making restitution? Would it be lawful to pay such prisoners higher wages than those paid to prisoners not saddled with a restitution burden? If the level of prison wages is raised for all prisoners, would it be fair or would it advance correctional objectives to allow higher net prison incomes (after deductions for restitution payments) to inmates who committed more serious offenses which did not lend themselves to the restitution process? These are only a few of the operational/legal issues which could surface in a prison restitution program.8/

At all of these stages of restitution there are common operational/legal issues, but little applicable program or research experience. Whether we are dealing with constitutional issues on the highest level, or day-to-day field challenges, these same issues will confront program administrators. Which offenders are to benefit from or suffer from recruitment into such programs? What kinds of crimes should be considered compensable? To what degree is the amount of restitution to be tailored to victim loss or harm, or to offender's ability to pay? If a sentence includes a mix of restitution and incarceration, will it operate at cross-purposes? What legal and administrative provisions should be made for

changes in the ability of the offender to meet his restitution obligation?

III. The Granting or Denial of Liberty

Central to restitution programs is the question whether an offender can be deprived of his liberty, or an equal opprotunity to a sentence of probation because he will not or cannot make restitution to his victim. The issue may arise in several forms and at numerous points in the criminal process. In some instances the issue is posed in a manner most difficult to assess, for example when police or prosecutors exercise their dicretion in situations where restitution alternatives are made available or (as in the East Palo Alto Community Youth Responsibility Program), where non-cooperation with a restitution program may terminate the diversion process and result in referral of the offender to uncertain disposition by a juvenile court.

While the legal literature provides little reliable guidance with respect to situations where restitution is compelled prior to conviction for a crime, issues of substantial due process under the fifth and fourteenth amendement to the U. S. Constitution are likely to be raised as diversionary programs increase in number and grow in impact. The due process clauses of these amendements promise offenders that they will not be deprived of their liberty in the absence of some rudimentary procedures, such as hearings. Therefore the utmost care should be employed to make certain that no automatic or mechanical assumptions about quilt are made in diversionary programs which would saddle alleged offenders with the choice of acquiescing in procedures which imply guilt as an alternative to criminal prosecution, or being labelled juvenile offenders.

The question of discrimination against some offenders because they are unable to make restitution, or compelling them to undertake menial tasks while others can buy their way out, can be expected to raise serious questions of equal protection of the laws and due process under the fourteenth amendment.[9] This issue arises whenever some public agency directly or indirectly establishes a class or category of persons and treats them more harshly than others without having a sufficient justification for doing so. While discriminations are permissible, they must be rational and not arbitrary; if unequal treatment is based upon rational classification, states have wide discretion in this regard.[10] In the absence of racial classifications or violations of fundamental rights courts will strain to uphold programs.[11]

These issues of due process and equal protection are more likely to be raised when restitution is required as a condition of probation, or when probation is sought to be revoked for failure of an offender to meet his restitution obligation. Here, in contrast to the diversionary area, we finally find a more substantial body of law to guide us.

Judges have power granted by statute, or possess well recognized inherent powers to discriminate between defendants in sentencing and in providing for conditions in conjunction with sentences. For example, Sec. 35.10, Subd. 2 of the New York Penal Law provides, with respect to

conditions of probation and conditional discharges, that a sentencing judge may require a defendant to:

> (f) Make restitution of the fruits of his offense or make reparation, in an amount he can affort to pay, for the loss or damage caused thereby . . . .

This is only one of many such state statutes dealing with adult and juvenile offenders.[12]

Similar powers are granted in a federal statute[13] and the attitude of the federal courts toward this remedy can be illustrated by the words of the U. S. Court of Appeals for the Fifth Circuit in U.S. v. Savage:[14]

> Without question the court had the right to require as a condition of probation that the appellant make appropriate restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which he had been convicted . . . . Probation is conferred as a privilege and can not be demanded as a right.

The thirteenth amendment to the U. S. Constitution which forbids involuntary servitude is not a bar, since it makes specific exception for servitude "as punishment for crime," and state constitutions have been similarly interpreted. In Maurier v. State[15] the Georgia Court of Appeals also addressed the question whether a restitution requirement constituted imprisonment for debt, and said it did not:

> That restitution to the injured party may be a condition imposed for suspending a sentence upon conviction of an offense . . . does not prevent the sentence from being valid and legal, and is not violative of the Constitution of 1945 . . . providing that (t)here shall be no imprisonment for debt . . .

Anti-peonage cases would not appear to bar work assignments in lieu of money payments unless restitution programs are distorted into devices for obtaining and exploiting cheap labor.[16]

There has been speculation, based on two U. S. Supreme Court decisions[17] that imprisonment for inability to make restitution would violate the equal protection clause, but these decisions turned on the fact that the sentences imposed exceeded the statutory maximums, and in any event the offenders offered no evidence as to treatment of offenders generally. While the legal issue is not yet settled, policy considerations as well as the legal issue should be considered. Defendants should not be pressed to the wall or impoverished to effect restitution.

The National Commission on Reform of Federal Criminal Laws recommended federal legislation to provide that:

> . . . . When restitution or reparation is a condition of the sentence, the court shall fix the amount thereof, which shall not exceed the amount the defendant can or will be able to pay. (emphasis supplied)[18]

and the same point was made by a New York Court:

> . . . if the suspension of the sentence is to be meaningful, the conditions of the defendant's probation must be such as are within the defendant's capacity to meet, in the light of his financial position and average earnings[19]

The right of courts to order restitution as a condition of probation is clear. It also seems clear that this power to couple liberty with payment of symbolic or actual restitution extends to enforcement or collection procedures, for without reasonable enforcement mechanisms this sentencing power would be meaningless. Without the power to jail a defaulting offender, enforcement of restitution orders would be almost impossible. It should be kept in mind, however, that conditioning liberty on dollars or labor carries us into areas where courts will be sensitive to possible arbitrary procedures, to treatments in which discriminations are not reasonably related to worthwhile program objectives, or to any other indications that our laws are not being equally applied.

IV. Restitution Remedies

Although restitution programs appear to be offender oriented, because their goals are almost entirely correctional, the scope and effectiveness of these programs are strongly influenced by the nature and scope of remedies available to benefit victims.

We have already noted that there are legal and policy factors which tend to limit the quantum of restitution to the ability of offenders to pay,[20] but problems also flow from the fact that victim losses may be low in proportion to the gravity of the offense or are otherwise too easily satisfied. For example, one offense may be quite serious in comparison to another and yet result in only a small and easily paid victim loss. In the Minnesota Correction Center's program the median victim damage was reported to be $139, and many restitution obligations were paid in short order, but the Minnesota Parole Board was unwilling to discharge program subjects from parole after completion of restitution obligations.[21]

The assessment of damages raises a number of questions which must be considered in restitution planning. There is a very real danger that the less the offense and the less the damage, the greater the burden which will fall on the offender. How can this happen? If we make the assumption that the more serious the offense the more likely it is that there will be criminal prosecution or referral to a juvenile court, less serious matters are more likely to be the subject of diversionary proceedings. If the diversionary program is a restitution program, there is literally no limit to the restitution which can be compelled, and program authorities are quite free to take

into account all offenses suspected to have been committed by the offender. If the offender is criminally prosecuted he has a number of ways of limiting his restitution liability, unlike an offender divested from the system. Most statutory restitution schemes permit restitution orders in connection with sentences only "for actual damages or loss for which conviction was had."[22] Therefore, simply by going through the plea bargaining process, a more culpable offender can lessen his restitution liability.

The Wisconsin Supreme Court took a different and unusually liberal view in State v. Scherr. It said that:

> . . . . When a court in a criminal suit determines the amount of restitution for the purpose of probation, it does so as part of the criminal proceeding. Such proceeding determination is analogous in its nature to a pre-sentence investigation.[23]

However, in this same decision the Court declined to allow restitution for a victim's losses outside the time limits specified in the criminal charge, indicating that it was not about to permit sentencing courts to examine "a series of acts" which go very far beyond those for which a conviction is obtained.

Most formal and informal programs provide restitution only for actual damages, and not for common-law damages such as pain and suffering or permanent injuries. Where the victim has his damages taken care of through insurance or employment fringe benefits, a program which operates outside a statutory framework can order restitution to third parties such as insurers, but this may not be possible where restitution is a condition of probation. In a number of jurisdictions courts have held that third parties may not recover.[24] It is difficult to justify non-coverage for such third parties if the primary goal of restitution programs is correction of the offender rather than responding to victim need.

The restitution remedy is in theory available to victims of all crimes who suffer damages. In fact the remedy loses much of its practicality where the nature of the crime makes it likely that there will be a prison sentence rather than probation. It is not surprising, therefore, that with rare exceptions[25] the remedy has been applied mainly to property crimes and only rarely in the case of crimes of violence. For example, the Minnesota Restitution Center accepts only non-violent offenders convicted of property crimes, and the Tucson Adult Diversion Program excludes all violent, sexual, or narcotics offenders. Of course the restitution remedy can play a part in connection with parole following incarceration for a violent crime, but this also poses some problems. In a Maryland case involving a confessed rapist it was reported that:

> Watson will be eligible for parole in 15 years, but whenever he is released, said the judge, he must pay 40% of his income for the rest of his life to the two sons of the housewife he killed. (The husband said) the payments could only serve to remind his sons

of their mother's murder, and might even put them in physical danger from Watson or his friends. (The husband) was going to be forced into the . . . position of hiring a lawyer to have the payment or reparations removed from the sentence of his wife's killer.[26]

At the present time there is no coherent or consistent operational or theoretical basis for answering questions involving who shall pay, how much shall be paid, who shall receive, and how much shall be received. Diversionary programs have little expertise in assessment of of damages. Courts have rarely applied their own experience in damage adjudication to the restitution area.[27] This is not surprising, in view of the fact that the rationale of the restitution remedy is corrective rather than ameliorative. Greater attention to such issues as damage assessment is probably not a high priority because the obligation to pay is limited by the ability to pay, and payment itself is of lower priority than rehabilitation of the offender.

V. Administering Restitution Programs

Administration of the restitution remedy does not begin at the point when the restitution bargain is struck by a probation condition, an agency ruling, or a so-called "negotiated contract" of the kind employed in the Minnesota Program. Whether the restitution remedy will be invoked at all may depend on program resources and on administrative mechanisms available to meet program goals.

Since the aim of formal restitution programs, those in which specific agencies are set up for the purpose of administering programs of restitutive justice, is to correct and rehabilitate offenders, the existence of implementation mechanisms will largely determine whether cases are referred, and the volume of cases referred. For example since most offenders have little in the way of resources and often lack marketable job skills,[28] developing jobs (or subsidizing them) may be crucial to the existence of a program and to continued referrals. Since this is an expensive measure, completion of the restitution obligation can also mean job loss for the offender -- conveying a less than desirable message to a candidate for rehabilitation.

The nature of the bargain struck can be quite complex, involving not only obligations of the offender but also of the sentencing authority. In one New York case, Feldman v. Reeves[29] the defendant had made his restitution payment in escrow, conditioned upon his receiving a sentence of probation. When the court determined it could not do so, it ordered its Department of Probations to repay the offender. While this case involves an unusual situation, it forcefully illustrates that the restitution bargain may be one-sided, or entered into by the offender under compulsion, but nevertheless courts will carefully consider what the offender is entitled to under his bargain. Simple and clearly described bargain terms are therefore essential.

The restitution remedy is attractive because of its human appeal (the innocent victim has suffered damages), and because it does not yet carry the failure label which has attached to so many other correctional efforts. A juvenile or adult diverted into a restitution program may fail to meet his obligation and find himself referred back into the criminal justice system -- this time with the added record of failure in a correctional effort -- which can be expected to influence an ensuing exercise of prosecutive discretion. This raises the spectre that many offenders who would have been given a sentence of probation without a restitution condition under ordinary circumstances, will find themselves in penitentiaries only because of this new and attractive remedy.

Because of these dangers the collection mechanism must be carefully designed. Allowing direct payment from the offender to the victim puts an unfair burden on the victim. If the victim fails to notify the court or program of the offender default it will weaken the correctional thrust of the effort, which relies on and is centered on offender compliance with his restitution obligation. It is far better to have monies paid into courts or restitutive agencies, and disbursed by them. Payments should be capable of being independently monitored and timely measure should be taken in the event of default.

Where programs provide for symbolic restitution, e.g., labor in parks or other public or private facilities in lieu of cash it is questionable whether reliance can be placed on monitoring by private parties or officials of facilities benefitting from such symbolic restitution. They may be unwilling to complain, thereby depriving a program of much of its planned correctional effectiveness.

Defaults in payment should not be treated simply as enforcement matters. They may indicate recalcitrance on the part of offenders, but may also be indicators of the inappropriate nature of original restitution bargains. Default hearings should therefore be an occasion for review of the continued desirability of the original restitution order, as well as for review of the narrow reasons for the defaults themselves.

Much attention has been given to the desirability of involving victims in direct contact with offenders in these programs. This course presents a host of administrative difficulties, e.g., do we penalize a victim who does not wish to cooperate? How do we protect victims? Elemental fairness should move us to avoid procedures which enlist victims by offering them rewards or calling on their sense of civic responsibility. They suffer enough without being selected to carry this additional burden.

In this brief overview it is possible to touch on only a few of the many administrative problems which may arise in the course of programs which have widely different objectives, procedures, resources, and offender or victim clients. We must keep in mind that formal

programs have only rarely been carefully monitored or observed to date, and that the administrative problems of court programs still wait research attention.

VI. Relationship to Other Remedies

Restitution programs do not operate in a vacuum. We have already noted that there are potential conflicts with other correctional programs and objectives, with victim interests, and that these programs have impact on prosecutive operations. Two closely related victim remedies warrant special attention, civil proceedings by victims against offenders, and state compensation to victims of violent crime.

The existence of a restitutive justice program in no way limits the right of a victim to pursue any civil remedy he may have against the offender. While this is orginarily not a profitable avenue, because of the indigence of most criminal offenders, there may be cases where defendants are capable of making restitution.[30] It would be dangerous, however, to permit perversion of the restitution process for this purpose. The Wisconsin Supreme Court in State v. Scherr gave this warning:

> . . . . Neither should the criminal process be used to supplement the civil suit or as a threat to coerce the payment of a civil liability and thus reduce the criminal court to a collection agency.[31]

Conversely, the restitution procedure should not be used to hinder or frustrate victim action. Offenders may try to hide behind restitution programs. In People v. Stacy[32] the offender was ordered to pay $100 per month until $6,000 was paid. When the victim sued civilly for a far higher amount the offender moved to stay the probation restitution order pending outcome of the civil suit. The court refused the stay on the ground that this would deter and inhibit the victim's right to pursue his own remedies.

There is a close and important relationship between restitutive justice programs and victim compensation programs.[33] The following table compares the two types of programs.

TABLE: Comparison of Remedy Limitations in Victim Compensation and Restitution Programs on Selected Variables.

Limiting Variable	Victim Compensation Remedy	Restitution Remedy
Requirement of offender apprehension	Not necessary	Necessary
Presence of benefit limits.	Generally true	Rarely true

Limiting Variable	Victim Compensation Remedy	Restitution Remedy
Victim eligibility requirements	Generally only victims of violent crimes	Theoretically, no limitations by type of crime
Financial need of victim	Sometimes necessary	Not necessary
Determination of offender financial ability	Not important	Very important
Presen of offender-victim family relationship	Prohibits receiving benefits	No bar to benefits
Concern for offender rehabilitation	Irrelevant	Extremely relevant

It should be noted that victim compensation programs have substantial experience in damage assessment which should be tapped by restitutive justice programs. Future expansion of both types of programs could open the way to use of this experience by restitutive justice programs, or even to assumption of the assessment task by victim compensation programs on a cost reimbursible basis.

Most state victim compensation programs are empowered to civilly sue offenders to recover awards paid to victims. These subrogation powers have thus far not been exercised to any noticeable extent. If restitutive justice programs should proliferate and operate effectively to recover damages from offenders, we may anticipate that victim compensation administrators will seek to make recovery of part of their costs from offenders. Those who plan restitutive justice programs should take this program relationship into account.

CONCLUSION

Restitutive justice is but one way of addressing correctional challenges, and but one way of making victims whole. It should not be given an automatic plus sign because it is a relatively unresearched field. The concept, and programs developed to implement the concept, should be scrutinized, evaluated, and compared with other ways of correcting offenders and helping victims. Since little is known, experiments should be encouraged so that we can learn more and develop fair and effective models for implementation.

Demonstration programs should be designed to facilitate evaluation. Cost benefit analyses (addressing social as well as dollar costs) are vital to determining whether restitutive justice is a

worthwhile correctional route. If it is, careful evaluations incorporating cost benefit analyses should help us to determine which elements of restitutive justice programs should be given major emphasis.

Notwithstanding the very slim data we possess in this area, there is reason to be optimistic that fair, efficient, and effective restitutive justice programs can be designed to withstand the tests of well designed evaluations and cost benefit analyses. There is reason to believe that restitution and victim compensation programs complement each other and can enhance the benefits of both.

Restitution programs should be simple and easily understood. They should address their correctional objectives mainly by stress on completion of carefully described restitution obligations, and should avoid mixtures of restitutive justice and more traditional methods of offender treatment.[34/] Finally, if restitution programs are to be effective, and have credibility with offenders, successful completion of the restitution bargain should be the final termination of individual correctional efforts, and not the end of one stage preliminary to referral elsewhere for additional correctional treatment.

FOOTNOTES

1. Victim compensation programs have been established in Mass., N.Y., Md., Ga., La., Ill., Minn., Nev., Calif., Wash., Alaska, and Hawaii. Federal legislation to provide grants in aid to state programs is pending, and President Ford gave support to the concept in his June 19, 1975 crime message to the Congress.

2. Edelhertz, Herber and Gilbert Geis, Public Compensation to Victims of Crime, New York, Praeger Publishers, Inc., 1974. See also pp. 20-21, infra.

3. When restitution is accepted by the victim as consideration for an express or implied promise not to file a complaint, it constitutes a compounding violation. See W. LaFave and Scott, Handbook on Criminal Law, 526, 1972.

4. For an extensive discussion of compounding violations see Note, Compounding Crimes: Time For Enforcement, 27 Hastings Law Journal, Issue 1 (Sep. 1975, in publication). See also Richard E. Laster, "Criminal Restitution: A survey of Its Past History and an Analysis of Its Present Usefulness," University of Richmond Law Review, Vol. 5, Fall, 1970, p. 83.

5. Police may refer matters to juvenile agencies, as is done in the case of the Youth Services Bureau in the Mt. Baker District in Seattle, Washington.

6. See 18 U.S.C. 3651 and Study Draft of New Federal Criminal Code, the National Commission on Reform of Federal Criminal Laws, (Washington, D.C.: Government Printing Office, 1970), Sec. 3103(2) (e).

7. Among the states which have such statutes are N.Y., Ga., Calif., Ill., Wisc., Pa., Mass., and the District of Columbia. Juvenile statutes are cited in Levin & Sarri, Juvenile Delinquency: A Study of Juvenile Codes in the U.S. (Ann Arbor: University of Michigan Press, 1974), p. 54.

8. A South Carolina Department of Corrections Study recommended that "fair wages" be paid to prisoners. The Correctional Industries Feasibility Study Market Research Phase: A Summary of Conclusions and Recommendations, South Carolina Department of Corrections, 1974, p. 7.

9. Little or no recovery has been had under these provisions. Edelhertz and Geis, op. cit., p. 290.

10. See Edelhertz et al, Restitutive Justice: A General Survey and Analysis, Law & Justice Study Center, Battelle Human Affairs Research Centers, Seattle, Washington (January 1975) a report of Grant NI-99-0055 submitted to the National Institute of Law Enforcement and Criminal Justice, L.E.A.A., pp. 35-36.

11. Ibid.

12. See footnote 7, supra.

13. 18 U.S.C. 3651.

14. 440 F.2d 1237 (5th Cir., 1971).

15. 144 S.E.12, 112 Ga. Appl. 297 (Ct. of Appeals, 1965).

16. Bailey v. Alabama, 219 U.S. 219 (1911); Taylor v. Georgia, 315 U.S. 25 (1942); Pollack v. Williams, 322 U.S. 4 (1944).

17. Williams v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 401 U.S. 395 (1971).

18. Study Draft of New Federal Criminal Code, footnote 6 supra, Sec. 3103 (2), (e).

19. People v. Marx, 19 A.D. 2nd 577 (Supr. Ct., App. Div., 4th Dept., 1963).

20. Pp. 9-11, supra.

21. Burt Galaway and Joe Hudson, "Issues in the Correctional Implementation of Restitution to Victims of Crime." Paper presented at the American Society of Criminology, 1973 Annual Meeting, New York, 1973, p. 8. See also Kathleen J. Smith, A Cure for Crime: The Case for the Self-Determinate Sentence, (London, Cox & Wyman, Ltd., 1965), pp. 48-49.

22. See 18 U.S.C. 3651.

23. 9 Wisc. 418, 101 N.W. 2d 77.

24. People v. Graco, 204 N.Y.S. 2d 744 (Oneida County Court, 1960).

25. In People v. Stacy, 64 Ill. App. 2d 157, 212 N.E. 2d 286 (App. Ct. of Ill., 1965) restitution was ordered following a conviction for attempted murder.

26. Time Magazine, May 8, 1972, p. 61.

27 In People v. Scherr, footnote 23, the trial court appointed a referee to assist it in assessing damages, a procedure criticized by the Wisconsin Supreme Court when the case came up on appeal.

28. Galaway & Hudson, footnote 21, supra, at p. 11.

29. Feldman v. Reeves, 356 N.Y.S. 2d 627 (App. Div. 1974).

30. See Feldman v. Reeves, Ibid., and People v. Alexander, 6 Cal. Rptr. 31.

31. See footnote 23, supra.

32. See footnote 25, supra.

33. See footnote 2, supra.

34. For a discussion of recommended elements in restitutive justice programs see Edelhertz et al, footnote 10, supra, at pp. 84-92.

TOWARD THE RATIONAL DEVELOPMENT OF RESTITUTION PROGRAMMING

Burt Galaway

INTRODUCTION

During the past ten years an exciting variety of programs have developed to demonstrate the use of restitution as a requirement placed upon the offender in total or partial response to the criminal or delinquent act. Restitution has apparently always been quite widely used informally both as a condition of diversion and as a court imposed condition of probation. What recently developed programs have been attempting to demonstrate is that restitution can be used in a planned, systematic manner to accomplish some other end such as rehabilitation or correction of the offender.

Examples of such planned restitution programs include the Community Services program in England, Minnesota Restitution Center, the Victim Assistance Programs in the juvenile courts of St. Louis, Missouri, and Pennington County (Rapid City) South Dakota, the Restitution Shelters developed by the Department of Offender Rehabilitation in Georgia, the Probation in Restitution Experiment of the Pol ounty (Des Moines) Iowa Court Services, the Pilot Alberta Restitution Center in Calgary, Alberta, the Adult Diversion Project of the Pima County Attorney's Office, Tuscon, Arizona, and others. Some of these programs are serving as models for others. The Victim Assistance Program of the Pennington County South Dakota juvenile court, for example, was modeled largely after a similar program in St. Louis, Missouri, and has itself become the model for a program in Oklahoma. The programs in Georgia, Iowa, and Alberta were influenced by the experiences of the Minnesota Restitution Center. Quarterly reports of some programs report frequent inquiries by other agencies interested in restitution programming; one of the goals of the Minnesota Restitution Center is to disseminate information and to assist in the development of restitution programs by other agencies.

Interest exists in expanding the systematic application of restitution in the correction system and a group of program staff would appear to exist with an experience base and commitment to assist with such expansion. However, the interest and stimulus for expansion of restitution programming is, as is frequently the practice in corrections, considerably in advance of assimilation, analysis, and dissemination of information concerning the extent to which existing programs are attaining criminal justice goals. Further, most of the present projects, in spite of their exciting nature, have inadequate plans for either evaluation of outcomes or systematic recording and dissemination of data concerning program processes. Even in the projects whose original plan, frequently developed as a grant application, specified an evaluation design, these designs have either not been implemented or the implementation has been incomplete and inadequate. Thus, not only is the impetus for restitution programming advancing faster than assimilation of the experiences of current programs but these experiences are going to be of a reduced helpfulness in planning because of the failure to require adequate information keeping and evaluation or, if required, the failure of funding bodies to monitor projects to assure adherence to commitments to evaluation contained in the grant application.

The experience of restitution programs to date is helpful however, in the identification of what can be done as well as in suggesting questions for resolution. The experiences indicate that the following are possible:

1. Restitution programs can be established in a variety of criminal justice agencies. At present, restitution programs are administered by prosecutors, private organizations, neighborhood citizen groups, juvenile courts, adult court services, and state departments of corrections. Furthermore, program examples can be found at all stages of the criminal justice process -- pretrial diversion, prosecution, probation, and institutional services. Programs have been established which both distribute the restitution programming among existing staff and which specialize these functions in special units or organizations.

2. Restitution can be added to existing sanctions. The typical pattern has been to add restitution requirements to other sanctions or required services. Examples include adding restitution to usual probation conditions, requiring the offender to reside in a restricted setting while making restitution, and requiring the offender to participate in group counseling or other treatment activities while implementing a restitution plan.

3. Problems in determining the form and amount of restitution are resolvable. Further, restitution agreements can be developed under circumstances of direct victim-offender negotiations or circumstances in which the negotiations are through a third party without direct victim-offender contact.

The experience of successfully establishing restitution programs in a variety of criminal justice settings coupled with the growing interest in restitution programming will likely result in the continued development of a variety of restitution programs. Hopefully, expansion will include a systematic effort to evaluate the outcomes of restitution programming along with a careful analysis of some of the problems and issues which must be resolved as restitution is integrated into criminal justice programs. The purpose of this paper is to suggest three ways in which criminal justice planners and administrators can contribute to the orderly development of restitution in criminal justice agencies. The three methods are:

1. Careful analysis, assimilation, and dissemination of information from present restitution projects.

2. Creation of conditions which permit controlled experimentation with the use of restitution.

3. Development of descriptive accounts of alternative resolutions to key questions in the utilization of restitution.

DISSEMINATION OF INFORMATION

The first method, synthesis and dissemination of information concerning present restitution experiences, will be considered only briefly because it is largely beyond the ability of either existing restitution programs or agencies which may be considering implementing restitution programming. However a careful review and analysis of the experience of existing restitution programs would provide useful guidelines to agencies considering implementing restitution programs and avoid the necessity of continually reinventing the wheel. Useful information might be shared about types of offenders for whom restitution is used as a sanction, how restitution is operationalized, experiences with victims, reaction of the community to restitution programming, impact of the host agency on the restitution program, types of problems encountered and the manner resolved, and any available indication of the effectiveness of restitution in meeting program goals. Such a synthesis could, of course, highlight contrasts among various programs and suggest alternative ways of pursuing restitution programming.

For correctional planners such a cross program comparison and synthesis might suggest very useful clues in determining agency receptivity to restitution programming and, secondly,suggest possible variables within these host agencies which will impact and influence the direction of restitution programming. For example, from its inception the Minnesota Restitution Center required offenders to engage in mandatory group counseling as well as completing restitution commitments. To what extent did the group counseling requirement result from locating the restitution center in a host agency with a high proportion of treatment professionals in leadership positions and a strong commitment to group treatment approaches? This might be contrasted with the Georgia experience in which residents live in restitution shelters but are not required to engage in treatment activities while completing their restitution obligations.

While planners and administrators who are considering establishing restitution programs would gain from a synthesis of information about existing programs, the preparation of this material is beyond the reasonable ability of any specific program. But what can be expected of individual restitution programs? Two things can be reasonably expected. First, movement can be away from exploration in the use of restitution and toward the development of reasonably controlled restitution experiments. Secondly, good descriptive accounts should be developed about the way in which key questions in the use of restitution are resolved and the results which are thought to flow from the particular resolution.

TOWARD CONTROLLED RESTITUTION EXPERIMENTS

If present restitution projects are viewed as exploratory, the next logical step is to build upon these experiences through the development of controlled experiments designed to test the impact of restitution programming. Movement in this direction will require the development of operational definitions of restitution. The formulation of explicit purposes for restitution programming, the definition of a

population of offenders for whom restitution is considered appropriate, a willingness to use restitution as the sole sanction for a portion of the specified populations, and the development of research designs which permit comparisons of restitution programming vis-a-vis other types of criminal justice sanctions.

Operationalizing Restitution: A cursory examination of existing programs reveals that the term restitution is used to refer to a number of different phenomena. The term has been applied to a process in which the offender makes a cash payment directly to the victim, the offender makes a cash payment to a third party who forwards the payment to the victim, the offender engages in some sort of community service, the offender makes a cash payment to a community organization, or the offender provides a personal service to the victim of the crime. Sometimes adjectives are added with reference made to monetary restitution, symbolic restitution, personal service restitution, community service restitution, and so on. An immediate need is the development of a conceptual framework which clearly specifies and defines differing types of restitution.

FIGURE I

TYPOLOGY OF RESTITUTION

Form of Restitution	Recipient of Restitution: Victim	Recipient of Restitution: Community Organization
Monetary	Type I Monetary-Victim	Type II Monetary-Community
Service	Type III Service-Victim	Type IV Service-Community

A simple typology of restitution as is illustrated in Figure I can be developed by using two variables: whether the offender makes restitution in money or service and whether the recipient of the restitution can then be identified:

Type I: Monetary-victim restitution refers to payment of money by the offender to the actual victim of the crime. This is probably the most common definition and actual use of restitution.

Type II: Monetary-community restitution involves the payment of money

by the offender to some substitute victim. The Minnesota Restitution Center has been making use of this type of restitution as a service restitution requirement became less acceptable to the parole board. This is also a corrective measure used by West German Courts for juvenile and young adult offenders who can be ordered to make monetary payments to useful public establishments.

Type III: Service-victim restitution requires the offender to perform a useful service for the actual victim of crime. Existing restitution projects and the available literature do not provide good examples of this type of restitution although the Citizen Dispute Settlement Programs of the American Arbitration Association[1] and the Night Prosecutor Program in Ohio[2] are likely sources. Both of these programs are designed to bring offenders and victims together to effect a noncriminal settlement of private criminal complaints. The Victim Assistance programs of the juvenile courts in St. Louis and Rapid City, South Dakota, make reference to personal service restitution which appears to be of this type[3]

Type IV: Service-community restitution requires the offender to perform some useful community service. Probation conditions requiring community service, the English program of substituting community service for imprisonment,[4] and the use of "symbolic" restitution in the first two years of operation of the Minnesota Restitution Center are all examples of this form of restitution.

Any typology of restitution will become more complex as additional variables such as victim-offender contacts or victim participation in developing the restitution plan are considered. Although difficult to assess in corrections, the issue of whether or not restitution is undertaken voluntarily or is coerced may be an important variable in a restitution typology. The Minnesota Restitution Center, for example, has developed restitution agreements calling for moral restitution in which the offender agrees to make restitution for offenses (such as checks) for which, because of plea bargaining or for other reasons, he was not actually found guilty. The restitution agreements containing such a provision have clearly specified that this was strictly a moral obligation and that failure on the part of the offender to complete the obligation cannot be used as grounds for parole revocation.

The limited experience with restitution to date indicates that the concept is broad and requires some refinement in order to specify differing kinds of restitution requirements. A present need is to begin defining these different types of restitution, identifying the factors which are characteristic of each type, and developing a useful classification scheme.

The typology of restitution here may or may not be useful in planning new programs. The issue, however, is to clearly define the nature of restitution to be utilized in a program. Factors that go into that definition - form of restitution, recipient of restitution,

extent of victim involvement, extent of coercion, and so on, are, at this point in the development of the concept, less important than their clear specification. What is needed is the systematic demonstration of various kinds of restitution programs. Studies of a wide variety of experiences with different types of restitution (each individual type clearly operationalized) will, over time, provide clues as to what type of restitution works best in specified circumstances. To have an idea of the meaning of "works"[4], the restitution program must have a clear purpose.

Purpose of Restitution: There is considerable lack of clarity about the purpose of restitution. Restitution has been advanced both as a program to help crime victims and as a program which is rehabilitative for offenders. Who are the expected beneficiaries of a restitution program -- victims, offenders, community at large, criminal justice system? Promoting restitution as a program to help crime victims is popular but questionable. The vast majority of crimes go unsolved, many of those that are solved through the arrest of an offender do not result in conviction, and for many offenders for whom convictions are secured, restitution may not be considered an appropriate sanction. Thus, a comparatively small number of crime victims will ever receive redress as a result of restitution programs. If the primary social objective is protecting the welfare of crime victims, then other programs -- such as public crime victim compensation --are likely to become more effective than offender restitution.

Herbert Edelhertz notes that in its historic connotation, restitution was designed to benefit the offender rather than the victim.[5] Historically, restitution became the mechanism whereby the offender and his kin group made amends to the victim and his kin group and thus avoided a more severe sanction which the victim's kin group could legitimately impose. An interesting example of the same mechanism was recently reported in the Minnesota press.[6] An Ethiopian student murdered his roommate, another Ethiopian. The offender was found to be insane and committed to a program for the criminally insane after which the Immigration Service began deportation proceedings. The offender then requested a delay in his deportation until his family in Ethiopia could arrange a suitable settlement with the family of the victim (custom required that these negotiations could not begin until after a year of mourning had elapsed) so that he could safely return to Ethiopia without risk of being killed by the family of his victim.

A second purpose of restitution, which would be very consistent with its historic purpose, is to provide a less severe and more humane sanction for the offender. This purpose is implicit in diversionary programs and is more or less explicit in both the Minnesota and Georgia programs. The Minnesota Restitution Center is thought to be an alternative to imprisonment for property offenders and the Georgia Restitution Shelters are part of a package of programs which were funded in an effort to reduce the size of that state's prison population. Restitution as a mitigation of punishment requires consideration of the concepts of just deserts and parsimony[7]. Is restitution a just penalty for the crime and is it the least severe of appropriate penalties?

A third related, but conceptually distinct, purpose for restitution is rehabilitation of the offender. In the 1940's this purpose was advocated by I. E. Cohen,[8] and more recently by Albert Eglash,[9] Stephen Schafer,[10] O. Howbart Mower,[11] and Galaway and Hudson.[12] The rationale for speculating that restitution might be more rehabilitative than other correctional measures includes the notion that restitution is rationally related to the amount of damages done and thus would be perceived as more just by the offender. In addition, restitution is seen as specific and allowing for a clear sense of accomplishment as the offender completes concrete requirements, requires the offender to be actively involved in the treatment program, provides a socially appropriate and concrete way of expressing guilt and securing a sense of atonement, and the offender who makes restitution is likely to elicit a more positive response from persons around him than the offender sent to prison or receiving some other correctional sanction. In short, restitution is perceived as a sanction which enhances self respect.

A fourth possible purpose for restitution is to benefit the criminal justice system by providing a fairly easily administered sanction permitting the reduction of demands on the system. Offenders can be rather easily processed while avoiding a public appearance of doing nothing or being "soft." While not articulated explicity as a purpose, this rationale may be implicit in the use of restitution within informal diversion programs or as a probation condition.

A fifth purpose of restitution can be derived by speculating that the nature of the imposed criminal sanction reflects as well as has an impact on the overall society. Some sanctions may encourage brutality, divisiveness and scapegoating. Others may lead to a sense of humaneness and further the integration of a society. One might argue that the restitution sanction may lead to a reduced need for vengeance and retribution in the administration of criminal law as offenders are perceived as responsible persons taking active steps to make amends for wrong doing. If this is true, then perhaps the restitution sanction would have a positive impact on all of society.

These five possible purposes - redress for the victim, less severe sanction for the offender, rehabilitation of the offender, reduction of demands on the criminal justice system, and reduction of the need for vengeance in a society -- are not mutually exclusive. Individual restitution programs, however, can reasonably be expected to specify the purpose or purposes for their existence.

Specification of Population: In addition to indicating the type and purpose of restitution, the program should specify the characteristics of the offender for whom the specified kind of restitution is thought to be an appropriate requirement in order to accomplish the program's purpose. The variables currently used by restitution projects to determine the suitability of offenders include the type of offense, age, extent of penetration into the criminal justice system, employability, and extent of damages resulting from the criminal offense. Regardless of the criteria, the characteristics of the offender for whom restitution is thought to be appropriate should be specified at the outset of the project.

But there is still another issue. Most existing restitution programs have used restitution as an add on requirement. Restitution is combined with other correctional requirements - as a condition of probation, as a part of the program of a community corrections center and so on. This subjects the offender to the usual requirements of these other correctional processes including, for example, mandatory counseling in the Minnesota Restitution Center. As the use of restitution expands, defining the appropriate relationship of restitution and other sanctions available to the criminal justice system will become an important policy issue. When is restitution a sufficient penalty? When and how should it be combined with other penalties? When should it not be imposed? An immediate evaluation problem for assessing the impacts of restitution is to identify a group of offenders for whom restitution is acceptable as the sole penalty. This will then permit study of the impact of restitution with less concern about possible contamination by other correctional requirements.

A crucial question then becomes: Can the process of requiring a specified group of offenders to make a specified type of restitution for a specified purpose under circumstances where restitution is the only correctional sanction required be undertaken in a setting which permits a reasonably controlled experiment? Minimally, can a portion of the specified population be randomly assigned to the restitution requirement with others receiving the conventional criminal justice services in order to compare outcomes for the two groups? Before encouraging widespread adoption of restitution programming, a number of controlled experiments should be undertaken to test its impact. To this end, priority should be given to funding programs which can answer the following questions in the affirmative:

1. Is the type of restitution requirement to be imposed clearly and explicitly stated?

2. Is the purpose or desired outcome of restitution clear?

3. Is the group of offenders for whom this type of restitution is thought to lead to the desired outcome clearly specified?

4. Is restitution the sole criminal justice sanction to be required of these offenders?

5. Is there a project evaluation design which will permit reasonably confident conclusions concerning the relation of restitution to the accomplishment of the purposes?

DESCRIPTIVE STUDIES

In addition to the dissemination of information regarding current experience with restitution and moving towards controlled experimentation with the use of restitution, present programs suggest a number of questions for which exploratory and perhaps even qualitative research strategies are, at present, the most appropriate. Developers of restitution programs can contribute to the refinement and resolution of these issues by planning and implementing record keeping systems which

will enable administrators to share descriptive accounts of how their programs deal with several major questions. The questions can be grouped into three general areas - victim involvement, public acceptance, and impact on the criminal justice system.

Victim Involvement: What role, if any, should victims of crime play in a restitution program? If restitution is being utilized as a less severe sanction, such as an alternative to imprisonment, what consideration should be given to the wishes of the victim? This question has received almost no attention. Any program which attempts to actively involve the victim in the restitution process will be confronted with victims who, for a variety of reasons, decline participation. This raises the issue of whether the victim's failure to participate should serve as a veto over the offender's opportunity to utilize restitution instead of more severe sanctions. The Minnesota Restitution Center has resolved this issue by permitting the substitution of community service or payment of restitution to a community organization for the direct involvement of the victim. The Adult Diversion Project of Tucson, Arizona, however, permits either the victim or the arresting officer to veto the defendants entry into a pre-trial diversionary program utilizing restitution.

Existing programs range from those such as the Minnesota Restitution Center, The Iowa Restitution in Probation Experiment, and the Adult Diversion Project, which attempt actively to involve the victim and the offender in direct communications both to develop a restitution plan and to continue contacts as the plan is implemented, to programs such as the Georgia Restitution Shelters in which court ordered restitution is made through the intermediary of the shelter's business managers in order to avoid victim-offender contacts. The Iowa program represents an effort to deliberately introduce victim-offender involvement into a system in which restitution was already present but was being handled through court officials without victim and offender communication. To date, the Minnesota experience indicates considerable success at securing the assistance of victims in negotiating the restitution contracts; less success, however, has been achieved in maintaining offender-victim communication once the contracts are completed and the offenders are actually implementing the agreement.[13]

The impact of victim-offender communication on both the victim and offender is, at present, unknown. This is an area which requires considerable further exploration. Can victims and offenders engage in meaningful contacts and communication which are beneficial to both? What does such communication do to the offenders perception of victims and the victims perception of offenders? Would such communication reduce the need for scapegoating and cries for retribution? These questions require experience and study which should develop as efforts continue to actively involve offenders and victims with each other.

The question of victim involvement raises two further issues - differentiating types of victims and consideration of victim culpability. Victims range from individuals to large organizations. Should the type of victim be a consideration in determining restitution

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obligations? How is "victim" to be operationalized in the case of large organizations? Does the type of victim influence the impact which restitution may be presumed to have on the offender or the willingness of the victim to be involved in a restitution program?

A growing body of evidence suggests that in some situations victims may be partially responsible for their own victimization.[14] What part, if any, should the issue of victim culpability play in imposing restitution requirements? If a victim is partially responsible for victimization, does this influence the restitution obligation for the offender? How do victims' and offenders' estimates of loss vary? What is the possibility of victim's inflating the extent of their losses? Do offenders perceive victims as trying to "rip them off" and, if so, how does this impact on the usefulness of restitution in achieving its stated purpose?

Public Acceptance: Another series of questions can be asked concerning the public acceptance of the restitution sanction. To what extent does the public perceive restitution as an appropriate sanction? Under what circumstances would the public accept restitution as a sole sanction and under what circumstances should it be attached to other requirements? Do victims, as a subset of the public, perceive restitution as fair? To what extent are victims satisfied with restitution as the sole penalty? How do the public and victims perceive restitution vis-a-vis other criminal justice sanctions?

Impact on Correctional Programs: A final series of questions relate to the impact of restitution programming on other correctional programs. How does restitution programming influence the job of probation officers? To what extent is restitution compatible or incompatible with treatment approaches used in correctional services? Does a restitution requirement inhibit rehabilitation of offenders by detracting from ability to support self, family, or meet other financial obligations? Does it detract from counselling efforts directed toward inter or intrapersonal problems? Is restitution simply a bill collecting procedure requiring little skill on the part of the correctional worker? When restitution is not the sole penalty, can it be integrated with other correctional services and sanctions for the offender? In the 1940's, Irving Cohen suggested that restitution requirements provided a positive focus for the work of probation officers.[15] More recently, Kathleen Smith has proposed that financial restitution (both directly to the victim and also to the society in the form of a court ordered discretionary fine) become the basis for determining the length of time that an offender would be incarcerated.[16]

What is the cost of administering various types of restitution programs? What skills and tasks are necessary in implementing a restitution program and how do these compare with the usual skills of correctional workers? Do some types of restitution reduce the need for other correctional services? Are there occasions when restitution may be an unjust sanction for the offender such as when an offense

created damages so extensive that even the lifetime earning capacity of the offender might not be sufficient to make reparation? Also, if some offenses and offenders are perceived as responding to an oppressive society, then an argument can be advanced that imposing a restitution requirement is just a continuation of the pattern of oppression (this argument, however, can also be advanced for any sanction which might be imposed under these circumstances).

These are some of the troublesome questions for which, at present, there are certainly no clear answers. Administrators of restitution programs can contribute to the development of a knowledge base in these areas by systematically recording and describing their experience in dealing with these issues. Simple surveys can be conducted to secure preliminary answers which can be tested out with experience. An immediate need is for the publication of good descriptive accounts of ways in which the questions are actually being resolved in practice and a description of the results which presumably flow from a particular resolution. From these descriptive accounts, more general principles can be developed to guide the further development of restitution programs.

SUMMARY

An attempt has been made to identify three major research - information needs necessary to the rational development of restitution in corrections: 1. Assimilation and dissemination of the experiences in current restitution projects. 2. Development of controlled experiments to begin testing the application of various types of restitution. This requires the development of operational definitions of restitution, a specific purpose of restitution, explicit definition of a population, preferably the utilization of restitution as the only sanction, and hopefully, a design in which random selection is acceptable. 3. Recording and publication of descriptive accounts of how questions in the areas of victim involvement, public acceptance, and impact on the correctional services are being answered as restitution is introduced in correctional programs. These descriptions should flow from operating programs and should describe both the actual practices of the program as well as the results observed from various practices. Restitution will continue to be formally and systematically utilized in corrections. With formal and systematic study of its use along with dissemination of materials new programs will be spared the necessity of reinventing the wheel.

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SECTION III

The four papers in this section deal primarily, although not exclusively, with the use of restitution as a condition of probation. In his paper, Albert Eglash sketches out the idea of "creative restitution" as involving the requirement of some form of restitution by the offender to the victim which is effortful, constructive, relevant to the damages done and leaves the situation better than prior to the criminal act. The close similarity of this type of restitution to the Adlerian concept of "logical consequences" is brought out in the latter part of Eglash's paper. A major emphasis of a creative restitution scheme could be on restitution in the form of service - either to the individual victim or the larger community. An example of the latter type of program is provided in the paper by John Harding describing the British program of community services. In this paper, Harding outlines and discusses the legal framework and organization of the British program along with some of the major operational issues and future directions.

A very different type of restitution arrangement currently in operation in Iowa is described in the paper by Bernard Vogelgesang. The 1974 session of the Iowa legislature passed a statute requiring that restitution be a condition of either probation or deferred sentence. While it is not clear whether the Iowa legislature requires only restitution in the form of money or would allow personal or community services restitution, the common practice is clearly toward monetary restitution. In many respects, the Iowa legislation appears to formalize the widespread practice of attaching monetary restitution conditions to probation orders.

The paper by Steven Chesney presents empirical evidence from the State of Minnesota on the manner and extent to which restitution is utilized in the county probation departments of the State. Many of the same problems associated with the Iowa program are evident in the data presented by Chesney on the attitudes of Minnesota Probation Officers toward the use of restitution. One question that needs to be carefully considered in this respect concerns the relative extent to which the professional orientation of probation officers has negative implications for the conduct of a monetary restitution scheme: Does a monetary restitution scheme smack of a bill collector role for the probation officer and does this conflict with the role set of a professional?

Several major issues run through these papers: First, the question as to whether restitution should be made by the offender to the victim or to the larger community. The Iowa legislation appears to provide for restitution solely to the crime victim while the British scheme emphasizes restitution by the offender to the larger community. A creative restitution scheme, as suggested by Eglash, could conceivably apply to either the individual victim or the community. As reported by Chesney, the practice in Minnesota is overwhelmingly of the type in which the offender makes restitution to the victim with only incidental use made of restitution to the community. While the idea of making restitution to the community is consistent with the legal concept of crime as a wrong against society, the fairness of this practice for the individual victim is open to question. Offender restitution to the community can be viewed as simply an extension of the original historical transformation of restitution paid to the victim into fines paid to the State.

A related issue concerns the nature of the victim to whom restitution is to be made. As Vogelgesang notes, the crime victim is commonly an insurance company or a large corporation as opposed to an individual citizen. What - if any - is the differential impact on the offender of making restitution to a large corporation as compared to individual crime victims?

Also pertinent here is the question of direct victim-offender involvement in a restitution scheme. Modelled after the Minnesota Restitution Center, the Iowa scheme encourages structured victim-offender contact in the formulation of the restitution plan. Similarly, Eglash's concept of creative restitution would seem to encourage involvement between the parties. Data presented by Chesney, however, on Minnesota probation practices indicate that direct victim-offender contact is overwhelmingly discouraged by judges on the grounds that such a practice would be against the wishes of victims or might lead to further victimization. On the other hand, evidence is available to indicate that personal contact between victims and offenders can have the positive effect of minimizing the offender's use of rationalizations concerning the harm done. (See, for example, Stewart Macauley and Elaine Walster, "Legal Structures and Restoring Equity," Journal of Social Issues, 27, 1971, pp. 173-188.) An interesting sidelight on this issue is Chesney's finding that a sizeable proportion of victims designated by the courts to receive restitution, had not been so informed.

BEYOND RESTITUTION-CREATIVE RESTITUTION

Albert Eglash

The Three Faces of Justice: Restitution Contrasted with its Alternatives

For thousands of years, retributive justice and its technique of punishment for crime; for decades, distributive justice and its technique of therapeutic treatment for crime--these are the alternatives to restorative justice and its technique of restitution.

Often in bitter opposition to each other, these two alternatives are in many respects very similar to each other, but are in sharp contrast with a restitutional approach.

1. While both punishment and treatment are concerned primarily with offenders' behavior, restorative justice focuses primarily upon the destructive or harmful consequences of that behavior, its effect upon the victims of the criminal act.

2. Similarly, while both punishment and treatment overlook the victims, except as witnesses, restorative justice makes victims and their needs an important consideration and gives them an important role to play both in achieving justice and in developing a rehabilitative or correctional program.

3. Both punishment and treatment place offenders in a passive role of receiving corrective action. An analogy is traditional medicine, where patients passively receive either surgery or some form of medication.

By contrast, in restorative justice the basic requirement is an active constructive effort on the part of the offenders themselves. We might use the analogy of biofeedback therapy as a treatment of medical disorders in which the patients heal themselves.

4. Both punishment and treatment remove offenders from the situation in which the offense occurred. CREATIVE RESTITUTION keeps the offender in the situation, but reverses his behavior from one of taking or harming to one of giving or helping.

5. The logic or rationale of our two traditional approaches require that, when successfully applied, misbehavior will stop, either because of deterrence, avoidance of punishment, or because the underlying emotional conflict motivating the behavior has now been resolved.

CREATIVE RESTITUTION, as a form of guidance, recognizes that guidance does not prevent errors; it only destroys fixated patterns so that learning can begin to occur. In Alcoholics Anonynous, for example, a "slip" is not an indication of failure, but a painful opportunity to learn.

6. Both punishment and treatment define <u>past responsibility</u> in terms of the circumstances or causes of the criminal act; and when there is a question of possible insanity, are committed to a specific position regarding "free will" <u>vs</u> "psychological determinism". Similarly, both approaches define <u>present responsibility</u> in terms of vulnerability to social discipline, either punishment or treatment; and

both insist that present responsibility is related to the past.

For example, jurists and theologians, accepting free will but rejecting psychological determinism, are likely to agree that we are responsible for our behavior and, as a consequence, we should be punished, in prison or in Purgatory for our willful disobedience of human or Divine law.

Similarly, behavioral and clinical scientists, accepting psychological determinism as part of the social sciences, but rejecting free will as illusory, are likely to agree that our developmental history and our metabolic and neurological condition, our cognitive-affective state at the time of the offense, were determinants of that offense; and that, since our behavior was determined by forces not under our own control, we are not responsible and should not be punished, but helped. Therapeutic treatment is seen both as just and as scientifically logical.

A restorative approach of CREATIVE RESTITUTION accepts both free will and psychological determinism. It re-defines past responsibility in terms of damage or harm done, and can therefore accept psychological determinism for our past behavior without destroying the concept of our being responsible for what we have done. Similarly, it re-defines present responsibility in terms of our ability or capacity for constructive, remedial action, and can therefore accept free will for our present, ongoing behavior, and for our future contemplated behavior, without destroying scientific explanations of past behavior. Only in restorative justice are determinations of past and present responsibility independent.

For instance, in AA, alcoholics insist "I'm not responsible for my past behavior, much of its most destructive moments occurring in a blackout when I was certainly far from sane. Still, I accept present responsibility to make amends to those I inadvertently hurt, and to help other victims of alcoholism."

If offenders are willing to make amends to their victims, then the classical question, "Was the defendant sane at the time of the crime?" becomes less crucial.

FOUR TYPES OF RESTITUTION

Once we make a decision that our main thrust will be neither toward retributive justice and punishment, nor towards distributive justice and therapeutic treatment of offenders, but instead, toward restorative justice and restitution, we may not have solved our problem of achieving both criminal justice and correctional rehabilitation; but, at least, we are now in a position to define our problem clearly: we can now begin to ask productive questions.

Perhaps the key question we ask becomes: "Do we want to compel the offender to make amends or do we want to leave it up to him to decide? Shall restitution be permissive or shall it be mandatory? Is the criminal free to choose or is he required?"

If we have only these two alternatives, then the alternative of freedom rather than of coercion is probably unacceptable to us. Given only these two alternatives, most of us will opt for making restitutional activity a requirement. But as soon as we make something a requirement, as soon as we coerce people, we find ourselves up against the stubborn perversity of the free human spirit, the rebel which lies within each of us.

Fortunately, we have four rather than two alternatives; for restitution is composed of two independent decisions, either one of which can be either free or coerced: first, a decision about making amends or not; second, what form the amends is to take.

1. In the spontaneous restitution of everyday life, both aspects are free: if deliberately or accidently I offend or harm someone, I am free to decide to make amends for what I have done, and I am equally free to decide how. In my opinion, spontaneous restitution has no important function in criminal justice or correctional rehabilitation.

2. In the mandatory restitution of civil court action, a court may require a defendant to make amends to his victim. Traditionally, for thousands of years, this has taken the form of court-specified payments. Here both aspects are coerced: the defendant is required to make amends and told exactly how to do it. I doubt that financial reparations, in its usual form, has a great deal to contribute towards rehabilitation of an offender, although it provides a measure of justice for the victim of the crime.

3. It is not necessary that both aspects, both decisions, be either coerced or mandatory: one aspect can be free, the other required. For example, in ritual restitution, the decision about making amends is freely made; but, once made, the form is determined. This is the province of religion: I am free to select my religious affiliation for myself; but, once selected, I may find myself performing atonement rituals which I did not choose for myself. These are designed more for reconciling man and God than for making amends towards offended individuals.

Some clinicians, especially the psycholanalysts, have called attention to the ritual restitution of religion and the compulsive rituals, subtly restitutional in nature, of psychopathology: in the story, "I NEVER PROMISED YOU A ROSE GARDEN," a teenage girl has lost her hold on reality and, in compensation, creates an imaginary world. Analysts use the phrase, "loss and restitution."

4. Now we come to the last variety of restitution, and the one which I believe holds maximum promise for all of us concerned about justice to victim and offender alike, about rehabilitation of victim and offender alike--guided restitution, which I like to term, CREATIVE RESTITUTION.

In guided restitution, the offender is required to make amends for his offense, but is free to determine for himself what form this amends will take. At first glance, this may seem like a risky proceeding, for the offender may select some trivial gesture wholly disproportionate to his offense; and, if he does, then no useful purpose is served by the restitution.

However, if, in addition to requiring restitution, we also define the restitutional act, then we leave the offender free only within the limitations of our definition. Let's look now at a definition of restitution which defines the act in terms of its characteristics:

Four Characteristics of Guided Restitution

Guided restitution is defined essentially as an offender being required to make amends to the victim of his offense, while being free to select the form of the amends. Within this definition, we can distinguish some specific characteristics which the restitutional act has:

1. Restitution is an active, effortful role for the offender. This principle is well-established in corrections, as when offenders do forestry or road building work.

2. The active effort is also a constructive and helpful effort directed towards the victim of the offense.

3. The constructive or helpful aspect of the restitutional act is related to the nature of the damage or harm resulting from the offense. I know a Juvenile Court judge in Detroit who, when confronted with youths guilty of mischief against a railroad, had them visit the railroad operation daily and write about their observations. When other youths damaged a bus, he required them to help repair the damage and to weekly wash the bus.

4. The nature of the relationship between the restitutional act and the offense is reparative of damage done to person or property. For example, some youths caught vandalizing a park were required to plant and tend new trees.

Once we place these requirements upon the amends we protect the victim from a trivial act on the part of the offender. However, this does not protect the offender from vengeful demands on the part of the victim.

Two Characteristics of Creative Restitution

Were I inclined to be critical, as indeed I am, I would object that there is nothing essentially creative about the process of guided restitution. Two further characteristics can be added which I believe justify describing the procedure as truly creative:

1. The Second Mile. The reparative effort does not stop at restoring a situation to its pre-offense condition, but goes beyond: beyond what our own conscience requires of us, beyond what a court orders us to do, beyond what family or friends expect of us, beyond what a victim demands of us, beyond any source of external or internal coercion, beyond coercion into a creative act, where we seek to leave a situation better than it ever was.

I know a child who damaged a neighbor's mailbox. The girl's mother helped her to repair it, and together they restored it to its original condition, which wasn't very good. The next day, on her own initiative, she asked her mother for paint and brush, and she made the box more attractive than it had been prior to her act.

Another instance told to me by Paul Keve:

After a long history as a chronic delinquent, Steve straightened out; and, as a plumber, stayed out of trouble, married, and had a child. Then one day the sight of some copper tubing was too strong a temptation and he stole it. Afterwards, sick and confused, he was glad to be caught.

Part of the probationery requirement was mandatory restitution for tubing stolen and used or sold. One day, while waiting to make his regular payment, Steve overheard this: "Our club's constructing a playground for underprivileged kids, but we can't get the kind of tubing we need." On his own initiative Steve suggested the best source for the kind needed and then helped to construct the playground. In doing so, he helped to rebuild his own self-respect. His second mile took him back to the person he had hoped to be.

When we move into the realm of CREATIVE RESTITUTION and choose to walk a second mile, we resolve for ourselves the age-old philosophical dilemna of free-will vs determinism. We begin to see that our destructive behavior was never freely chosen and was not our true self; that we ourselves have been victims of environmental pressures, of our own emotional pressures, of our misconceptions and destructive beliefs and attitudes; that our own thoughts, like a chattering monkey on our back whispering their stupid suggestions, betrayed us; that the behavior we thought we freely chose was in fact compelled; but that at the same time, we are indeed free to become as constructive as we wish.

As we gain this insight, seeing our offense as weakness, not as strength, we gain a sense of identification with others who are victims like ourselves; and we then extend the concept of "restitution to the victim" towards other offenders, themselves victims of those forces, external or internal, which alienate us from our own true self as well as from others.

2. Mutual help programs. I do not know if, literally speaking, there really exist demons who can possess us and who need to be exorcised. I am a hard-nosed skeptic. But at a figurative or emotional level, we are all at one time or another possessed by demonic forces. We all need help.

Part of CREATIVE RESTITUTION is the offender's activity on behalf of other offenders, a mutual-help relationship exemplified by the AA program: an alcoholic is likely to listen only to someone who has been through that same hell, and many delinquents prefer to listen to an ex-con rather than to a professionally trained worker. Moreover, an alcoholic's willingness to help other alcoholics stay sober may enable the helper to remain sober; an ex-con who tries to help delinquents not follow in his footsteps may be keeping himself out of trouble.

If this is so, then a largely untapped resource for helping offenders is other offenders. Bill Sands' Seventh Step Program is an example of this, and several years ago I helped get a similar program, Youth Anonymous, started in Detroit, under the leadership of an outstanding human being, Tip.

Tip had spent most of his life in correctional institutions--juvenile, state, federal, and military. He became dedicated to helping youth, and these youth listened to him when they scorned professional helpers.

Restitution in the Administration of Justice

The administration of criminal law begins when the police investigate a crime or a complaint and ends when an offender is discharged from probation, prison, or parole. At which points in this process can restitution appropriately fit?

In instances of minor complaints, restitutional activity may occur before any official criminal charge is brought; but, in more significant offenses, I think that restitution fits best as a probation requirement. Those who have already served time or who are still in prison often feel a sense of bitter resentment difficult to reconcile with restitution to victims.

However, I want to suggest one more point-in-time at which restitution may occur, namely, before any offense has been committed. I have encountered instances of pre-offenders turning themselves in either to the police or to mental health agencies; and, since the advent of community HOTLINES, we are in a good position to encourage pre-offenders to seek help before committing any crime. I think that we can

make amends even for a thought, an impulse; and some books on the psychological use of dreams suggest that, when in a dream we have offended against anyone, we let them know about it.

The Differential Effect of Punishment and Restitution: A Controlled Experiment

I wrote two versions of a brief story describing a youngster stealing, caught, and disciplined by his parents, either by punishment, or by guided restitution; then shuffled the two versions and distributed them randomly within a group of subjects.

Here is the story in its two versions, with the five questions and the percent of "YES" replies given to each question by the 203 subjects who happened to receive the punishment version and by the 209 subjects who happened to receive the restitution version.

A STORY

Ten year old Jimmy steals a candy bar. The grocer catches him and tells his mother.

Punishment	Restitution
His mother makes him stay in the house that Saturday afternoon instead of going to a movie. He isn't allowed to have any candy for a week. His father spanks him.	His mother and father talk to Jimmy. They tell him to go back to the grocer and make up in some way for what he's done. Jimmy goes to the grocer, apologizes, and offers to sweep out the store.

A few weeks later, Jimmy and another boy are in another store. His friend tells him how, without getting caught, Jimmy can take a bar of candy.

QUESTIONS	Percent of YES Replies Punishment	Guidance
1. Will Jimmy take the candy?	41%	27%

Discussion. This question attempts to measure the deterrence value of a disciplinary technique. Creative restitution seems to be regarded more effective than punishment.

2. Does Jimmy feel that he got fair treatment from his parents.	52%	80%

Discussion. This question attempts to measure the mental hygiene aspect of discipline. These results suggest that guidance is relatively effective in strengthening the relationship between child and parent.

3. The grocer needs a stockboy. Jimmy wants the job. Will he ask for it?	55%	76%

Discussion. Here we are attempting to measure self-acceptance in contrast with self-stigma. Apparently an offender feels humiliated,in part, by the discipline to which he is subjected.

4. If he asks for the job, will he get it?	52%	73%

Discussion. Here we find that when creative restitution occurs, the victim apparently does not feel cheated at the thought of the offender "getting away with it," i.e., not being punished. Reconciliation is apparently more easily effected within a restitutional than within a retributional framework.

5. Jimmy's neighbors know what has happened. They are asked if Jimmy can, again this summer as he did last summer, stay with them for a week. Will they invite him?	67%	80%

Discussion. For an offender who is helped to make amends for his offense, social stigma is less.

Offenders' Attitudes

How do offenders themselves, those on probation or parole, those in prison or juvenile institutions, feel about the concept of restorative justice? I have talked with a large number, always in discussion groups, and have listened to their ideas and reactions. Here are some of the attitudes they express:

1. They have little respect for mandatory restitution and much prefer to have a say in the form the restitutional effort will take.

2. Even if they are free to select the form, they are reluctant to have restitution a requirement in addition to imprisonment: "I have already paid my debt to society."

3. Many see it as a good idea. "Yeah, it'd make me feel better." "Be hard to say, 'I'm sorry,' but I'm willing to give it a try."

4. Some see no need for it: "I didn't really hurt anyone, and the people I hurt, I'm not sorry about it."

5. Some are scared. "Naw, he might work me over. I don't know what I'm getting into."

6. Probationers are willing to accept it as part of the terms of probation, provided that a trusted mediator first approaches the victim and makes sure that the offender's gesture will be acceptable. An intermediary is needed.

7. Juvenile offenders especially seem to find the idea strange, as if no one --peers, parents, teachers, clergy -- has ever told them: "If you wrong others, find a way to make it up to them." They, more than adults, want someone like Tip or a probation officer to pave the way.

THE VICTIM

At the core of the restitutional concept lies the damage or harm done to victims of crime. In reading autobiographies of criminal offenders, I am impressed with their callousness towards their victims. Even when they determine, with apparent success, to pursue a different way of life, they never make amends to those they hurt.

The victim is generally overlooked. In a classroom experiment, I ask students how they would handle an incident of verbal or physical aggression, either name-calling or actual violence. Invariably, they concern themselves solely with the aggressor, seldom with the victim.

I now want to admit that I too am offender-oriented. From the start, I've been thinking and writing about ways to help offenders, about justice and rehabilitation for offenders. I work with and interview offenders. I seldom think about the victim, how to help him with his financial, medical, emotional, and social problems. I have never visited any victims, never interviewed any, never wondered what questions I would want to ask, never thought to include any victim-interviews--"How do you feel about CREATIVE RESTITUTION?"--in this paper.

For me, restorative justice and restitution, like its two alternatives, punishment and treatment, is concerned primarily with offenders. Any benefit to victims is a bonus, gravy, but not the meat and potatoes of the process.

An Adlerian Comment

Ernst Papanek

Queens College, New York

Activity characterizes those of us fortunate enough to be healthy, and represents a healthy component even in a delinquent (misguided) personality: a correctional technique which requires effortful activity directly builds on this intrinsically healthy aspect.

Activity and effort imply learning (or re-learning) by doing, as encouraged by Adler. When verbal insight fails to change our behavior, then active learning becomes indispensible.

By asking us to make a contribution, giving something of ourselves, restitution teaches us to use our abilities and energies for constructive achievements, and thus increases our status and prestige in a socially acceptable way.

The emphasis of creative restitution upon the "consequences" of our behavior, in place of our moralizing about the behavior itself or analysing its unknown motives, plays an important part in Adlerian discipline. The idea of natural consequences is at the center of our treatment process for delinquents.

Repairing the damage also repairs our opinion of ourselves. Our restitutional behavior gives us real satisfaction, so that we live up to our expectations of ourselves as reliable, responsible human beings. Guidance towards constructive restitution helps us overcome feelings of unease and inferiority, and becomes an important and effective factor in developing our innate potential for social feeling and for constructive motivation.

When we go a second mile (successful overcompensation), we make a strength out of a weakness. We're led from a self-centered activity in a certain area to a contributive activity in the same area. We go beyond a more "homeostatic" restitution and toward a truly creative, open-ended restitution. Adler sees this open-endedness, this striving for perfection, as a primary motivating force. For the healthy, life is an unending creative task.

Our restitutional activity takes place within a framework of constructive interpersonal relations: with authority, coercion plus freedom to choose; with our victim, amends and reconciliation (Dr. Eglash cites instances of true forgiving), with other offenders, mutual-help. This interpersonal aspect is the most important rehabilitative characteristic of creative restitution.

The offender pictures us as hostile towards him; he's alienated from us, his social interest underdeveloped; and when we punish him, we exacerbate his attitude, for then we live up to his hostile expectations.

But his constructive interpersonal contacts help him overcome experiences and opinions which led him to choose delinquency. Through social interest, he identifies with our common ideals; and then others' needs become his. Once we interest him in others, even in caring for a pet animal, we've started developing his social interest. Once we set him on his way to solving his problems cooperatively, which takes real courage, we win everything.

Creative restitution represents an opportunity for constructive action in accordance with our abilities. Having this opportunity, we're able to do the right thing and correct our mistakes. We're accepted as a member of society, as responsible for our actions and for correcting them when we can. When we consider ourselves socially and psychologically responsible, we grow into healthy, mature human beings.

COMMUNITY SERVICE RESTITUTION BY OFFENDERS

John Harding

INTRODUCTION

The idea of community service by offenders is a comparatively recent development in the non-custodial treatment of offenders. Its legal origin lay in the report prepared by the Wootton Committee in 1970 on Non-Custodial and Semi-Custodial Treatment of Offenders. Community service was one of several recommendations put forward by the committee in an attempt to offer the Government of the day some constructive alternative to prison and custody. The committee were made aware of the rising prison population in Britain, which by 1970 had reached 41,000. Penal reform groups and Probation departments were pressing for community based programmes which offered some alternative to the courts for an adult facing a custodial sentence. On the strength of the committee's recommendation and the interest generated by the public at the time, the Home Office set up a Working Party to examine in some detail the feasibility of community service by offenders as an alternative to a shorter custodial sentence for men and women over the age of 17.

THE LEGAL FRAMEWORK OF THE PROGRAMME

The community service recommendations of the Wootton Committee, with some amendments, were finally incorporated in Section 15 - 19 of the Criminal Justice Act of 1972. This Act was later superseded by the 1973 Powers of Criminal Courts Act.

Following the report of the Home Office Working Party, the Home Secretary announced in the Summer of 1972 that community service projects would be set up on a pilot study basis in six probation areas - Nottinghamshire, Inner London, Kent, South West Lancashire, Durham, and Shropshire. The projects were designed to test out the feasibility of the Courts making community service orders. The six areas were given the authority to introduce community service to take effect on January 1, 1973. Each of the six areas was properly monitored from the start by the Home Office Research team in Manchester, who were asked to evaluate the work of the community service sections over a two year period.

The main provisions in the 1973 Powers of the Criminal Court Act are as follows:

(1) A person aged 17 years or over, convicted of an imprisonable offence, may be ordered to undertake unpaid work for any total number of hours between 40 and 240, within a period of one year. Concurrent as well as additional orders are possible in respect of a number of different offences, but the aggregate must not exceed 240 hours.

(2) Orders may only be made with the offender's consent, and where arrangements for orders in his area of residence have been approved by the Secretary of State and approval notified to that court. Courts must

consider a probation officer's report about the offender, his circumstances, and the availability of suitable tasks, and if the Court thinks necessary, his suitability to undertake such work.

(3) An Order must specify the Petty Sessions area in which the offender resides, and only a court acting for that area may deal with the subsequent amendments to the order, for example, breach or revocation proceedings, or when the change of the offender's circumstances compels transfer of the order.

(4) Orders may be imposed by the Magistrates Courts or Crown Courts.

(5) The requirements of the order and the legal provisions for breach or revocation procedures etc., must be explained to the defendant by the Court before the order is made. Copies of the order must be passed to the probation officer who must serve a copy on the offender. The requirements are that the offender must report to the relevant officer as instructed, and notify him or any change of address; and that he shall perform for the number of hours specified such work at such times as he may be instructed by the relevant officer.

(6) Instructions for work should as far as practicable avoid interference with the offender's normal work, education or religious activities.

(7) Breach of a requirement of an order, if proved, may attract a fine not exceeding £50, without prejudice to the continuation of the order.

(8) Revocation of an order, whether for breach of requirements or under other circumstances, may be dealt with by way of any penalty which could have been imposed for the original offence. Where breach of requirement is not involved, Courts may simply revoke the order without further penalty.

(9) Schedule III of the Act outlines the provisions for the appointment of a Community Service Subcommittee of a Probation and Aftercare Committee, and the powers of the subcommittee. The community service subcommittee acts as a policy controller for the organisation of community service in a probation area. The committee is made up of lay magistrates and certain ex officio members such as a trade union official, chairman of a volunteer bureau, a judge, a journalist, plus the senior probation personnel responsible for the administration of the scheme.

THE ORGANISATION OF THE SERVICE

Each of the six experimental community service areas has by circumstances and emphasis brought something different to the scheme. Inner London operates on a scale nearly twice as large as that of any other area. Kent has a particular philosophy of operation involving a detailed allocation procedure before placement with a voluntary agency. .Nottinghamshire emphasises integration of community service with the numerous voluntary organisations in the area. Durham shares Nottinghamshire's emphasis and the Community Service office had to be active in stimulating voluntary effort. Durham and Shropshire are largely rural areas, with problems of travel. The scheme in South West Lancashire operates in an area with pockets of very high unemployment, and so uses weekday work more than do other areas.

Thus, because areas have different local pressures and different policies to accommodate these pressures, they have all developed separate perspectives on the scheme since the beginning of the experimental period. However, the scheme has proved viable in that work is being done and orders are being completed in all the areas.

All six areas have expanded into new court areas since the beginning of the scheme. Three of them - Durham, Nottingham and Kent - now have two administrative centres. Each scheme involves allocating offenders to work which may be provided by voluntary agencies, statutory authorities, agencies stimulated into existence by the Community Service office, or by the Probation and Aftercare Service itself. Offenders on community service are supervised either by members of the work-providing agency or by full time or sessionally paid probation staff. Supervision may be continuous, intermittent, or nominal, depending on the nature of the task and the behavior of the offender.

The senior probation officer is in day-to-day charge of the scheme. He is accountable to the chief probation officer and the Community Service Committee. The senior probation officer, or community service organiser as he is usually known, is involved in locating tasks, matching and allocating offenders to the tasks, liaising with work-providing agencies, sentencers and probation officers, following-up difficult offenders and iniating breach proceedings in the courts. He is also responsible for a team of probation officers who are involved in similar work. As these schemes have expanded more staff have been recruited. It is currently estimated that a staff member is responsible for between 40 and 50 offenders on community service. Areas also appointed full time ancillary staff whose tasks included the organisation of equipment and transport, supervision of small work groups, follow-up and liaison with community groups, and follow-up with offenders for breach requirements. In Nottinghamshire, an additional staff resource was obtained from the local Council of Voluntary Service, where the services of the Volunteer

Bureau Organiser were used to place some offenders. The Bureau maintained good contacts with a number of local groups and thus afforded community service section with additional outlets.

In all areas local probation officers are advised to contact the Community Service office before recommending community service to the court. Careful matching of an offender to an available task is made before the first work allocation. The offender's experience in that first work task confirms his suitability or unsuitability for that type of work; if he is unsuitable, other work placements are tried. As a general rule, an offender remains in one allocation throughout his order, if the work continues to be available and he responds well.

The Community Service office's contact with offenders on community service is maintained through supervisors; the community service organisers themselves do not often see the offender after the induction interview and initial matching, unless, for example, the offender requires help of a personal nature or breach proceedings are being contemplated. In Nottinghamshire the community service organiser interviews each offender in the middle and end of his order to ascertain his response and attitude to the scheme.

Research reveals that over 60% of offenders on community service are supervised by non-professional staff, voluntary group or community organisation. The remainder are supervised by sessional supervisors employed by the Probation Service. The sessional supervisors take responsibility for small working parties of offenders, usually at the weekend or in the evening. Tasks include painting and decorating of houses and flats for the elderly and physically handicapped, making toys and equipment in a workshop base for the handicapped and disabled, special project work on adventure playgrounds or community centres. Sessional supervisors are drawn from many quarters; some are tradesmen or craftsmen, some are well-motivated students, and, significantly, some are ex-offenders who have graduated through the community service scheme to the point where they are assessed as suitable for the leadership role. Other supervisors within the voluntary sector are, in the main, ordinary men and women from the community who give their time to a particular voluntary organisation.

The task of the supervisor, whether voluntary or sessional, is crucial in that he undertakes the direct work with the client and carries out the intentions of the court in relation to the offender. Beyond this, however, the realisation of the spirit of community service orders lies in the hands of the supervisor, who conveys to the offender not only the expectations of the community but also the value of the task he is undertaking and the appreciation of the community for his efforts. The use of non-professional staff in community service schemes has been recommended during the experimental period 1)for reasons of economy of resources, 2) because it creates a role for those committed to the idea of work with offenders but not trained for

it, and 3) because the non-professional is capable of a special contribution in being seen by the offender as more sincere and more representative of the attitude of the community as a whole. None of these virtues can be denied, but it should be emphasized that the successful use of non-professional staff depends very much on the clear identification of the distinction between professional and non-professional tasks, and availability of skilled support for such workers. While the demands upon the community service team for direct support of clients may be more limited, every client has a supervisor who will require some degree of support through the order.

Regular contact is maintained with non-professional supervisors on a weekly basis either by written or spoken communication. Each week a supervisor returns a work sheet which gives details of a person's attendance at and performance on the task. On average, an offender performs approximately eight hours service a week wither in the evening or at the weekend. Regular visits are made to the organisations to obtain progress reports on an offender's placement. A further quarterly meeting of sessional supervisors and other non-professions is held at the office headquarters. Such meetings may be divided into specialist groups. For example, one might hold a meeting of those supervisors working in youth groups, organisations for the handicapped, or those supervisors responsible for small work parties. Non-professional staff are not expected to attend court and give evidence on someone who has breached a requirement. In the event of an unsatisfactory placement an offender is returned to a work party supervised by one of the probation ancillary staff. If he further offends in this group, then evidence is given to the court by the probation staff member.

THE RATIONALE AND PURPOSE OF THE PROGRAMME

In the second reading debate in the House of Commons on the 1972 Criminal Justice Bill, the then Home Secretary said, "I was attracted from the start by the idea that people who have committed minor offences would be better occupied doing a service to their fellow citizens than sitting alongside others in a crowded gaol. This will, of course, have to be a voluntary choice of the individual concerned for a number of reasons; afterall, if it is not done voluntarily, the work will not be good. The alternative will be to go to gaol." Later in committee, an Under-Secretary of State said, "I know that it is the personal wish of the Home Secretary that not only should the scheme work, but that it should be a type or order which the courts may come to use freely and one which they will turn to as a normal alternative to a short custodial sentence as a means of making people pay for their offences rather than merely spend a short time, of a probably not very reformative nature, in an overcrowded local prison." Thus, the principal intention of the 1972 Criminal Justice Act was to reduce the number of persons committed to custodial institutions.

Among other assumptions made at the outset, one can list the following:

(1) In cost terms, community service is a cheaper alternative to prison or Borstal or Detention Centre. In Great Britain the average cost of keeping a man in prison is currently £45 per week. An average length order of 120 hours takes approximately 6½ months to complete and costs £158.

(2) Community service allows an offender to live in the community with his wife and family, supporting them by his normal work.

(3) It avoids some of the more negative effects of prison: overdependence, loss of decision-making, loss of responsibility, loss of status.

(4) It gives an offender an opportunity to contribute in some form in the community, and thereby gain status and approval for his actions.

This last assumption represents the kernel of the community service philosophy. The notion of using the offender as a community resource was not in itself novel, since scattered experiments have been taking place in Britain and the United States in the sixties and early seventies. In the United States, the Kennedy/Johnson era had seen the launching of the ambitious community development programmes in large urban areas like New York, where the ghetto resident faced environmental deprivation on a multiple scale. Community workers within these projects began hiring local residents from disadvantaged areas or organisers and social work aides, often with great effect. The New Careers Movement spread in the United States to include employment schemes for ex-offenders, ghetto residents, and the poor. Similar approaches were adopted in Britain at the start of the seventies. Five Borstals working in conjunction with the Community Service Volunteer Organisation in London sent a number of trainees during their sentence to work in homes for old people or centres for the handicapped. The Community Service by Offenders scheme shared a similar philosophy to those other projects in attempting to make people dispense a service rather than become recipients of help.

Other treatment possibilities may be claimed for community service, although it may not be the only possible method in any one case. It may combat social isolation, on almost any level, including the isolated and often institutionalized offender, whose only community is behind prison walls. It may give him a sense of belonging to the world outside prison. It may help the offender who lives in a community to which he feels he does not belong, either because he offends or because he lacks achievement or a particular skill or identity which is traditional in his family. He can be enabled to demonstrate similar skills, or establish entirely new ones. He may even have a family which is isolated,

and instances of wives accompanying their husbands to help at voluntary organisations occur frequently. Offenders, too, learn to work in a group wherever they are placed for community service. Experience shows that the practical work group composed of four to six offenders and a supervisor appears invariably to develop positive social value. Within this setting, many offenders tested their own behaviour and attitudes against the reactions of their fellow workers and have begun to achieve a more generally acceptable level of functioning. These groups can be appropriately critical or supportive, often helping to resolve members' personal problems without recourse to statutory sources. Within the groups themselves, therefore, there may develop a microcosmic concept of community, and the elements of concern for others.

By contrast, community service tasks which involve direct help to the severely disadvantaged, such as the mentally and physically handicapped, children at risk, the elderly and sick, may be seen as a very appropriate treatment method for an admittedly small but distinct group of offenders. The reparative element in community service can help an offender to shed a burden of guilt - not only the obvious guilt deriving from some damage he may clearly have done to others by an offence, but the often inexplicable guilt derived from some forgotten action or omission. More commonly, perhaps, among those who undertake direct service to the disadvantaged, we can perceive the symptoms of growing maturity, the development of a capacity to have concern for others, the move away from the egocentricity of the child. This aspect is particularly important in view of the large proportion of our intake who are in their late adolescent years.

Certain rather practical benefits also emerge from community service. It gives opportunities for offenders to identify skills and work interests which they themselves did not suspect or regard as useful. It may help to identify entirely new skills, when existing ones are no longer appropriate or in demand, or test an interest or aspiration before the offender commits himself to lengthy training or employment. To a limited extent, it can be used to help the chronically unemployed to re-establish a work habit. Finally, it is possible via community service to offer a more constructive use of leisure to those who, because of mental or physical handicaps or social factors, are unable to work, and at the same time counteract isolation.

CENTRAL ISSUES INVOLVED IN THE IMPLEMENTATION OF THE PROGRAMME

In setting up a community service programme, the organiser faces three main tasks. They include:

(1) The community acceptance of the programme and the identification of the tasks;

(2) The cooperation of the courts, particularly magistrates, judges and clerks to the justices;

(3) Cooperation and involvement of colleague probation officers and other social workers in the community.

The organiser needs to maintain an essential balance between these separate but inter-connected tasks. If cooperation breaks down on any one of these three essential tasks, the whole scheme is in jeopardy. From the outset, therefore, the organiser proceeds with the assumption that he will work with three separate interest groups at different levels using skills which are not unfamiliar to the community worker.

(1) Community Acceptance

The author was appointed as Community Service Organiser in Nottinghamshire three months prior to the opening of the scheme on January 1, 1973. The contacts with the community organisations usually involved a meeting with the representative of the organisation concerned, at which community service was explained in some detail. From such meetings it was determined whether the agency would be able to provide suitable work for offenders, and also what was the attitude of the agency toward community service and the use of offenders generally. In many cases, more than one meeting was needed before a decision was reached, because the proposal had to be put to a committee or because more information was required. Some agency representatives wanted time to think about the implications of the scheme, or practical issues such as insurance had to be clarified. Some agencies simply did not have suitable work for offenders. During the period October 1972 to January 1974, 152 agencies were approached. Of these, 54 reacted favourably and were able to provide work and a further 75 were favourable but the provision of work was uncertain. Of the remainder, 5 were unfavourable but open to further negotiation, 1 was unfavourable and not open to any further negotiation, and 16 had no clear outcome. Thus the reception of the idea of community service ranged in nearly all cases from great enthusiasm to willingness to give the scheme a trial. A member of another organisation, who had the most reservations about community service during a meeting, was the one who afterwards suggested further possible contacts for the scheme.

The interviews with the community service officers gave some indication of the attitude of voluntary agencies toward community service. The main reason for agencies being reluctant to participate appeared to be their feelings towards offenders working as volunteers; for example, one organisation had had an unhappy experience in using Borstal boys. Alternatively, they may feel threatened by the thought of using offenders or that the good name of the agency would be contaminated by doing so. On the other hand, the agency may simply have wanted to wait until it had seen the scheme in operation before committing itself. In practice it was easier to establish links with voluntary organisations and local tenant groups than with local authority departments and local hospitals. The process of acceptance was slower in local authority committees, as they discussed the implications of the experiment in detail. Officials could easily accept the offender

in a practical role but raised difficulties when asked to find tasks which involved relationship skills such as visiting the elderly in hospitals, or befriending a mongol child. The barrier was broken by the Education Department youth workers who were willing to use offenders as assistant leaders in youth club settings. Subsequently, offenders have pioneered new developments with local authority departments. They can now be found working in childrens' homes, running day centres, assisting in pre-school play groups, and organising intermediate treatment activities alongside probation officers and social workers.

On a public relations note, the organiser lost no opportunity to make contact with civic leaders, trade union officials and the media. Numerous talks were given to local organisations, debating societies, Rotary groups, etc. Although many of these groups expressed divergent opinions about the usefulness of community service, the idea attracted widespread support which was maintained throughout the two year experimental period.

(2) Relationship with the Courts

One of the first major issues confronting magistrates and judges was to ascertain the place of community service in the range of sentencing alternatives for imprisonable offences. As has been made clear when the Criminal Justice Bill was being debated in the Houses of Parliament, Ministers saw community service primarily as a method of dealing with persons who might have been sent to prison for shorter periods of imprisonment. In three of the six experimental areas the chief probation officer, or working groups set up by them, have tended to view community service primarily as, or only as, an alternative to custody. In the other three areas, community service is regarded as having a wider use, and in one of these the position is defended by the argument that if community service is primarily an alternative to custody, the probation officer writing the social enquiry report must expect that the court will consider making a custodial sentence before he would be in a position of recommending the alternative of community service. In Nottinghamshire, for example, magistrates and judges agreed to confine community service orders to those who might have been given a custodial sentence. Some attempt was made thereafter to introduce an unofficial tariff system, whereby a person whom magistrates felt might have received a twelve month prison sentence would be given an order for 240 hours. In the same way, 120 hour order might be equivalent to a 6 month prison sentence. In practice the policy became a flexible instrument with a good deal of variation, often depending on the attitudes and approach of the respective magistrates. As the scheme developed, it was suggested that the court should assess hours in terms of 1) the gravity of the offence and previous record of convictions, and such other matters as would normally be weighed in passing sentence; 2) the capacity of the offender to take some regular responsibility for his attendance over an extended period; and 3) the extent of his work and

and domestic responsibilities and other pressures he may be facing.

Sentencers, for example, have been discouraged by probation staff from making long orders - upwards of 200 hours - on young offenders whose ability to work through such an order was found to be limited. The same tendency can be discerned in the recidivist with long institutional experience. Once these and other concerns about the possible effects of the length of an order had been identified, it became the practice to encourage probation officers to offer details to courts on the suitable length of an order in their reports. The response of courts to this practice has been encouragingly positive, and it has become clear that the imposition of maximum orders (which may present particular difficulty simply because they are the maximum) has been reduced considerably, and that those which are made without reference to the offender's capacity to undertake them are made now in the absence of specific advice from the reporting probation officer. It is felt that the willingness of courts to adopt the advice of the probation service in this instance can by extension be taken to demonstrate their general confidence in the content of social enquiry reports.

Possibly a larger issue amongst sentencers during the initial planning meetings was a dispute about the overall aims of community service. Some saw community service as a punishment whereby the offender could repay his debt to society. Others saw the measure in more personalized terms as a method of rehabilitation. Ironically, the notion of community service gained a certain unifying strength amongst magistrates through its appeal to conflicting philosophies about crime and punishment.

Other questions were directed to the type of task the offender might undertake. There were some objections to the task which brought offenders into direct personal contact with the young, handicapped or elderly. Some voiced criticism that helping in a club for the handicapped was a soft option alongside the more practical task of digging a garden. The organiser was placed in a position of now having to defend his ground. Other magistrates took issue with their colleagues who shared this view. Work with the handicapped, they maintained, could make mental and emotional demands on an offender which were far from soft or easy in terms of commitment.

On the whole, magistrates lent their support to the community service scheme, but support could have faded quickly if preparations were not made to supply magistrates with a flow of information about the progress of the scheme. Information sheets were sent to each magistrate at the outset. This gave details of the tasks and the organisations who had agreed to participate in the experiment. Individually, magistrates were at liberty to ask probation officers at the time of the court proceedings for a follow-up review of a person made the subject of a community service order. Some magistrates enjoyed even closer contact with those on community service. A number of

magistrates were associated with voluntary organisations as active participants. Some have worked alongside offenders and shared tasks at day centres, clubs for the handicapped, and youth clubs. None, to our knowledge, have revealed their other responsibility to the offender and thus have felt able to mix and share experiences as ordinary volunteers.

(3) The Role of the Probation Service

There was some scepticism in the probation service, both locally and nationally, when the legislative details of community service were first announced. Officers questioned the assumption behind the measure. The essence of voluntary work in the community is of service freely given without any element of compulsion. Were not community service orders, therefore, a contradiction in terms? How could one compel an offender to give up his leisure time to some form of service? Probation officers were quick to point out that although the offender had to give consent to the making of an order, in reality it was Hobson's choice, since the alternative option was prison or another type of custodial sentence. In addition, anxieties were raised by the type of tasks which would be made available to the offender. Would it be a repetition of the Victorian chain gang?

All these questions suggested that the organiser should spend much of his time with local teams exploring and discussing the measure in some depth. Out of these meetings came requests for further information and clear guidelines about the running of the project. A community service working party was set up two months before the start of the scheme on a cross-representational basis from all the area teams. This group, together with the community service section staff arranged to meet monthly so that information could be shared and policy questions raised. Having looked at some of the anxieties present at the outset, the organiser's next task was to help probation officers to look at the selection of suitable offenders for the scheme. One relied on the probation officer's skill in assessment as an essential feature in starting a new sentencing venture. From this process, two problems were identified. The first is to avoid the creation of a limited understanding of the new method. Inevitably a new method must be proceeded by a tested prediction about its scope and applicability, but its potential becomes stunted if all those involved are not kept in touch with the understanding which emerges from actual practice. In some ways, the possibilities presented by community service are so novel - particularly in the opportunity they offer to identify and mobilize the offender's positive quality in contrast to traditional attempts to minimize his defects and limitations - that there is a genuine risk that the full scope of the measure might not be explored. Consequently, it is seen as essential to develop effective methods of communicating to probation officers the relevance of their recommendations, in order that they, in turn, may better advise the courts in future instances.

The second problem in establishing a new measure like community service relates to involvement in the rewards of the work undertaken. Probation officers commonly see people who fail to respond to the skills they exercise in supervision. In some respects, those who are responsible for community service are in the unenviable position of experiencing directly the value of their work. Beyond the important reward of seeing an offender complete a community service order, the staff receive frequent evidence of the offender's positive achievement; it is sometimes difficult to choose between the pleasure created by the offender's sense of achievement or that created by the enthusiastic support of the group from whom he has taken work.

Both these problems of communication can only be avoided by the creation of close links between the specialist team undertaking community service work and those responsible for providing an intake. The responsibility for maintaining such communication rests with the community service team but the effectiveness of the link depends entirely on the willing participation of the probation service as a whole. The pattern of communication includes the pre-trial consultation, the regular provision of progress reports to the officer who recommended an order, and, in those instances where two forms of involvement with an offender exist, as close a liaison as possible between the two officers involved.

ASPECTS OF SELECTION, ASSESSMENT, AND MATCHING

At the outset, community service organisers were asked to detail those offenders felt to be suitable or unsuitable to the scheme. The following guidelines were drawn up.

Not Suitable:

(a) the psychotic or highly disturbed.
(b) the heavily addicted - drugs or alcohol.
(c) those who have committed a serious sexual offence.
(d) those of very low intelligence.
(e) those who are facing a crisis situation which would suggest probation as a more suitable alternative.

Suitable:

(a) the isolated and withdrawn.
(b) those lacking in social training who need an experience of consistency and continuity.
(c) seriously disadvantaged people whose offences might be related to lack of opportunity at various stages in their lives.
(d) those whose crimes may be serious but whose background is fairly stable.

(e) actors-out, chip-on-shoulder, low self-esteem, purposeless livers who are always on the receiving end and believe that the world owes them a living.

As the Nottinghamshire project developed, we became less bound by those early exclusions. We have been able to include in the scheme, quite successfully, two registered addicts, three severely handicapped offenders, and several people with drinking problems. Some voluntary organisations have shown remarkable resilience in coping with them to the extent that earlier reservations have been substantially modified.

Screening procedure is as follows. The probation officer, having examined the various points of suitability for community service, makes contact with the community service organiser and discusses the case in hand. The latter is concerned to know something of the offender's response to the idea of community service. He also asks a series of practical questions which cover a man's work pattern, available leisure time, attitude of family and friends and the nature of the offence. The community service organiser finally offers some advice about recommendation and informs the officer that suitable tasks are available. The important feature of this process is then recorded in the probation officer's written report to the court. The responsibility for initiating community service recommendations can be either through the iniative of a magistrate or judge at an early court hearing or by the direct recommendation of a probation officer through contact with a client whom he knows is going to court.

The assessment and matching of offenders to tasks is a crucially important aspect of the scheme. Offenders are seen within days of the making of the order at the community service headquarters. The interviewer is already in possession of a social enquiry report but this, in itself, is of limited value in terms of making an assessment. Somehow within the framework of the first interview, the organiser has to put across the requirements of the order and convey the spirit of community service. The offender has already given his consent to community service but that agreement took place in a court room. It would be misleading to assume that agreement of that kind was a reflection of a person's motivation toward community service. Motivation, therefore, does not automatically follow from a legal sentence. A setting has to be created in which the offender gradually becomes aware of the significance of community service both for others and himself. Often this process takes weeks, months to achieve. Sometimes the offender is scarcely motivated at all but will perform the hours to meet the requirements of the sentence. One has learned not to assume too much about a person's response on a first encounter. Changes take place in a person's response over a period of time so that the first and last assessment on that person could reflect different attitudes. (See Appendix I Case Illustrations).

In the first interview there is a deliberate focus on a person's activities and interests. One is concerned to know something of a person's coping ability. Attitude to work, leisure, family and friends are of some significance in helping to draw up a picture of likely response to community service. Questions are asked about their ambitions. Many of those interviewed display a wide gap between their present reality and future aspirations for themselves. Others reveal a more personal response to questions about the future. One young man replied, "I just want to be someone". Another woman in her early thirties with five children in care said, "I'd like to feel I was of some use. I've lost my self-respect". The last two comments, so typical of many we have seen, indicate a need for recognition which could, in part, be met by the type of placement we arrange.

Some reference is also made to previous experience of helping others. We avoid the use of the word volunteer in this question as many would not identify simple examples of befriending with the role of volunteer. Almost all those interviewed have some experience of this kind to draw on. Often, such details have never been raised in the context of their relationship with the previous supervising officer. Following these questions attention is then drawn to the task list (see Appendix II). Offenders are asked to nominate those roles on the list which would most interest them. Responses vary. Some opt for a group of personalized tasks, others follow more practical orientation. A few would prefer to continue both practical and personal roles within the task. This is not difficult to arrange, as with some organisations the line between personal and practical is very thin. The offender's choice of task will be strongly taken into consideration along with several other factors such as age, the nature of his offence, the public risk and degree of motivation. Final arrangements are made between the organiser and the placement organisation. We try as far as possible to arrange placement to meet the assumed needs of each individual. For example, Andrew, disabled in his left leg as a result of polio, was placed with a sports club for the physically handicapped as a volunteer leader. Andrew had come to terms with his disability and was able to offer considerable help and encouragement to youngsters with similar problems. Such matching is not always easy due to a number of factors. Sometimes one is uncertain about a particular offender so he may be placed in a practical task with a work party to test out his response. On other occasions, the appropriate task may not be available. Similarly, some organisations undergo changes in personnel so that the organiser is forced to hold off placing people until some stability has been reached.

Offenders are usually placed with organisations or practical work groups within a week to three weeks of their first assessment interview. During the interim period the community service organiser has been in touch with the supervisor responsible for an organisation to gain his total agreement to a placement. There is no onus on the placement agency to accept an offender.

They will often reserve judgment until the subject has been informally interviewed by their nominated supervisor. The organiser gives some details of the offender to the organisation, including the offence, name, age, address, known abilities, and any other relevant information thought to be of some value to the organisation. Organisations do not require personal dossiers and are usually content with bare, essential details so that they can form uncluttered opinions for themselves. Most of the organisations have accepted an offender as an ordinary volunteer not to be differentiated in any way from other members of the serving public. The detailed information about a person remains with only two or three key members of the group. This degree of acceptance and trust has been one of the chief factors in contributing to the success of the scheme. Naturally, if an offender wishes to tell his story he is free to do so. Many do, possibly to test out initial overtures of acceptance within a group. Such a sharing can create a more realistic dialogue between the offender and the group. But the decision must rest with the offender.

THE ROLE OF THE COMMUNITY

As has been illustrated in a previous section, community organisations and groups responded from the outset to the challenge of community service by offenders. Some general reflections on this relationship follow. Experience has shown that while offenders working as volunteers in outside organisations should not be singled out publicly as offenders, they do require a special degree of reassurance as to the value of their contribution. It is not always possible to convey to offenders adequately at the beginning of an order that organisations will value them for their work. Even before starting work, offenders often ask whether they would be allowed to continue on a voluntary basis after their orders were completed. Community service staff have always accepted the importance of the responsibility to enable such a development as continuity and it is interesting to note that in the first eighteen months of the Nottinghamshire scheme, approximately 35% of offenders completing orders remained with the organisation as a volunteer afterwards. It became apparent however that attempts at permanent involvement of offenders beyond the requirements of the order are not best undertaken via the obvious intervention of community service staff themselves. Only the spontaneous appreciation of the organisation and the beneficiaries for whom he is working will be seen as trusted and real.

The importance of this particular aspect, that is the extent to which the offender feels valued for his work, can also be seen in relation to probation organised tasks. Here, while it is not always possible to guarantee the opportunity to work alongside other volunteers, the essential opportunity for the offender to test the attitude of the community can be incorporated in several ways. Possibly the role of the sessional supervisor, as a representative of the community

without specialised social work training has at times been underestimated. Sessional supervisors have clearly demonstrated their understanding of this role. In particular, a number of former offenders have been employed as supervisors and the expectation that this would lead to the creation of work groups with anti-social values has not been borne out. In addition, the opportunity to experience the impact of their work upon the beneficiary is usually available, although occasionally only via the representative of an organisation concerned. It has sometimes been necessary to investigate poor response or work by a particular group, and this has almost invariably been found to be associated either with a direct expression of lack of appreciation by the beneficiary, or with the evidence that the extent of the beneficiary's need has been exaggerated. On the other hand, there have been a number of instances where a work group, on perceiving the real extent of a beneficiary's need, have without direction far exceeded their brief to help that person, occasionally refusing to be credited with hours for doing so.

The apprehension of the community about dealing directly with the offender is real and widespread, and it is to the credit of many work providing organisations that they are so willing to experiment in spite of evident anxieties and misgivings, rather than in the absence of these. Obviously their actual experience with offenders has not always been satisfactory, but the usual course for the removal of an offender from a particular task has been unreliability of attendance rather than unacceptable work or behaviour. This in itself demonstrates the high level of commitment of organisations to offenders under their supervision and the extent to which they must have modified their demands on the offender's actual ability. As far as the offender is concerned, unreliability can usually be attributed to deficiencies in the matching process or the original assessment of the offender, although it should be emphasised that accurate predictions of the offender's ability and response are never possible, and every matching process is likely to be to some extent an act of faith on the part of the community service team, the outside organisation, and the offender himself. Unreliability may occur because the demands on the offender are too great or too little, or because of domestic health or employment factors, or traveling difficulties unconnected with the placement. It may, of course, also derive from an offender's refusal to stick to the requirements of the order.

Instances of unacceptable behavior by offenders at work locations are extremely rare, and it is usually possible to trace these to a history of mental instability or evidence of general unsuitability for community service. Instances of actual material loss sustained by a beneficiary through contact with offenders appears to be even more rare. Any apparent losses reported are thoroughly followed up, and it must be said that sometimes such losses turn out to be the result of hasty assumptions about an article temporarily mislaid. It is believed that during a period when about 500 offenders in Nottinghamshire had been the subject

of orders, and several thousands of hours of work undertaken, only four instances of theft had occurred, one of which was property belonging to the probation service, two which were property belonging to sessional supervisors, and one which was a direct theft from a member of the public. The individuals sustaining such losses were compensated.

As confidence grew in the scheme, one was able to cope with the occasional negative comment in the press. A correspondent once wrote to a Nottingham evening newspaper that the thought of burglars doing social service work filled him with horror. He signed his letter "chop off their hands". A week later a councillor replied. He was chairman of the Nottingham City Education Committee. Thirty offenders were placed with youth organisations in the first eighteen months. His reply: "All concerned with the scheme are convinced community service represents a significant break-through in terms of reducing the prison population as it offers an offender the opportunity to play a useful and worthwhile role in society." But the most rewarding acclaims for the project came from the local secretary of a community care group. "I have been asked by the passengers of the community bus to write to you on their behalf to thank you for Colin and the wonderful work he is doing. He is not only an artist at driving. He has that reassuring personality so essential when taking invalids who have not ventured out of their homes for some time. His skill and indefinable something has made these people ask to be included trip after trip. Many passengers expressed their affection for him in tangible ways by inviting him and his family to tea, etc." That care group, for example, started off with one community service offender, Colin. Twelve months later, this voluntary organisation was using the services of ten offenders in the evenings and the weekends. They were mainly involved in providing bus trips, organising a shopping service and a programme of household repairs for the housebound elderly and disabled.

Thus, experience in Nottinghamshire has necessitated the revision of a number of assumptions about the community attitude and response to offenders. There is no further need to canvass community organisations for tasks. The opposite is the case; the community service staff are constantly having to turn away requests for help because of insufficient numbers of offenders on the scheme at any one time. The ability of organisations to balance offenders' needs with their own is a source of constant surprise to the community service staff. It has been found that sharing communication of the kind outlined makes special demands on the time and resources of all those involved, and requires a degree of mutual confidence and respect which can easily be underestimated. While organisations have accepted responsibility towards the offender, the community service team have learnt to identify their own, sometimes far-reaching responsibilities to the community - to protect and support the efforts of other organisations without usurping

their functions, to ensure continuity of service when this is essential to the existence of an organisation, and to act as a focal point for exchange of information and the extension of cooperation between different groups.

SOME ADDITIONAL DATA AND EVALUATION FINDINGS

Much of the detail in this section is taken from the official Home Office Research Unit publication called "Community Service Orders", published in April, 1975.

(1) The Research Unit reported by July 1, 1974 that 1,172 orders had been made in the six experimental areas. At the time, 307 were satisfactorily completed, 114 unsatisfactorily terminated. Termination could be due to breach of the order or revocation.

(2) The most common types of offences for which community service orders were made were as follows: property offences - the majority, motoring offences, offences against the person, and miscellaneous.

(3) Offenders on community service were drawn primarily from the 17-24 age range.

(4) The average number of previous convictions of those ordered to undertake community service was three in some areas, four in the others.

(5) Between 38% and 50% of offenders on community service had had experience of a custodial sentence.

(6) It is shown that those with longer criminal records, and those who had served a custodial sentence, were less likely to terminate their order by completing it. The type of offence committed was not found to predict manner of an order's discharge.

(7) Women were made subject of approximately 10% of all community service orders.

(8) Typically, a community service order followed a probation officer's recommendation of that sentence. The courts' take-up rates of recommendation for community service varied between areas, but the average was probably not lower than that in relation to probation.

(9) Not all community service orders were made in cases where a custodial sentence would otherwise have been passed, but it is not possible to estimate at present with certainty the number that were.

(10) Rates at which orders were made were sensitive to local difficulties and lack of publicity. Fluctuations in these rates are attributed more to fluctuations in number of probation officer recommendations of community service than to fluctuations in number of initiations of community service consideration by courts.

(11) The number of orders made differed between areas, but when corrected for the size of the probation areas it seems that smaller schemes were not under-developed relative to the larger areas.

In Nottinghamshire, a small team of probation officers undertook some consumer research with offenders who had completed community service orders. At the time of a colleague's report, 20 were interviewed successfully, 14 were unproductive, and six were awaited. There have been some interesting findings from the 20 successful interviews: 14 felt that they had served the community and only one of them did not think he had. All but two claimed that, knowing what they knew, they would still have agreed to community service. If this sentence had not existed, 13 felt that they would have received a custodial sentence, two a fine, and two probation or another sentence. Fifteen saw community service as an alternative to imprisonment; 17 felt that probation would have been of less benefit to them; and 17 felt that their community service experience had been worthwhile. Only two of the 20 had been involved in community work before their sentence, but 12 were after their experience of community service, and these intended to continue with the work. An important aspect to emerge has been the development of the relationship between the offender and his supervisor, although no direct questions were asked about this. Of the 11 offenders who mentioned supervisors, nine spoke in very positive terms, and two in negative terms. One of the men interviewed said "the court order put me smack in the middle of where I always had wanted to be."

Dr. K. Pease of the Home Office Research Unit quoted his evaluation of the scheme as follows.

"The community service experience shows that the scheme is viable. Orders are being made and completed, sometimes evidently to the benefit of the offenders concerned. However, the effect on the offenders as a whole is as yet unknown. The penal theory underlining the scheme is thought by some to be uncertain; it has not as yet made much impact on the prison population because of the manner of its use by the courts. In practice, a few supervisors may be able to subvert some orders of the court unless good contact at the work site is maintained by the probation service; and neither the type of offender for whom it is suitable, nor the most desirable work placement for different individuals on community service are as yet known. The writer feels much more optimistic about the scheme than the list implies, but has tried not to state the case for community service any more strongly than the evidence currently

available justifies. It is intended to give a clearer picture of its outcome by examining the one year reconviction rate of offenders made subject to orders during the first year of the operation of the scheme in each of the experimental areas. At best, community service is an exciting departure from traditional penal treatment."

FUTURE DIRECTIONS

On August 1, 1974, the Home Secretary, having read the evidence to the Home Office Research Unit, announced the national extension of community service schemes to all Magistrates and Crown Courts in England and Wales. Probation areas outside the experimental projects were given approval to commence their own community service schemes for April 1, 1975. To date, 95% of all probation areas in England and Wales have a partial or complete community service scheme operative in their areas. The new areas are encouraged to set up community service projects on a system of staggered development so that staff gain the necessary practice and expertise before enlarging the scheme to other parts of the area. Progress is also limited by cutbacks in government and local authority spending. However, despite these restrictions on growth, there is much optimism and interest in the scheme from both the probation staff and community organisations up and down the country.

As community service projects expand, the following implications seem to be of importance.

(1) Some organisations who offer promising placements do not expand opportunities for offenders without some reallocation of staff time. This could often be at the expense of the growth of the organisation. If one is to maintain a range of placements with voluntary organisations, central government may have to consider grant aid to certain organisations willing to take offenders.

(2) For some offenders, community service can involve a change of attitude, a different life style. This is particularly the case for offenders involved in personalised tasks. It would be dishonest to merely raise a young person's expectations without the hope of long term fulfillment. Six ex-community service offenders are currently employed as part-time supervisors in Nottinghamshire. Three more have gone off for training either in social work or youth work. But this is not enough. We must look for new opportunities and courses for offenders from the universities, colleges, hospitals, schools and social work departments. Such a challenge will require additional funding and staff resources if the start made on community service is to be properly developed.

(3) More research time is needed to investigate who is suitable for community service and what type of tasks are most appropriate.

(4) The community service experiments have been run by a specialist section of community service staff. Although much has been done by the specialist staff, there is a need to centralize the organisation of community service and involve local probation officers more closely in the scheme. One would, therefore, advocate a gradual move away from specialisation to the point where each area team had its own staff member who was responsible for organising community service from a local office. Colleagues could more readily share the responsibility for running the scheme and, perhaps, use its potential more fully. Such a transition has implications for those in charge of community service training and allowances should be made for this in terms of future planning.

(5) Community service offers the probation service a real opportunity for partnership with community groups. In asking community groups to accept and involve offenders as helpers we are pushing back the conventional stereotypes of offenders and widening the threshold of tolerance. In that process, we are, perhaps, asking the community to grow with us, to share our success and failure and make it more communicable.

APPENDIX 1

CASE ILLUSTRATIONS

ANN THOMAS

Ann Thomas prefers to be called Colette Williers. Part of her difficulty lies in wanting to be something else. She at times wishes to detach herself from her previous identity and describes Ann Thomas as slow, clumbsy, and rather conservative. She thinks that Colette Williers fits in with a more sophisticated, confident image that she would like of herself.

Colette was adopted at the age of three months, and was raised by her parents in Hertfordshire. She was subsequently displaced by a younger natural child a year later. She says that "as she grew up her relationship with her mother deteriorated due to an inverted type of discrimination - in that her parents had never disciplined her in the same way that they had chastised Jenny." This pattern further emerges during her borstal training when she got the staff to collude sympathetically with her drug-taking to the point where no control was exercised.

Colette's I.Q. is assessed at 140 and, although she only passed three 'O' levels, it is clear that she has an above average intelligence. Much of her behavior over the last seven years has been of a familiar testing kind. She has tested her parents, rebelled against authority and challenged people as a way of gaining reccgnition for herself. There have been several institutional periods during this time, including a probation home, probation hostel, borstal training, and a hospital for those suffering from a behavior disorder. Not surprisingly, her employment record is poor and patchy. She has worked as a stable maid and has had various odd jobs of short duration. She and her cohabitee, Jim Hughes, took an early discharge from the hospital in May, 1972. They set up home with their baby in Nottingham. The relationship appears to have been both neurotic and destructive with the child the only means of holding them together. Eventually in frustration, both parents seem to have released their aggression on the child. Colette talks of guilt and is still very much self-obsessed. I found her insightful about herself, as one would expect, but lacking in ability to sustain a long term relationship. She is very unsure of her identity and sometimes wishes she were a man.

Colette is currently living on her own but will shortly change accommodation as she is being evicted from a council flat. There are plans for her to take a government training centre course as a secretary in September. She is not particularly keen on this, and even remarked that she preferred to take on a male trade like an electrician. She selected some tasks which would appeal to her and they again reveal a certain identity with some of her own difficulties.

I feel potentially community service could be of immense value to this women, although she may need a fairly protected start without too much demanding involvement. Her progress needs to be regularly assessed. It is useful to know that she already has a supervisor in Mrs. Brown.

Colette completed community service very satisfactorily. Most of her 200 hours were spent with the Family First Organisation, directed by Mrs. Smith. She performed a number of tasks for Mrs. Smith, such as painting and decorating, gardening, clerical work, running a shop, etc.

Colette gained great support from the interest and concern which Family First show for all those involved with them, both staff and residents. It was an ideal placement. Mrs. Smith even attempted to sort out Colette's employment difficulties and arranged interviews for her with local colleges of education and the Department of Employment and Productivity. Colette, in turn, acknowledged her attachment to Mrs. Smith, and the more she became invested in the organisation the more satisfaction she obtained. We received no adverse reports about her, and the only complaint was that Colette overtaxed herself in terms of physical effort. She has a frail physique and is very prone to colds and chest complaints. Part of the difficulty is that she does not eat properly or dress warmly enough.

Colette also worked for the Rushbridge Luncheon Club and attended on ten occasions. She helped prepare and serve meals for old aged pensioners. Once again progress was satisfactory, although I do not think Colette ever felt the same sense of involvement as with Family First.

Colette has expressed an interest in continuing to work for Family First, and this is to be encouraged. Her future is by no means clear, especially in terms of employment. The chief value of Family First is that Colette has begun to believe in herself again and has acquired the respect of other people.

COLIN MARSHALL

Colin is 23 years old. He is of medium height, slightly overweight, and dresses casually but neatly. He has been married for just over a year and has a young child. He and his wife have lived on Crabtree Estate in Bulwell since their marriage. Colin in the youngest of the three children, both of the older ones being sisters. He feels that he gets on well with his family and is quite affectionate towards them. He was taken away from school at the age of 14 and was sent to Approved School because of continual truancy. While at Approved School he obtained his first year city and guilds mechanics qualifications. This was his only other brush with the law. He has now been working as a delivery driver for four years and is keen to own his own business

(either a garage or in hairdressing supplies). His interests, he says, are limited to cars and football. Neither he nor his wife have many social activities. He was extremely pleasant during the interview and I felt that he was quite sharp and canny. He listed his priorities as:

(1) driving for old people's outings
(2) archaeological digs
(3) ambulance service (if driving)

We talked for some time about the first of these choices and I suggested that it might be helpful if he linked up with a particular old people's home, so that he already knew the people before taking them on outings. He seemed quite prepared to do this and suggested that his wife might also be interested. If she does join in with him on this, then it could have interesting repercussions on his continuing the work at the end of the order.

After my colleague's initial assessment of Colin, I arranged through an old contact with Joan Selby, the secretary of Basford Care Group, for him to be linked up with them on some of their Sunday excursions for old aged pensioners and handicapped people in the district. I also arranged from my contact with the University, to borrow the community wagon from the students. As all this took a few weeks to arrange, in the interim period I arranged for Colin to do two jobs at Holme Pierrepont acting as a car marshall. It is interesting to note that although we had little success in terms of placement at the National Water Sports Centre, Colin and his friend Alan were two successes, so much so that the secretary forgot they were on community service and offered them both payment at the end of each occasion. Colin and Alan had to remind him that they were on community service! This pattern of total cooperation and concern has continued throughout Colin's order.

What happened with the Basford Care Group and the outings on Saturdays and Sundays throughout the summer and autumn has done nothing but credit to the scheme and to Colin Marshall himself. His initiative, kindness, and total willingness at every aspect of the Basford Care Group has impressed the organisers, the beneficiaries and the general public. I have always felt that Colin represented the best aspects of community service available for the total benefits of the scheme. Because of my feelings about this particular situation and the involvement with such a good voluntary group, he has been interviewed by the Observor newspaper, The Evening Post, and latterly his work has been filmed for B.B.C. 'Man Alive'. The problem doesn't just end with Colin himself; his next door neighbor is Alan, also on community service, who is currently placed with the Eastville Youth Group under the guidance of Keith Ingram and Peter Lewis, both probation officers. However, Alan goes voluntarily as a driver/assistant bringing his own car on some of the outings. Colin's wife is also a valued member of the group and they bring along

their child with them. Just before Christmas the Care Group held a small party and gave presents to Colin and his wife by way of recognition of their efforts. They also managed to link up a 14 year old probationer who had expressed interest in community service with Colin. He sits alongside him in the ambulance and acts as Colin's assistant.

Fortunately, the impressions of the Basford Care Group about Colin's work are excellently recorded by Joan Selby and they form part of the record in this file. The evidence speaks for itself. It is interesting to note that halfway through the order, Colin tore up his record card and said he wasn't interested in the formality of the order itself. If Joan wanted him to help with the Care Group he would come along willingly any time. The strength of this remark is revealed at the end of the order, when I understand he has now put in for a house transfer from Bulwell to be nearer the Care Group at Basford. His work with the Care Group has also caused one influential City Councillor, Jess Burton, to change his mind about community service by offenders. At the last annual general meeting of the Care Group in January, he made a public statement admitting he had judged the scheme too hastily and claimed his mind had been changed by Colin and his friends in their efforts for the work of the Care Group itself. Despite all the publicity that Colin has received, he has remained unruffled and cooperative throughout.

PETER C.

Peter is a member of a delinquent family well known to the probation service, and at the age of 25 had already experienced most sentences available to the courts, including Approved School, Detention Centre, Borstal Training, and two prison sentences. Social standards are control in the family home are reported as very low, while Peter's response to the various forms of institutional training he had undergone was described as promising. He had, in particular, taken an active part in community based projects while in borstal. His record of convictions contained a preponderance of burglary and theft offences, and joint or group offences were also a common feature.

His community service order was imposed by the Crown Court for offences of theft and deception, the order being for the maximum of 240 hours. Although Peter had by this time enjoyed an apparently stable marriage for three years, the social enquiry report makes the following significant comment: "...it is clear that he retains a strong emotional bond with his own family and this is reflected in the degree of his social and criminal involvement with his relatives...". His employment record was reasonably good.

Peter's attitude at assessment was friendly and cooperative, but his motivation for community service seemed to derive mainly from his relief at being at liberty. He felt he was most suited to practical work, but also expressed interest in helping at

weekend youth camps, having some experience of camping himself. Initially, he was placed for general practical tasks at a group of bungalows for the elderly, and supervised by the resident warden. His first few weeks' work received good reports, but as the winter drew in his attendance became more erratic. This was seen as partly due to his reluctance to undertake outdoor work such as gardening during the winter, but the fact that he was working alone rather than with a group of workers was also believed to be significant. He was therefore relocated with a group who were renovating a house for use as a halfway hostel for patients discharged from a local mental hospital. His response was good, and there was some evidence that he was beginning to develop some awareness of the needs of others,and a sense of responsibility for the work he was undertaking. He continued to attend in spite of domestic crises, notably his wife's deserting him and the loss of his job, and while not absolutely regular, his persistence at a time of crisis could be seen as surprising in a young man of his background.

The evidence of growing motivation and awareness in Peter was sufficiently strong at this point to justify his placement at a week's camp for handicapped adults arranged by the local social services department, which took place in a holiday area some distance away. The community worker responsible for the camp reported that he took a leading role in the success of the expedition. Unfortunately, however, during the week that he was away it emerged that he was suspected of involvement in a further joint burglary offence as having received stolen property. It was necessary for the police to arrest him at the camp, although this was undertaken with considerable discretion so as not to cause disruption to the other campers. Following his release on bail, he completed his order with a further weekend expedition of a group of offenders to the Derbyshire Peak Park, helping with a nature conservation project.

At the subsequent court appearance, a report on Peter's progress whilst on community service indicated that the order could be seen as extremely successful, with both Peter and the community having derived considerable benefit. In passing sentence, the judge indicated that this report of success had been a major factor in his deliberations and, in spite of Peter's bad record of offending, a suspended sentence of imprisonment was imposed.

Peter has remained in contact with his community service officer and has indicated his willingness to help as a volunteer on any project in his home area. Peter was one of the offenders subject to community service whose re-offending caused us most concern, since it had appeared that a genuine change in his attitude to others was taking place as a result of his work for the elderly and handicapped. He and several others with a similar history led us to the tentative conclusion that extensively delinquent cultural influences, especially where these are strongly rooted in an offender's family of origin, may so dominate

that the beneficial possibilities of community service cannot prevail.

DAVID D.

At the age of 18, David's criminal record was relatively minor, but the offences for which he appeared before the Crown Court were not. The prosecution described him as an experienced housebreaker who had become a great nuisance to householders, and indicated that although he was considerably younger than his co-defendant, there was nothing to choose between them in terms of criminal sophistication. Three of the offences were of burglary with intent (throwing a brick through a bank window and being found on the premises). He asked for fourteen other offences to be taken into consideration. His co-defendant had been dealt with at an earlier date by way of a suspended prison sentence, and the judge indicated that this was the main reason why David had avoided a Borstal sentence and had instead attracted the 150 hour community service order which had been guardedly recommended in the social enquiry report.

David's childhood history was disrupted, first by his contracting diabetes at the age of five years, as a consequence of which he spent four years during childhood receiving in-patient hospital treatment because of difficulties in stabilising his condition. He spent regular holidays at home however, and apparently detected that his parents' marriage was failing. His absconding and difficult behaviour compelled his discharge from in-patient treatment at the age of 11, but the emotional pressures within the family provoked the continuation of such behaviour by David and, after considerable truancy and delinquency which two years of supervision could not influence, he was committed to the care of the local authority. He returned to his mother's home after his parents had separated, but his employment record developed a pattern of serious inconsistency.

During pre-trial enquiries, David had shown some resistance to the idea of further probation supervision, and such a recommendation would probably have been unrealistic in view of the gravity of the offences. However, comments he made during the assessment interview and his subsequent behaviour suggest the possibility that he had a need for personal support and guidance, and that in various ways he sought this from community service. He at first showed some understandable interest in working as a helper in a children's home but detailed discussion elicited rather authoritarian attitudes about the best way to handle children with difficult behaviour. These comments, and his general immaturity, indicated that it would be unwise to risk such a placement. However, it is also possible to speculate that David's remarks contained some reference to his own difficult behaviour as a child and later, and some element of need for control and punishment. Other references he made to an interest in joining an army cadet corps appear to support this. He accepted the suggestion that he join practical work groups in the first instance, and was allocated to painting and decorating.

His attendance was exceptionally good, and he completed the order in three months, usually working both Saturdays and Sundays. Early in the order the opportunity arose for David to accompany a combined group of other community service offenders and younger boys on probation on a weekend expedition to a National Trust property to assist with nature conservation work. Although quiet and diffident in group relationships, his work and behaviour were good. However, painting and decorating groups appeared to meet his needs more accurately, particularly through the opportunity offered to develop a relationship with a supervisor. His first supervisor was a girl only a few years older than himself, who had particular abilities in gaining the trust and confidence of those as shy and withdrawn as David.

He discussed with her a number of problems not previously disclosed, including his fears of being a homosexual, and her positive influence led to his enrolling for evening classes in order to take 'O' level examinations. However, she herself felt that he began to over-identify with her, and his past difficulties with his father suggested that the experience of male supervision might be of value to him. This was achieved without difficulty, when two groups were working together and a male supervisor, himself an ex-offender, was able to interest David in changing groups. Although this occurred at a time when David had nearly completed the hours laid down by the court, he continued to work with the group as a reliable volunteer for some months afterwards. David sought much advice and guidance from this supervisor, and came to hold great respect for him. Perhaps an even clearer sign of the extent to which David had begun to mature was his ability to integrate himself among his peers in the work group.

The history of David's community service order demonstrates the potential of this method in offering new solutions to problems which had proved insoluble by other methods at other periods in his life. Direct intervention into the family's problems had been thoroughly attempted but without much success, and he had already indicated his own reluctance to receive further casework help. However, his disrupted history and family relationships had clearly left him with a major employment problem and a need for control and firm guidance. Never having resolved problems in parental relationships, he had not even begun to make satisfactory peer group relationships.

Although it would be foolish to make predictions about the extent to which David may have been influenced against further offending, his story also illustrates some of the special rewards of this method for the workers and supervisors involved. There are aspects of David's progress on community service which can be identified very clearly. His near perfect record of attendance is no matter of speculation, but an objective fact, and as gratifying to the community service staff as it perhaps is to David himself. His practical work and response to supervisors contrasts sharply with his past employment history. While David's community service order was clearly imposed as a direct alterna-

tive to a probable custodial sentence, it became a medium for indirect and very practical intervention in some of the areas in which he had 'treatment' needs.

APPENDIX II - TASK LIST

PERSONAL HELP

Youth:	Helping at youth clubs, organising sports and discos, running coffee bars.
	Helping to run weekend camps and expeditions.
	Helping to run a junior football team.
Children:	Helping in a residential children's home.
	Helping to run a preschool playgroup or holiday playscheme.
Handicapped:	Helping with swimming clubs, sports clubs, riding for the disabled, holiday playschemes.
	Helping at social clubs for the handicapped of all ages.
	Helping at a school for mentally handicapped children.
	Helping as a driver for club meetings or day outings.
	Helping with a shopping service for the disabled at Victoria Centre.
	Helping with activities for mentally handicapped hospital patients.
Elderly:	Helping in an old people's home.
	Helping at an old people's day centre or club with activities, catering, transport, and outings.

PRACTICAL HELP

Building:	Renovation and construction work on projects for the homeless, children's playschemes, community centres, adventure playgrounds, clubs for the handicapped, projects of historical interest. All building and practical skills welcome.
Painting and Decorating:	Painting and decorating work for the elderly, handicapped, fatherless families, various community projects.

Countryside and Gardening:	Helping at National Trust parks to improve the countryside - forestry, drainage and clearance work, etc.
	Helping a foot path preservation society.
	Helping a canal preservation society.
	Gardening for handicapped, elderly, and for community projects, associations, etc.
Workshop:	Helping with the renovation and setting up of the workshop.
	Helping in the workshop with toy making and repair, furniture making and repair, equipment for youth clubs, conversion of equipment for the handicapped, etc.
	Motor maintenance and repair of vehicles belonging to community groups.
GENERAL	
	Helping at a neighbourhood advice centre, tenants' association or housing association, or with a community newspaper - general, clerical, practical help or advice.
	Help at a soup kitchen or night shelter for vagrants and the homeless.
	Helping at a club for isolated single people, ex-prisoners, etc.
	Helping to collect and deliver furniture for needy families.
	Helping at charity events - fetes etc.
TRANSPORT	Numerous opportunities for qualified drivers with clean driving licenses, especially those with P.S.V. licenses, or those with their own properly insured vehicles.
OTHER OPPORTUNITIES	If you have any other worthwhile activity to suggest, or some special interest, skill, or hobby, don't hesitate to mention it.

THE IOWA RESTITUTION IN PROBATION EXPERIMENT

Bernard J. Vogelgesang

During its 1974 session, the Iowa Legislature passed a bill which required among other things that restitution would be made to the victims of criminal behavior. It is a "Hodge-podge" piece of legislation which deals with deferred sentence; conditions of probation; pre-sentence investigations; conditions of parole; and, of course, restitution.

With reference to restitution, the statute states;

"It is the policy of the state that restitution be made by each violator of the criminal laws to the victims of his criminal activities to the extent that the violator is reasonably able to do so. This section will be interpreted and administered to effectuate this policy."

Consequently, the State of Iowa has established that restitution shall be made as a matter of policy, but the statute does not state the reasons for the establishment of this policy. The debate indicated, however, that the major reasons were strong feelings of compassion for victims and a desire to punish violators. During the debate, the opinion was also expressed that the act of restitution would be rehabilitative in and of itself.

The law requires that restitution be a condition of a disposition of either deferred sentence or probation, and further requires that a formal plan of restitution be developed. It requires that such a plan be developed promptly and that the plan include "a specific amount of restitution to each victim and a schedule of restitution payments." Interestingly, it places the major responsibility for developing a plan of restitution on the defendant: "...the defendant, in cooperation with the probation officer assigned to the defendant, shall promptly prepare a plan of restitution....".

Once prepared, the plan of restitution must be presented to the court. The court may approve it, disapprove it, or modify it. At any subsequent date the plan of restitution may be changed to reduce or increase the amount of restitution made. Such changes can be made only upon approval of the court.

Full restitution is not required: the defendant is required to pay restitution to the extent that he or she is reasonably able to do so and the law recognizes that changing circumstances can affect the ability of the defendant to pay.

If the court approves a plan which does not require full restitution, or if the court orders no restitution, the court is required to file a specific statement as to its reasons and the facts supporting its determination.

The defendant has the right to request a hearing at any time on any issue relating to the plan of restitution and the court must grant the hearing. There is no similar right for victims.

Once the plan of restitution is approved by the court, it becomes a formal condition of probation. If the defendant fails to comply with the plan, the defendant is to be considered in violation of the probation or deferred sentence contract and can be revoked and incarcerated. (In our jurisdiction I am not aware of any case in which a probation has been revoked only because of inability or failure to pay restitution).

The other major provision of this bill specifies that by accepting restitution, the victim has not relinquished the right to recover further damages through civil action.

It is important to note that the Iowa law does not make restitution a pre-condition of either probation or deferred sentence. The disposition is made first and then a plan of restitution is developed. As a result, restitution is not considered as an alternative to incarceration, nor is inability a factor in denying probation. Further, the law states specifically that the period of probation shall not be extended merely to collect restitution. Consequently, if the court places an offender on probation for two years and if a plan of restitution is approved subsequently which provides for a monthly payment of $25.00, the defendant is required to pay a total of $600.00 regardless of the total amount of loss to the victim.

A few examples of restitution plans have been attached. In some cases preparation of the restitution plan has resulted in the development of a more general debt adjustment or debt consolidation plan. This has happened frequently enough so that some staff members have suggested that our department develop a debt adjustment service as an integral part of our correctional programs.

While the law requires the defendant to prepare a plan of restitution in cooperation with the probation officer, in practice it works the other way around. The probation officer assumes the major responsibility for preparation of the plan, whether or not the court orders it. As a result, the probation officer must determine the number of victims involved; the total amount of loss; the resources of the offender; and then must negotiate a plan which is both reasonable and satisfactory. This has substantially increased the work load of probation officers. Partly as a result of this and partly as a result of common sense, the letter of the law is sometimes avoided.

Where there is a single victim involved and where the loss to the victim is small, it is not unusual for the probation officer to see to it that restitution is made without developing a formal plan. The court is merely informed that restitution has been made and that no formal plan is necessary.

The Iowa law is specific in that it is the policy of the State of Iowa that offenders shall make restitution to their victims, but the law is not specific as to the purpose behind that policy. As a result, the tendency is to effectuate the policy without determining what effect it

has on the victim; what effect it has on the offender; and what effect it has on the correctional system itself. We just collect the money, regardless of effect.

In spite of the fact that we have no data to support this, there is little question in my mind but that one effect on the system is that the work load has increased. This is obviously true in the case of probation officers, but is also true for the administration which must develop accounting procedures and systems. It is quite possible that it costs the state as much or even more to collect and disburse restitution as the victims eventually receive. This does not mean necessarily that restitution is a bad idea; but unless it has other value for the system, for the victim, or for the offender, it is possible, if the legislature wishes to compensate victims, that it would be more efficient for the state to do this directly with funds appropriated for that purpose.

On a subjective basis, it seems that one value to the system is in the area of public relations. Even on a casual contact basis, merchants have indicated that they are quite aware of receiving restitution and that they are more interested in receiving restitution than in having all offenders incarcerated. If this subjective observation is correct, it is likely that the state policy on restitution will result in a decreased demand for and reliance on institutionalization as the correctional method. Unfortunately, we have no data upon which a conclusion can be reached objectively. It is something we ought to know, however, because if restitution does help to form public opinion favorable to using non-institutional correctional programs, restitution is indeed a valuable tool.

In our system we also have no objective data as to the effect on the offender. Iowa law calls for restitution to be made on the basis of that which can be reasonably made by the offender. "Reasonable" is a word which lends itself to wide interpretation; like beauty, it lies in the eyes of the beholder. The relationship between a probation officer and a probationer is authorization by its nature and if the probationer perceives the amount of restitution as unreasonable if it is perceived as being so high as to force the offender into further thefts - the payment of restitution itself could harden the probationer's attitude. Again, we don't know, but we need to know.

Shortly after the passage of the law described above, our department began implementing a project called the "Restitution in Probation Emperiment", otherwise known as RIPE. It is modeled on the Minnesota Restitution Center program, except that it occurs prior to and, we hope, without incarceration. Part of our purpose was to develop objective data about the questions raised above.

We have had a good deal of difficulty in implementing this program. There was a delay of a few months as evaluation and

probation staff attempted to develop a competent evaluation design, a design which would be capable of providing us with information which would be more useful than a mere survey of attitudes.

Once the evaluation design was settled on, however, we found that we had been naive in assuming that face to face contact between victim and offender would be a very personal contact, and we should have known better. As an example, when a car is stolen and demolished, restitution is paid to an insurance company rather than the owner. As a result, the victim becomes an insurance company. It is one thing for an offender to sit down with an individual from whom he has stolen directly, but it is something else again for an offender to sit down with a representative of State Farm. The offender views insurance companies in much the same way that law abiding fellow citizens all too often view insurance companies--as fair game. In one case which comes to mind, the victim was a large grocery store chain which had accepted a multitude of bad checks. As their representative in the face to face contact with the offender, the corporation sent their chief of security. The offender had some difficulty in viewing this person as the victim.

To a very large extent, restitution on a personal basis has gone the way of most business transactions in our society. The victim is often a corporation as against a neighborhood grocer and most Americans look upon corporations differently, which might explain the rise in shoplifting and in employee theft. Even when the victim is a real person, restitution is often made to an insurance company, and this, too, removes the offender from a sense of dealing with his victim. In summary, the impersonalization of our society has been a problem.

In the evaluation of this program, we are attempting to determine if offenders who pay restitution recidivate at a higher rate than those who do not; we are attempting to determine if offenders who deal directly with their victims recidivate at a higher or lower rate than those who do not; we are attempting to determine whether offenders who face their victims pay restitution more or less readily than those who do not; and we are attempting to determine whether or not restitution orders increase the number of technical violations and technical revocations. The evaluators have collected data for a twelve month period and they are now analyzing it. Unfortunately, the report will not be available until late December 1975, so at this time I can provide very little objective date.

Some interesting questions have been raised by offenders, however. An offender steals a car and demolishes it. The insurance company pays the victim $2000.00 and submits a claim for restitution in that amount. The offender pays it. The offender says the demolished car belongs to him but the insurance company has sold the car for salvage and has not deducted the income from its restitution claim. Should the insurance company pay the offender the amount of the salvage?

In a burglary, an offender damages a couple of drawers in a desk. The victim files a claim for a new desk and the offender makes restitution in that amount. Who owns the damaged desk? Offenders have expressed the opinion that the offender does.

There are many questions such as the above which relate to who owns property once restitution is paid.

Subjectively, we are of the opinion that claims submitted by victims tend to be lower when made directly to the offender as against being made to an insurance company. Statements of loss made to police tend to be higher than final claims made to a probation officer or to the offender.

Victims do appear to be quite willing to accept less than full restitution when they are aware of the financial status of the offender. In at least one situation, a victim has refused to accept restitution after talking with the offender and learning of his financial limitations.

Offenders do not seem to resent paying restitution. To the contrary, they seem to consider restitution to be a legitimate debt. On the other hand, as indicated above, they are quite aware that injustices can, and do, exist and they are concerned that restitution be fair and just. They do not want companies to make a profit on their payments.

When the evaluation report is available, we hope to be able to make some judgment as to whether restitution has any rehabilitative value. Some comparisons ought to be made between our RIPE program and the Restitution Center programs, although such comparisons will be difficult to make. But most importantly, at least in the case of Iowa where the payment of restitution has been made the official policy of the state, we need to define the purpose of restitution. Is it to compensate the victim? Is it to punish the offender? Is it to rehabilitate? Is it an alternative to incarceration? Or, is it a public relations device for correctional agencies?

It is unlikely that restitution can compensate the victim since in most cases restitution is not made in full. The use of restitution as an alternative to incarceration is risky, because the converse is implied. That is, failure or inability will result in incarceration. If punishment is the purpose, there should be nothing else--no probation rules, as an example. Perhaps it is a rehabilitative tool, but if it is it will be effective only for some people and consequently should be applied only on a diagnostic basis. If it is good public relations, as I think it is, we should admit that both to ourselves and to the offender.

Quite clearly, however, until we know what it is we expect to accomplish with restitution, there is no way we can determine its effectiveness.

PLAN OF RESTITUTION

TO: Judge, Fifth Judicial District

FROM: Probation Officer, Fifth Judicial District
Department of Court Services

DATE: June 16, 1975

I. SENTENCE AND CHARGE

The record shows that on the 25th day of July, 1974, the defendant appeared in the County District Court in person and with her attorney and entered a plea of guilty to the crime of False Drawing or Uttering of a Check, as defined in Section 713.3 of the 1973 Code of Iowa. At that time a pre-sentence investigation was ordered and sentencing was set for August 8, 1974.

On the 8th day of August, 1974, it was the judgment and order of the Court that the defendant be confined to the Women's Reformatory at Rockwell City, Iowa, for a period not to exceed seven (7) years and that she pay the costs of this action. It was further ordered that the sentence be suspended and that the defendant be placed on probation to the Fifth Judicial District Department of Court Services.

It was further ordered that the defendant make restitution on all outstanding checks.

II. PRESENT SITUATION

The defendant is presently residing with a friend. She is 19 years of age, single, and has no children. She is employed as a sales clerk. Her gross income is $340.00 per month and she clears $302.38. The defendant gets paid on the first and fifteenth of each month. She also receives a commission check on the fifteenth of each month which varies each month. A list of the defendant's monthly expenses is as follows:

EXPENSE	AMOUNT	TOTAL BALANCE
Room and Board	$ 80.00	$
Transportation	20.00	
Credit Union	108.00	978.09
Tire Company	15.00	332.33
Attorney		180.30
Miscellaneous	20.00	
	$223.00	

This figure does not include the $100.00 per month the defendant is to pay toward restitution.

III. PLAN OF RESTITUTION

A summary listing of the outstanding checks drawn by the defendant is as follows:

CHECKS	AMOUNT
Department Stores	$1,143.52
Restaurants	29.43
Grocery Stores	82.31
Shoe Stores	24.70
TOTAL:	$1,279.96

In this Plan of Restitution, the defendant agrees to pay $100.00 per month until the full amount of restitution to cover all bad checks is paid, plus court costs involved in this action.

To date, the defendant has paid in $365.00 on this restitution. Checks amounting in the sum of $249.64 have already been paid to Department Stores.

IV. CONCLUSION

It is the opinion of this Agent that the defendant will be able to meet the restitution payments as stated in this Plan.

This Plan is submitted with the understanding that it may have to be revised in the future if the defendant's status changes to any great extent.

PLAN OF RESTITUTION

TO: Judge, Fifth Judicial District of Iowa

FROM: Probation Officer, Fifth Judicial District
Department of Court Services

DATE: December 17, 1973

I. SENTENCE AND CHARGE

The record shows that on the 25th day of July, 1973, the defendant appeared in Polk County District Court in person and with his attorney and entered a plea of guilty to the crime of Assault with Intent to Inflict Great Bodily Injury as defined in Section 694.6 of the 1973 Code of Iowa. The Court accepted said plea of guilty and requested that the Department of Court Services make a pre-sentence investigation.

The record shows that on the 24th day of August, 1973, the defendant appeared in Court with his attorney, this being the date set for sentencing. It was the order of the Court that the defendant be imprisoned at the Men's Reformatory at Anamosa, Iowa, for a term not to exceed one (1) year. It was further ordered that the sentence be suspended and the defendant be granted probation for a period of one (1) year.

On the 1st day of November, 1973, a supplemental order was issued by the Court amending the original order. The supplemental order stated that the defendant would be responsible for payment of restitution as a condition of his probation.

On the 30th day of November, 1973, a hearing was held in Polk County District Court to determine if the defendant's constitutional rights had been violated by the issuance of the supplemental order requiring payment of restitution. At this time, the defendant's appeal was denied. The defendant was ordered to pay restitution as stated in the order of November 1, 1973, and in accordance with Senate File 26. A violation of this order would be considered a violation of the defendant's probation.

II. PRESENT SITUATION

The defendant is presently residing with his wife. There are no children of this marriage or for which the defendant pays child support. The defendant is employed. He has been temporarily laid-off since December 12, 1973, however he feels reasonably sure he will be back at work by February of 1974. He has applied for unemployment benefits in the mean time. The defendant's usual salary would be $300.00 per month take home. The defendant's wife is presently working two (2) jobs. She is

employed full time by the United Way, where her take home pay is $308.94 per month. Her second part time job is with Blue Cross-Blue Shield, and her take home pay here is approximately $100.00 per month. A list of the defendant's monthly expenses totaling $659.24 is as follows:

EXPENSE	AMOUNT	TOTAL-IF KNOWN
Rent	$120.00	
Finance Co.	30.00	$630.00
Tire Co.	15.00	225.00
Department Store	20.00	200.00
Groceries	140.00	
Lawyer	25.00	700.00
Doctor	10.00	
Car Repair	40.00	139.00
Renter's Insurance	10.24	
Car, Truck Insurance	15.00	
Water	7.00	
Lights and Gas	25.00	
Fuel Oil	40.00	
Telephone	20.00	
Gas (car and truck)	40.00	
Miscellaneous	40.00	
Parking	12.00	
Car Payment	45.00	643.00
Dentist	5.00	150.00
TOTAL:	$659.24	

Defendant	$300.00
Wife	308.94
	100.00
total	$708.94
less payments	659.24
total	$ 54.70

This figure does not include the $25.00 per month the defendant is to pay towards restitution.

III. PLAN OF RESTITUTION

A summary listing of the bills incurred by the victims of this offense is as follows:

EXPENSE	AMOUNT	INSURANCE PAID	BALANCE
Ambulance	$ 42.	$ --	$ 42.
Doctor	128.	75.	53
Doctor	10.	10.	--

EXPENSE	AMOUNT	INSURANCE PAID	BALANCE
Doctor	$1,235.	$ 437.50	$ 797.50
Doctor	35.	35.	2.
Doctor	50.	50.	--
Anesthestist	139.40	139.40	--
Doctor	170.	20.	150.
House of Vision	69.70	--	69.70
Doctor	17.	--	17.
Doctor	20.	--	20.
Iowa Lutheran	16.	16.	--
Iowa Lutheran	30.	30.	--
Car damage	78.49	78.49	--
Pharmacy	27.13	--	27.13
Pharmacy	6.	--	6.
Iowa Lutheran	1,835.65	1,835.65	--
TOTALS:	$3,911.37	$2,727.04	$1,184.33

Receipts and insurance forms verifying the victim's bills are in the possession of this Agent and can be made available to the Court upon request.

In determining a reasonable Plan of Restitution, there seemed to be two (2) alternatives to consider. The first is that the defendant obtain a loan for the full or partial amount of expense incurred by the victim, reimburse the victim and make monthly payments to the loan company. However, after talking with several loan companies, it was apparent to this Agent that a loan could not be obtained at this time by the defendant. The second alternative and the Plan to be submitted to the Court is that the defendant make monthly payments to the victims through the office of the Department of Court Services. The amount to be paid monthly figured at $25.00 and to continue through August, 1974, which is the date the defendant is due for discharge from probation. At that time, the defendant will have paid a total of $200.00 in restitution.

IV. VICTIM'S RESPONSE

This Agent has talked with the victim at some length regarding his feelings toward the Plan of Restitution which is being submitted to the Court. Although the total to be paid does not nearly compensate the victims for their total expenses, the victim has indicated that he is very pleased to receive the amount settled on as he did not originally feel he would get any reimbursement. He has expressed that his faith in justice is somewhat restored and is appreciative of the effort made on the Court's part to see that some restitution is made.

The victims have been informed that this payment of restitution in no way denies them the right to pursue recovery of additional compensation through civil action after August, 1974, when the defendant is discharged from probation, if they should so desire.

V. CONCLUSION

This Plan of Restitution has been difficult to figure, primarily because of the great difference in the amount of the victim's expenses and the defendant's inability to pay. It is the opinion of this Agent that the Plan is a realistic one which the defendant will be able to follow.

THE ASSESSMENT OF RESTITUTION IN THE MINNESOTA PROBATION SERVICES*

Steven L. Chesney

*Based upon research made possible by Grant Number 470000034 from the Minnesota Governor's Commission on Crime Prevention and Control

INTRODUCTION:

Restitution, defined as payments by the offender to the victim, has been described as a potentially important correctional tool. Irving E. Cohen, for example, advocated the use of restitution as a condition of probation in the 1940's.[1] While restitution is believed to be commonly used as a probation condition in America today, no systematic attempt to gather information on it has been reported. This paper reports on a major quantitative examination of the use of restitution as a condition of probation.

The study attempted to determine the extent to which restitution was used as a condition of probation in the District, County and Juvenile Courts of the State of Minnesota, the personal characteristics of the persons ordered to pay restitution, the circumstances of the offense, the ways in which the courts structured restitution, the amounts of restitution ordered and subsequently collected relative to reported losses, and those factors associated with the successful completion of restitution. In addition, the attitudes of judges, probation officers, victims and offenders toward the practice of restitution were examined.

It is expected that the results of this study will provide useful information to judges, probation workers and correctional planners. New insight into problem areas in the use of restitution as indicated by quantitative data on the attitudes and opinions of the producers and consumers of the criminal justice system may lead to an improvement in the ways in which restitution is structured and ordered. It is also hoped that this data will help to guide the future paths of theory and investigation for scholars and researchers.

Section I: Design

A. Court Surveys

Data concerning the extent to which restitution was used as a condition of probation were collected through the use of a questionnaire administered to all district courts and county courts within the State of Minnesota. All eighty seven Minnesota counties were selected so as to ensure the generalizability of the results to the population of the State as a whole. Likewise, it was considered desirable to include cases from all four seasons of the year in order to control for any seasonal variations. The sample was restricted to four months in order to minimize the work involved in data collection and thus maximize the chance that each county would respond.

A brief questionnaire was mailed to all clerks of county court and district court in the State. Questionnaires sent to the clerks of county court asked for the total number of juveniles sentenced to probation in the months of October 1973, January 1974, April 1974, and July 1974 as well as the total number of those juveniles also sentenced to pay restitution as a condition of probation in those same months. Similar information concerning adults was requested of the Clerks of District Court.

B. The Examination of Court Records

The more detailed data required for the description of offenders, victims, and circumstances of restitution conditions required the examination of court and probation officer files. Ideally, one would randomly select restitution cases from the population of probation cases in the State during a specified time. Because of the excessive amounts of travel required to visit all eighty seven counties of the State this approach was rejected. As an alternative to the random selection of cases, counties were randomly selected from three groups, or strata, of counties.[2]

The strata were defined on the basis of county population. This was done for two reasons. First, because the population centers in Minnesota are not randomly scattered throughout its counties. Secondly, it was deemed essential to include all three counties containing cities of over one hundred thousand population.[3] A random selection of cases was then made from the population of this stratum in order to ensure that the number of cases sampled from Metropolitan Minnesota would be proportionate to the population of cases drawn from the sample of rural Minnesota counties. The rural counties were then divided into two strata on the basis of population. A random sample of seven counties were chosen from each of the two rural strata.

All cases sentenced to probation within the fourteen counties selected from the two rural strata between the months of October 1973 and September 1974 plus a random selection of fifteen percent of all such defined cases from the same time period from the metropolitan stratum of counties comprised the sample of cases selected for the investigation of court records.

The next step was to design an instrument, in the form of a checklist, to extract the desired information from court records and probation files. The checklist had to contain data on the circumstances of the offense for which the offender was sentenced,[4] the personal characteristics of the offender, how the restitution obligation was structured by the court, and some indication of its relative completion.

Armed with an instrument designed to efficiently and reliably[5] gather the above data, the researcher visited each office of the Clerks of County and District Court in the sample of seventeen counties. Further information on the offender and the outcome of the probation sentence was gathered from inspection of the files of the county's probation officers.

C. Attitudes Towards Restitution: Judges and Probation Officers

All judges and probation officers in counties chosen from the rural strata of the sample were chosen for interviews along with a random selection of half the judges and probation officers from the urban

counties stratum. The resulting sample represents a large proportion of judicial personnel in the State of Minnesota, including one half of all district court judges in the State.

After mailed notification of the study, each judge and probation officer was contacted by telephone for a fifteen minute standardized interview. The major areas covered in these interview are summarized in Table A (See Appendix). For judges, these questions included, the proportionate use each judge made of restitution as a condition of probation, what factors they considered when deciding whether to order restitution as a condition of probation and the value they placed on restitution as a correctional tool. The sample of probation officers was asked similar questions, as well as items concerning the fairness and workability of restitution sentences and a description of their role both in determining whether restitution was to be ordered and in its supervision.

D. Attitudes Toward Restitution: Victims and Offenders

We turned to the ultimate consumer of the criminal justice system, offenders and victims, for further insight into restitution. The original sample of court cases again served as the pool from which victims and offenders were selected. A random sample of offenders was drawn from each court jurisdiction of each county to form a new stratified random sample of probationers. One victim from the case record of each offender was randomly chosen to form the sample of victims. Each individual was first notifed by mail then followed up with a standardized telephone interview.

In addition to further information on a personal characteristics of each victim and the circumstances of each case, probationers and victims were asked to relate whether they considered the restitution ordered to have been fair.

Section II; Results

A. Court Surveys

A total of sixty eight clerks of district court (78.2% of those surveyed) and sixty nine county court clerks (79.3% of those surveyed) responded to the mailed questionnaire. Each clerk listed the number of adults or juveniles who received a sentence of probation and the number of offenders for whom restitution was ordered as a condition of probation during the months of October 1973, January 1974, April, 1974 and July 1974. Table One provides a summary of this information.

TABLE ONE
THE USE OF RESTITUTION AND PROBATION

	District Court		Juvenile Court	
	Probation Totals	Restitution Totals	Probation Totals	Restitution Totals
Minimum	0	0	0	0
Maximum	292	41	456	89
Mean	12.0	3.0	31.7	6.4
Standard Deviation	37.3	6.2	70.7	13.7
No. of Counties Responding(out of 87)	68	68	69	69

Thus, restitution existed as a condition of probation in this sample in about one fourth (23%) of all adult felony probation cases and in about one fifth (19%) of all juvenile probation cases. This indicates the relative importance of restitution as a condition of probation during the time covered by this study. Restitution was not an unusual condition of probation. Indeed, it has been described by judges and probation officers in some counties as "standard operating procedure".

Further examination of this data on the basis of urban/rural differences in the proportion of probation cases with restitution provisions shows that the metropolitan jurisdictions of Minnesota tended to order restitution in a smaller proportion of cases than did rural jurisdictions. However, this difference does not appear to be statistically significant.[6] Table Two provides a summary of this information.

TABLE TWO
RESTITUTION USE AMONG COURT JURISDICTIONS, JUVENILE AND ADULT

Proportion of Probation Cases With Restitution Conditions	Urban Courts (Hennepin, Ramsey, St. Louis)	Rural Courts
0 to 0.3	5 (83.3%)	85 (65.4%)
0.31 to 1.00	1 (16.7%)	45 (34.6%)
TOTAL	6 (100%)	130 (100%)

B. Examination of Court Records

Review of court records and probation files of the sampled counties yielded a total of five hundred twenty five cases from the time period chosen for this examination (October 1973 through September 1974). Juvenile courts and county courts (which are responsible for adult misdemeanors) produced most of the cases in the sample; County Courts produced two hundred nineteen cases (41.7% of sample) while Juvenile Courts produced two hundred fifteen cases (41.0%) of sample). State District Courts (primarily responsible for adult felony cases) account for only eighty one cases (15.4%).[7]

Analysis of the data revealed that restitution was more common in rural as opposed to urban counties. Because the number of cases sampled from both the metropolitan stratum and the two rural strata is proportionate to the population and because the urban counties contain over half the population of the State[8], it follows that at least half of the cases selected for the sample should have been from the metropolitan stratum if the occurrence of restitution cases was distributed equally throughout the population of the State. In fact less than one fourth of the cases came from the metropolitan areas. The difference between urban and rural counties in the number of restitution cases for the time

period covered by the study is statistically significant and is further evidence of urban/rural differences in either the use of restitution or the use of probation.

The most popular offenses for which restitution was ordered were "adult misdemeanor worthless check", followed by "juvenile vandalism", "juvenile theft", "adult misdemeanor criminal damage to property", and "adult misdemeanor theft". No murders were reported but one rape case, one arson case and one "theft of outdoor toilet" were included in the sample. Most cases involved loss or damage to property. In those cases involving personal injury, restitution was ordered to cover medical expenses. A summary of offenses is found in Table Three.

TABLE THREE

OFFENSES

Offense Class	All Cases (Adults + Juveniles)
1. Homicide	0
2. Crimes against the person (assault, armed robbery)	14 (2.4%)
3. Theft related crimes (theft, receiving stolen property, unauthorized use of motor vehicle, embezzlement, shoplifting, theft by check)	306 (53.3%)
4. Forgery (forged checks, welfare fraud, other forms of fraud).	37 (6.4%)
5. Damage or trespass to property (arson, vandalism, burglary)	210 (36.6%)
6. Sex offenses (rape)	1 (0.2%)
7. Traffic offenses (careless driving, leaving scene of accident)	6 (1.0%)
TOTAL	574* (100%)

Table three shows that crimes of personal violence (assault, armed robbery or rape) were outnumbered by crimes against property (bad checks, vandalism, and other crimes). Perhaps fewer violent offenders were placed on probation or a smaller proportion of such crimes resulted in an out-of-pocket loss suffered by the victim.

It is apparently not necessary to be convicted of an offense to be required to pay restitution under a sentence of probation. Many offenders convicted of one or more crimes had also been charged with other offenses. Restitution was also ordered for the victims of these charges. The mean number of such "extra-conviction" restitution obligations is 0.3 with a standard deviation of 1.0. It is very difficult to detect how many such restitution obligations were the results of plea bargaining. Positive indications of the relationship between plea bargaining and restitution were evident in only a minority of such cases (32.1%). This does not rule out the possibility that plea bargaining was involved in other cases.

Victims

Crime victims in the sample were grouped into five categories: Individuals (victimized at their homes or by personal injury): Owner Operated Business (typified by the "mom and pop" grocery store and including farmers); Other Businesses (including corporations); Government Agencies (including welfare departments and schools) and Non-Profit Organizations (primarily charities). The distribution of victims is summarized in Table Four.

TABLE FOUR
VICTIMS

Type of Victim	Number of Victims of the Actual Offense	(Frequency)	Number of Victims Receiving Restitution (includes substitute victims)	(Frequency)
Individual	179	28.5%	156	24.8%
Owner Operated Business	82	13.1%	79	12.5%
Corporate Business	247	39.2%	237	37.7%
Government Agency	62	9.8%	59	9.3%
Non-Profit Agency	13	2.1%	13	2.1%
Other or Unknown	46	7.3%	85	13.6%*
TOTAL	629*	100%	629*	100%

*Total is greater than total number of cases or offenses due to the existence of multiple victims of single offenses.

Offenders

The characteristics of the offender examined here are summarized in Table C (See Appendix). The "typical offender" (based on mean and modal values of each variable) was a twenty one year old, single, white male, from the lower middle class, with approximately one prior court contact. He was a high school graduate and employed at the time of sentencing in an unskilled or semi-skilled occupation. This "white middle class" predominance contrasts marketedly with what is known about the prison population of the State and the "consumers" of the criminal justice system in general (See below).

Amounts of Restitution

The losses reported by victims ranged from zero to thirteen thousand dollars. The mean amount of loss was $203.73[9], and the mean amount of cash restitution ordered was $167.02[10]. Most probation dispositions in which restitution was ordered required reparation for the full amount of victim loss (92.4%). Only twenty-eight (4.5%) of the six hundred twenty nine restitution obligations examined involved partial restitution. Six cases (1.0%) can be described as "full-plus" restitution. That is, payments for more than the out of pocket loss experienced by the victim. Four of these six victims were granted interest on the money that they lost as a result of the crime. In no case was the victim awarded payments for personal pain, suffering or mental anguish caused by the crime.

In-Kind Restitution

Restitution was ordered in the form of service to fifteen actual victims (2.4%) and twenty two (3.5%) "substitute victims" (usually the community or some government or social service agency). The mean amount of "in-kind" restitution rendered to an actual victim was one hundred and fifty two hours (ranging from ten to three hundred hours) and the mean amount of service rendered to the community was twenty three hours (ranging from ten to forty eight hours). Seven out of fifteen (46.7%) services rendered to the original victim were judged to be clearly related to the original offense. In one case an adult repainted the side of a barn that he had splattered with a thrown can of paint. The alternative is a service to the victim which was unrelated to the offense. These accounted for three (20.0%) of the fifteen cases. A good example of this type of arrangement was an incident in which two young boys vandalized a farmers' cooperative grain elevator. They each worked on a farm owned by that co-op for about ten hours to partially compensate the organization for the damages. Not surprisingly, when services were rendered to a substitute victim the services performed were never even remotely related to the offense or to the losses resulting from it. A good example of in-kind restitution rendered to a substitute victim was the practive in one county of sentencing juveniles to pick up litter along highways instead of compensating victims.

Compensation to Insurance Companies

Insurance companies were compensated for all or part of the amounts

they paid to thirty three (5.2%) of these six hundred twenty nine victims. In cases where the victim held a deductible insurance policy some courts ordered restitution to both victim and insurance company while other courts never ordered payment to the insurance company. In one metropolitan county small cash payments were made to the juvenile court "slush fund" instead of to a victim when the victim had been compensated already by insurance or did not want restitution.

Manner of Payments

Most payments were not made directly to the victim but instead were routed through an intermediary such as the probation officer or the office of the clerk of court. Thus only one hundred eight offender (20.6%) directly paid the victim while three hundred nineteen (60.8%) sent the money through a third party. Generally, most direct payments were either for small sums or from misdemeanor property convictions; larger amounts and those for most serious offenses were made indirectly. Four hundred eleven (65.3%) payment obligations fell due at the end of the offender's probationary period. Only sixty-seven (10.7%) were ordered to be paid "immediately" while three offenders (0.5%0 were ordered to make restitution within "a reasonable time". The remaining one hundred eighty cases (28.6%) were given a deadline shorter than the probation period to finish paying restitution.

Issues of Victim Culpability

While the issues of victim culpability and personal relationships between victim and offender are frequently discussed in the literature on restitution[11] they never appeared as issues in court records or as factors considered in the ordering of restitution. Since this study only examined records of convictions where restitution was ordered, conceivably the issues of victim culpability and victim relationships to offenders were used to pre-select cases where restitution was to be ordered. In short, these issues were not reflected in the amounts of restitution but may have influenced the decision to order restitution. Results from interviews with judges tend to confirm this suspicion and are discussed below.

Additional Sanctions

Courts were not always satisfied with limiting the conditions of probation to restitution. In addition, the offender was sometimes ordered to pay a fine, serve time in jail or detention, or compensate the county for court costs or the fee of the public defender. Thirty defendants (5.7%) were ordered to spend up to one year in jail or detention, eighty three (15.8%) were ordered to pay a fine, eight (1.5%) were ordered to pay court costs or public defender's fees, five (1.0%) were ordered to spend at least part of their probation period in a residential probation facility and five (1.0%) were ordered to undergo residential drug, alcohol, or psychiatric treatment. Two juveniles (0.4%) were ordered to apologize to their victims. The remaining three hundred ninety two offenders (74.7%) were given either no further conditions or only minor conditions on the sentence of probation.

Outcome

Probation was revoked for only twenty five offenders (4.7%). At the time of data collection - between seven and twenty two months after sentencing - four hundred seventy six restitution obligations (75.7%) had been completed to the satisfaction of the judge or probation officer. With information lacking on thirty five cases (mostly misdemeanor cases involving minor crimes and slight amounts) there were one hundred eighteen victims (18.8%) who had not been fully compensated. Of these one hundred eighteen, thirty two (27.1%) were considered by the court to be receiving restitution on a "satisfactory" basis. This is interpreted as meaning he or she was receiving installments on time. However, it could also mean that the offender was making a sincere but futile attempt to pay. There were eighty six restitution obligations (13.7%) the courts considered late or overdue. Approximately three fourths (76.3%) of the restitution obligations had be been completed or were being paid in a satisfactory manner at the time of data collection. Therefore it appears that most victims received the court ordered restitution with two years of the probation order.

An examination of probation files revealed that the most common reasons for not having completed restitution were financial inability to pay - ten offenders out of sixty eight cases (14.7%) - and willful refusals to pay - fourteen cases (20.6%). In addition, eight offenders (11.8%) were unable to make restitution due to subsequent jail or prison sentences. No reasons could be determined as to why the remaining thirty six (52.9%) offenders did not complete their restitution. An example of non-payment because of financial inability to pay was the case in which a poor man "chose" to serve thirty days in county jail because he could not pay restitution totaling less than one hundred dollars. Another man willfully refused to pay restitution by taking residence in an area from which he could not be extradited.

Factors Relating to Successful Completion of Restitution

While there is a need to determine the relative outcome effects of restitution as a correctional tool, such an objective remains beyond the scope of this study. Such an inquiry would utilize comparisons between groups, using matched samples or a control group to approximate an experimental design. In contrast the data presented here are purely descriptive, listing the circumstances of cases and outcomes for essentially only one group of subjects, those who were ordered to pay restitution.

The only practical indication we have concerning the effects of restitution is the relative extent to which it was completed. Certainly from the victim's standpoint the value of restitution is maximized when it is collected. It does not seem to be too presumptive to infer from the various theories concerning restitution that its rehabilitative, reconciliative or punitive effects are related to its payment, and not simply to the fact that it was ordered.

The influence that the variables of restitution - the characteristics of the offender, the circumstances of the case or the ways restitution was structured - might have had on its rate of completion were measured

by constructing contingency tables. The strength of the relationship between any one variable and successful completion of restitution was measured by Gamma and by correlational analysis.[12] Pearsons' chi-square test of association was utilized to test statistical association between each variable and successful completion of restitution. This test gives the odds (expressed as alpha) that the observed relationship was due to the operation of chance alone. One may then be confident that the observed relationship did or did not exist within the limits of statistical significance set by alpha.[13] The lowest level of statistical significance acceptable was set at alpha=0.05 or five chances in a hundred that the relationship was accidental. The results are summarized in Table Five below. A more complete description is included in Table D (See Appendix).

TABLE FIVE

FACTORS ASSOCIATED WITH SUCCESSFUL COMPLETION OF RESTITUTION

VARIABLE	GAMMA	STATISTICAL SIGNIFICANCE
Characteristics of Offender		
Age	-0.36	0.05
Marital Status (Single)	0.32	0.05
Race (Non-white)	-0.71	0.0001
Residence (Metropolitan vs. all other locations)	-0.12	0.01
Occupation level	0.55	0.01
No. of prior court contacts	-0.56	0.01
Circumstances of the Case	Pearson Correlation	Statistical Significance
Amount of victim loss	-0.13	0.01
Amount of restitution	-0.10	0.03
	Gamma	
Type of victim (personalized vs. non-personalized)	-0.10	*
Circumstances of the Sentence		
Restitution is full and not partial	0.38	*

Table five (cont.)

Factors Associated With Successful Completion of Restitution

Variable	Gamma	Statistical Significance
Restitution was ordered for payment within the full probation period	0.33	0.01
Payments ordered to be in regular installments	-0.45	0.01
Payments are made directly to the victim	0.14	*
Payments are made through a probation officer rather than some other intermediary	-0.51	0.05
Additional Jail sentence	-0.60	0.01
Additional fine	-0.18	*

*Not statistically significant

Characteristics of the Offender and Completion of Restitution

Inspection of Table Five reveals that the relationship between increasing age and completion of restitution is generally positive. However, the age group of offenders most likely to fail was the eighteen through twenty four year old group. Clearly, the relationship between age and completion of restitution was non-linear; juveniles appeared to have the best record for completing restitution. Married offenders did worse than single offenders. Table Two above indicates that residents of urban area were less likely to be sentenced to make restitution as a condition of probation. Inspection of Table Five, however, reveals that they were no less likely to complete it. Urban residents residing at inner-city rather than suburban addresses were significantly poorer risks than suburban or rural residents.

Social class was represented in this analysis by race, occupation and educational level. The data shows that this was an important determinant in the payment of restitution, as one might hypothesize from its supposed relationship to financial ability. Non-whites defaulted in nearly half (42.3%) of the cases. Indians defaulted in seven out of ten cases while Blacks completed half their restitution obligations and all Chicanos in the sample completed restitution. It should be noted that Indians are the most poverty stricken group in Minnesota. While the occupational level of a person or a juvenile's parent was an important predicator of his or her ability to pay (Gamma = 0.55), his or her

education was not. This was true for urban and rural residents and for all age levels. The only relationship education had was that significantly more high school dropouts defaulted than high school graduates. Interestingly enough, the occupation of a juvenile's parent had a stronger and more significant relationship with success than the actual occupation of an adult offender. The offender's prior record was a strong predictor of future ability to repay restitution, whether for attiudinal or financial reasons. While this finding may be support for the argument to limit restitution to first offenders, it may also have been a by-product of the social class or unemployment ofoffenders with prior records.

Circumstances of the Case and Completion of Restitution

As is evident from Table Five, no significant relationship was found between the type of victim and the completion of restitution. However, individual victims and owner-operated business were slightly less likely to receive full restitution than large business firms and government agencies. One can speculate from this that corporate victims such as Department stores or welfare agencies were more aggressive in seeking and receiving restitution than smaller businesses or individual victims.

As one might expect, the larger the loss and the restitution to be made, the less frequently restitution was completed. This may be interpreted as an argument for the more extensive use of partial restitution in cases where losses are great, especially for those offenders with limited financial ability. However, partial restitution was more frequently associated with failure to complete restitution than full restitution.

Circumstances of the Sentence and Completion of Restitution

Restitution was more frequently completed when the offender was allowed to pay over the range of his full probationary period rather than a more restricted time for payment. Surprisingly, a formalized installment plan whereby payments of a specified sum were to be paid at regular intervals seemed to be highly counterproductive in collecting restitution. Perhaps its use was reserved to only the poorer or more irresponsible offenders.

While inspection of Table Five reveals that restitution made directly to the victim was not completed more frequently than restitution made through an intermediary, it also shows that the identity of that intermediary was highly related to the successful completion of restitution. Probation officers were less likely to collect restitution (Gamma = -0.60) than law enforcement officers, clerks of court or county attorneys. It can be hypothesized that the role of bill collector conflicted with the role of counselor to the detriment of the collection of restitution. However, it is also conceivable that probation officers were assigned the responsibility of collecting restitution from only the more difficult offenders.

The effect of additional punishments on successful payment

of restitution is also revealed in Table Five. Jail was highly related to non-completion of restitution. Whether it was due to the effect of jail on the offender or a pre-selection whereby the poorer or more embittered individuals were incarcerated, when a restitution obligation was added to a sentence in the county jail, the probability of completing restitution was low. Fines also tended to be associated with the non-completion of restitution, although the relationship was not statistically significant. It could be conjectured that any negative influence the additional burden of a fine may have placed on offenders was at least partially compensated by the possibility that the ability to pay a fine was related closely to the ability to pay restitution.

C. Attitudes Toward Restitution, Judges and Probation Officers

The attitudes of judges and probation officers toward the use of restitution was examined by the use of structured interviews administered by telephone to a sample of judges and probation officers from the State of Minnesota.

1. Judges

A total of seventy two judges (96.0% of the total sample of seventy five) participated in the interview. Not every judge was eager to be interviewed. Much time was lost when judges repeatedly failed to maintain personal appointments or pre-scheduled telephone contacts. It is an open question as to how much their attitudes influenced the validity of these results.

Proportional use of Restitution

Fourteen judges (20.3%) noted that they ordered restitution in every probation case in which an identifiable victim suffered an out-of-pocket loss. Twenty nine judges (42.0%) reported the use of restitution in most such cases, eight in only half such cases (11.6%) and seven reported the use of restitution in few such cases (10.1%). No judge reported no use of restitution, one stated he ordered restitution whenever the probation officer recommended it, ten judges (14.5%) refused to answer. No judge reported ordering restitution for non-tangible losses such as pain or suffering.

Factors considered When Ordering Restitution

The factor reported as the most important to judges when determining whether restitution should be ordered was the offender's "ability to pay". This was listed by forty judges (55.6%) as one of the most important personal characteristics of the defendant. Other characteristics reported as important when deciding whether to order restitution were the age of the offender - seven judges (9.7%) order younger offenders to make restitution while four (5.6%) reserve its use to older offenders - and whether the individual was a first offender (6.9%). Fourteen judges (20.3%) noted they didn't consider personal characteristics when ordering restitution.

Few judges noted any consideration of the possible responsibility of

the victim for the offense or his or her personal relationship with the offender. Restitution was reduced or not ordered because of the existence of a personal relationship between the victim and the offender by only eleven (15.3%) judges. The responsibility of some victims for the crime caused seventeen judges (23.6%) to reduce the amount of restitution or refuse to order it. One metro area judge would not order restitution to those department stores that took checks from customers without proper identification.

Use of Partial Restitution

The use of partial restitution was reported by only thirty-two judges (46.4%). It should be noted, however, that while many judges did not order partial restitution they did not necessarily expect full restitution to be completed in every case. Remarks made during the course of the interviews indicated that a sincere but futile attempt to make full restitution would have been considered by some judges to be satisfactory if the probationer had made a "good adjustment to society" while on probation.

Use of In-Kind Restitution

"In-kind" restitution, service performed by the offender to the victim, was ordered by only fourteen (19.5%) of the judges within one year prior to the interview. Most judges who had not ordered it (37.5%) stated that a situation for this kind of sentence "never came up". Thirteen judges (18.1%) stated that in-kind restitution would be forced labor and thus unconstitutional under the Bill of Rights.

Personal Contact Between Victim and Offender

Only ten judges (13.9%) reported encouraging personal contact between the victim and offender either in determining the amount of restitution or its payment. Fifty judges (69.4%) thought such contact to be a poor idea. Some judges reported that most victims do not want such contact while other judges commented that such contact could lead to further victimization by the offender.

The Possible Rehabilitative Effects of Restitution

Most judges were moderately optimistic about the possible rehabilitative effects of restitution. Sixty one (84.7%) stated that they believed restitution could help to strengthen the sense of responsibility in some offenders, and fifty three (73.6%) thought it could help to reduce recidivism (although many of these fifty three thought its effect was small). Not surprisingly in view of these attitudes, thirty-one (43.0%) viewed restitution as either mostly or solely therapeutic (as opposed to punitive), and only 9.7% considered it mostly or solely punitive.

The Value of Restitution

Concerning the relative importance of restitution to the probation sentence, only seven judges (9.7%) termed it the most important condition

of probation. Thirty two (44.4%) viewed it as equal in importance to the other terms of probation. Only one judge thought it was of no importance as a condition of probation.

Only one judge out of the seventy two judges interviewed chose to "actively discourage" the use of restitution when asked if its use in the probation services should be "actively encouraged" or "actively discouraged". He stated that all such compensation belongs in the civil courts. Fifty judges (70.8%) would "actively encourage the use of restitution". There were several reasons given for favoring the encouragement of restitution. Twenty five judges (18.0%) explained that restitution is needed because victims deserve compensation. Thirty (41.7%) judges mentioned the usefulness of restitution in rehabilitation. Seven judges note that restitution was a matter of "simple justice" and that it should be used for that reason. Fourteen judges (19.4%) stated that they wouldn't encourage or discourage the use of restitution but would continue its present use.

2. Probation Officers

Caseload

All eighty two probation officers included in the sample participated in the interview. The average estimated caseload at the time of interview was forty seven clients. Of these, the average number of clients who had been required to make restitution was fourteen. Restitution thus had been ordered for approximately one fourth of all offenders in the caseloads of this sample of probation officers at the time of the interview. Most cases were described by the probation agents as involving full, rather than partial, restitution.

Functions Performed in Relation to Restitution

Agents were asked to describe the role he or she played in determining whether restitution was to be ordered and in determining its size and form. The pre-sentence investigation was used by fifty six agents (68.3%) to recommend whether restitution should be ordered. Thirty two agents (39.0%) reported having the responsibility of determining the amount of victim loss.

When asked whether the probation officers personally monitored the progress of restitution payment on a regular basis, sixty nine probation officers (84.1%) reported that they did. Only six (7.3%) did not and one agent reported doing so "sometimes". Agents were also asked what sort of actions they would resort to if payments were late. Sixty seven (81.7%) would at least call or write clients to notify them of the tardiness. Four agents (4.9%) would threaten to sent the probationer to jail or to lengthen the probation period. Others would tighten probation rules or rearrange payment schedules. Thirty nine agents (47.6%) would, as a second step, notify the courts of a fact that restitution was late. Nineteen agents (23.2%) would ask the court to lengthen the offender's probation. Only two agents (2.4%) would attempt to have the

offender's wages garnished. One agent reported that he would do "absolutely nothing" if restitution payments were late since the metropolitan juvenile court he served did not enforce restitution conditions. Fifty eight agents (70.7%) expressed the opinion that the measures available to them to enforce payment of restitution were adequate. Most agents who termed the tools available to them as inadequate were agents with metropolitan or inner-city caseloads who also reported high rates of noncompletion of restitution in their caseloads.

Possible Rehabilitative Effects of Restitution

In proportions similar to those noted for judges, most agents (89.0%) reported a belief that restitution helps to strengthen the sense of responsibility in some offenders. Sixty one agents (74.4%) believed it helps to reduce recidivism as well. Only three in ten, (3.3% and 12.2%) respectively, believed the opposite. Thirty seven agents (45.1%) saw restitution as more punitive than therapeutic. Only nine agents (11.0%) held the opposite view.

The Fairness of Restitution as a Condition of Probation

Sixty nine agents (84.0%) expressed the belief that restitution obligations in their jurisdiction have been "in general, fair and just". Only four (4.9%) saw them as having been too lenient. Six agents (7.3%), all having inner-city or metropolitan caseloads, considered most restitution obligations to have been either "too harsh" or "unrealistic" in view of the financial abilities of clients. The role of financial ability in determination of the fairness of restitution was indicated by several comments to the effect that restitution is fair if it is within the financial ability of the offender to pay. One would thus expect that most restitution obligations would be within the financial abilities of the offender. In addition, this might be expected from the fact that most judges used the offender's supposed ability to pay as the primary factor in deciding whether to order restitution. This hypothesis was tested by asking the agents to estimate the number of cases in their present caseload in which restitution was causing a financial hardship for the offender or his family. Seventy two agents (87.8%) said "none". Some further explain that this act was due to the screening process which selects only those offenders who could pay restitution. A few inner-city agents reported that restitution caused financial hardship for most or all of their clients.

The Value of Restitution

While one agent felt restitution should be mandatory, forty six agents (56.1%) felt restitution was equal in importance to other conditions of probation. Only five (6.1%) viewed it as the most important condition of probation while sixteen (19.5%) rated it as of minor importance to the probation sentence. While faith in restitution as a rehabilitative tool was as firmly established among probation officers as among judges, a greater proportion of agents (11.0%) than judges would "actively discourage the use of restitution in the probation services". The reason given for this attitude was usually that restitution was "a pain in the ass" for the agent. Agents reported the belief

that acting as a bill collector and "hounding" clients for money was harmful to the "helping role" they must take towards the individual client. Some agents reported that they were ill-equipped to handle the financial aspects of restitution. Some agents reported that they handled thousands of dollars a year of other people's money without benefit of training in bookkeeping or without even being bonded. One rural agent reported a political "tug of war" played with the county attorney over who should collect restitution. He reasoned (as did other agents) that the office was better equipped to handle collection and bookkeeping operations. It should be noted that the same kinds of attitudes toward "the bill collecting" aspects of restitution were also held by most of the sixty two (75.6%) agents who would have "actively encouraged" restitution. These agents also would rather not collect the money but either saw no alternative or found it worthwhile regardless. One agent thought restitution should be encouraged but only if "the system commits itself to restitution consistently."

D. Attitudes Toward Restitution, Victims and Offenders

The attitudes of victims and offenders toward the use of restitution were examined by the administration of structured telephone interviews to samples of victims and offenders randomly selected from the court records of seventeen Minnesota counties.

1. Victims

Characteristics of Victims Responding

A total of one hundred thirty three out of one hundred seventy two victims (77.3%) were successfully located and interviewed. Thirty-four (20.0%) could not be located due to lack of information in many court files and five (3.0%) refused to be interviewed. The individuals responding (excluding the representatives of organizations or businesses) were well educated, thirty seven (28.1%) were high school graduates and seventy-nine (59.4%) were college educated. They were of higher occupational levels than offenders; fifty (57.8%) were white collar workers and only fifteen (11.1%) were unskilled or semi-skilled laborers. In short, victims who were to receive restitution tended to be of a higher social class than offenders ordered to pay restitution.

Victim Involvement with the Restitution Sentence

Of the total sample, sixteen victims (12.0%) were not designated to receive restitution; the restitution which had been ordered was to be made to the victims' insurance companies or to their communities in the form of service. Of the remaining one hundred fifteen, twenty-five (18.8%) were unaware, until the interview, that they were supposed to receive restitution. This points to a lack of communication between the Criminal Justice System and the victim, a lack spoken to by more victims than just these twenty five. Many victims complained that nobody told them what was going on concerning the case or what their rights and expectations were concerning compensation. Some victims expressed the belief that the court and probation officers only looked out for the

interests of the offender. Some of these victims praised the police as the only element of the Criminal Justice System concerned with the welfare of the victim.

Only forty three victims (32.3%) reported having been actively involved in determining the size and form of restitution. Face-to-face negotiations with the offender to determine the size and form of restitution occurred in only seven (5.3%) cases while formal contracts spelling out the terms of restitution were only written in eight (6.0%) cases.

Amounts of Victim Loss and Restitution

According to this sample of victims, court ordered restitution compensated them for approximately 22.5% of their total losses[14] while insurance companies reimbursed them for 19.3% of their losses. Victims reported the actual restitution collected at the time of data collection to be only eleven percent of their losses. Therefore, at the time of the interview (nine to twenty four months after sentencing) victims reported total compensation (restitution plus insurance) of 30.2% of their losses. Table Six summarizes this information.

TABLE SIX
MEAN LOSS AND COMPENSATION

	MEAN	SD	N	TOTAL
Loss due to offense known to victims	$775.95	$1766.96	119	92,338.05
Comepnsations received from insurance companies	$773.04	$1186.67	23	17,779.92
Amount of court ordered cash restitution known to victims	$247.02	$ 417.63	84	20,749.68
Dollar equivalent of court ordered in-kind restitution known to victim	$ 15.00	0	1	15.00
Total cash value restitution ordered by court, known to victim	$244.29	-	85	20,764.68
Total cash value restitution received by victim	$190.55	$ 299.47	53	10,099.00

Who Should Compensate the Victims?

Despite the low proportion of reimbursement received from restitution, seventy eight victims (58.6%) believed that the offender is the appropriate party to compensate victims. Only twenty-two (16.6%) would not hold the offender responsible for making restitution, while twenty-five (18.6%) would give the offender a role in conjunction with government or private insurance companies. Only twenty five victims (18.6%) would favor the operation of victim compensation schemes by the government.

The Fairness to the Victims of Restitution

While only sixty two victims (46.6%) expressed satisfaction with the way restitution was completed in their cases, eighty victims (60.2%) thought that the restitution sentences as ordered by the court were fair. One hundred eight victims (81.3%) explained that restitution as ordered was fair because the restitution equaled their loss. Three victims (2.3%) noted that their restitution was fair because the offender paid what he or she was able, while two victims (1.5%) were happy with whatever compensation they could get. For those thirty victims (22.5%) who thought their restitution was unfair, twenty one (15.7%) reported that restitution was less than the value of their loss, while three victims (2.3%) were dissatisfied because they were given no money for the expenses incurred in going to court or negotiating restitution.

As a final measure of consumer satisfaction, victims were asked if they would prefer to have seen offenders punished by fines or jail sentences rather than ordered to pay restitution. Despite the wording of this question, fifty eight respondents (43.6%) wanted to see both restitution and other punishments. The reconcilliative potential of restitution may not have been apparent to these victims. Fifty seven victims (42.9%) reported being satisfied with their money back; while only seven (5.3%) would have foregone restitution if it had meant that the offender would have been sentenced to jail. Thus, the use of restitution as an alternative to punishment appealed to only a minority of victims.

2. Offenders

Only seventy one (44.0%) out of the sample of one hundred seventy two offenders were interviewed. One reason for the low response rate was the inability to receive permission to interview approximately thirty juveniles. The remaining missing offenders simply could not be located. The problem was compounded by the lack of good record keeping in some county courts.

Characteristics of Offenders

While the characteristics of the missing offenders are unknown, the personal characteristicsof those who did respond did not differ in any marked way from those of the original pool of offenders. Most respondents were white single males who worked at unskilled or semi-skilled jobs and had completed high school. Few individuals - only

three (3.9%) - in the sample of seventy one offenders interviewed had committed violent crimes. This should be compared to the seventy four offenders (14.0%) who had committed such crimes in the original pool of five hundred twenty five offenders. The difference in the proportion of violent offenders between the sample of offenders interviewed and the pool of offenders from which this sample was drawn is statistically significant and indicates that the sample from which the following data were collected was deficient in offenders who had committed violent offenses.

Amount of Victim Loss and Restitution

The mean amount of victim loss as reported by offenders was $381.14. Mean dollar restitution ordered was $278.25. Thus offenders reported restitution of 73.0% of the loss, while victims as previously noted had estimated that same proportion to be 22.5%. In short, there was a clear difference between the perceptions of victim and offenders concerning the proportion of loss compensated by restitution. This may be partially explained by the comments received from probation officers on the subject of determining the amount of restitution. "Many defendants do not know how much it costs to replace things" and "many victims want to be compensated for every loss to crime within the last ten years!"

Fairness to the Offender of Restitution

Most offenders (62.0%) thought that restitution, as ordered by the court, was fair. Interestingly, while seventeen (23.9%) thought of it as having been too harsh, four (5.6%) thought of it as having been too lenient. As with victims, most offenders who termed restitution as having been fair (61.4%) thought so because the amount of restitution equaled the amount of victim loss. Seven offenders (9.9%) thought restitution had been fair because they had "deserved it", seven (9.9%) thought so because the punishment "could have been worse", and one offender thought restitution had been fair because he enjoyed the in-kind restitution he had made to the victim. For the seventeen (2.4%) who thought that restitution had been too harsh, five (7.0%) claimed that they had paid for things that they hadn't done, three offenders (4.3%) thought that a fine or jail term plus restitution was unfair and two (2.8%) thought restitution was unfair because the offense was the fault of the victim. Two of the four offenders who thought restitution was too lenient explained that restitution hadn't fully repaid the victim's loss, while one thought that the restitution had not been enough punishment.

Only ten offenders (14.4%) would have preferred punishment by a fine or jail sentence instead of restitution. Of these, two would have preferred jail, four a fine, and one a residential probation commitment. Support for the concept of making the victim whole as an alternative to punishment seemed to be the majority opinion for this sample of offenders who had been ordered to pay restitution.

Section III: Summary and Conclusions

By analysis of court records and interviews with judges, probation

officers, victims and offenders this paper has attempted to describe the use of restitution as a condition of probation in the State of Minnesota between October 1973 and September 1974.

This analysis has shown:

1.) Restitution existed as a condition of probation in nearly one-fourth of all probation cases;

2.) Restitution was used in a straightforward manner by most courts. Full cash restitution was ordered to be paid by the offender to the victim in more than nine out of ten cases. Adjustments in the amount of restitution because of the limited ability of the offender to pay were rare. In-kind, or service, restitution to the victim or community was ordered in only a few cases;

3.) The most important factor determining whether an offender was ordered to pay restitution (assuming there had been a loss to a victim) was his supposed ability to pay. Thus those probationers ordered to make restitution were generally white, middle-class individuals;

4.) White, middle-class individuals also had the best record for completing restitution. The characteristic of an offender most strongly associated with failure to make restitution was the existence of a prior criminal record;

5.) Most judges and probation officers favored the use or restitution as a condition of probation. Similarly most judges and probation officers expressed the belief that restitution had a rehabilitative effect;

6.) Although only a minority of victims were satisfied with the way restitution had been made at the time of data collection, most victims thought that the restitution ordered by the court had been fair. In addition, most victims believed that restitution by the offender to the victim is the proper method of victim compensation;

It is hoped that this report will be of use to judges, probation officers and correctional planners in improving the utilization of restitution. Relationships with the one measure of success provided in this study may help to extend the use of restitution through provision of new support mechanisms and social programs to increase the ability to pay of more offenders. This seems desirable despite the high cost in correctional resources since it may help extend the benefits of compensation to more victims and thus insure greater popular support for the Criminal Justice System. It also seems desirable to extend the rehabilitive effect of restitution to those most needing it. It

certainly seems fair to make this humane alternative to imprisonment available to all despite their social class or yearly income.

It is clear that the most important determinant of whether an otherwise eligible defendant was to be ordered to make restitution was his supposed "ability to pay". As evident from both interviews with judges and from the cases themselves, this criterion was generally operationalized by choosing offenders who were white, well educated, and from the working and middle classes. This contrasted markedly with what is known about the Criminal Justice System in general. Those caught up in the system are overwhelmingly the poor, the lower class and members of minority groups.[15] Clearly, a large group of offenders, in whom the courts had little faith that restitution would be completed were not ordered to make restitution.

Considered in terms of the successful completion of restitution only, the preselection of middle class offenders was the best way to ensure that restitution ordered was restitution collected. Generally, the groups favored to receive restitution as a condition of probation were the same groups who later successfully completed restitution. The court thus did not put itself into the position of ordering something it could not enforce. However, in terms of the use of restitution as a rehabilitative tool and as a method of victim compensation the real needs may not have been addressed. One might assume that the well educated and middle class individuals or large and impersonal business that provided the bulk of the sample of victims were the victims least in need of compensation. Perhaps, the relatively well educated and well employed group of offenders that was able to pay restitution was the group of offenders for whom restitution had the least meaning.

Restitution may be one way that members of the more affluent social classes avoid prison. The data presented in this report may support this contention; members of the higher classes were the ones ordered to make restitution. Since some judges in the interviewed sample expressed approval of restitution as an alternative to prison sentences, some offenders may have gone to prison because the court assumed they couldn't earn enough money. In contrast, about as many judges made it clear that restitution was only considered after the individual was determined to be suitable for probation. In these cases the poor and unemployed escaped the sentence of restitution to the economic disadvantage of those in the higher social classes. If the use of restitution is to be extended for its rehabilitative and compensatory benefits we must think of new ways to enable the poor to make restitution.

One way to enable poorer offenders to make restitution might be the increased use of partial restitution, even in amounts comprising only token attempts to make the victim whole. The argument for this approach is clouded, however, by the fact that such restitution may be less meaningful to both victim and offender as evidenced by rate of failure of such sentences. Another alternative is greater correctional support and services for poorer probationers. Many agents reported that restitution obligations caused them to devote more time to job counseling and placement than they might otherwise have spent. One urban jurisdiction, for example, has found it necessary to specialize

probation officers - one officer handles most restitution cases. Many other agents have expressed the need for vocational training or job placement programs for probationers. One largely untried alternative is the use of "in-kind" restitution-service provided by the offender to the victim or to the community. Despite the approval expressed by the few victims and offenders who have experienced its use it has few admirers on the bench. The undesirability of victim-offender contact, problems in supervising and evaluating the work performed and the question of liability when a probationer is injured "on the job" are other reasons given by judges for not exploring this route. The successful experience of the community service by offenders program in England contradicts these fears. It has been found that such a program benefits offenders and the public.[16]

Without additional investments and special programs in support of the poorer or unemployed offender it is difficult to perceive how the potential rehabilitive uses of restitution can be realized. While correctional officers place faith in the rehabilitative effects of restitution, it is seldom used in the ways theorists have advocated as most rehabilitative. The emphasis on the "creative restitution" of Albert Eglash and its voluntary and expiative aspects was almost totally absent from the cases sampled as was the emphasis on person contact through the contractual process between victim and offender as advocated by Galaway and Hudson at the Minnesota Restitution Center.[17,18]

While restitution can hardly be termed a successful victim compensation scheme, there are certainly valid arguments in this presentation for its continued and expanded use. It does compensate some victims, and it does benefit some offenders (at least by keeping them out of prison). It should be possible to extend the use of restitution to benefit and compensate even more. However, there is an even simpler reason for the need to promote the use of restitution. This was best phrased by several judges and probation officers as"a matter of simple justice". Restitution appeals to most of us at a very basic and deep level. It relates to our most fundamental notions of fairness and justice. This may explain why most victims questioned - even some who didn't receive a cent - would prefer to have their compensation come from the offender rather than the government. This could have important implications for the continued support by the public of the criminal justice system as described by John Stookey.[19] It could also explain why conservatives and liberals are so uncritically supportive of a technique which has such a weak factual relationship to its professed goals.

Restitution is not addressed to a rehabilitative or victim compensatory need; instead it answers a moral need. It reflects the way we feel people should treat other people. As such the evaluations of the effects of restitution may need to show only that it is no worse than other rehabilitative alternatives and that it does compensate some victims. Any effects beyond these are serendipitous because the primary goal of restitution is the elimination of the contradictions between our systems of morality and our Criminal Justice System.

This paper has attempted to show that restitution is an important

probationary condition and has the support of the producers and consumers of the Criminal Justice System. It has argued that its use can and should be encouraged and extended. Whether as a component of a larger victim compensation scheme or as a routine alternative to imprisonment which is coupled with support and assistance to make its use available to all - it further merits attention.

NOTES

1. Irving E. Cohen. "The Integration of Restitution in the Probation Services". Journal of Criminal Law, Criminology and Police Science. Volume 34, (1944), 315-326.

2. Isador Chein. "An Introduction to Sampling" Research Methods in Social Relations, Revised Edition. Edited by Clare Seltiz, Marie Jahoda, Morton Deutsch, Stuart W. Cook, New York: Holt Rinehart and Winston, 1959, Page 533.

3. Minnesota State Planning Agency, Minnesota Pocket Data Book. Minnesota State Planning Agency Development Planning Division, December, 1973.

4. It should be noted at this point that the unit of data collection in this part of the study is the court case in which a person had been sentenced to probation (with restitution) for one or more offenses. Thus a few individuals appear in more than one case in the sample. In addition, several offenders were sentenced for more than one offense (and thus had more than one victim) within one case.

5. Reliability of the instrument designed to extract court records data was measured as follows: Since data was gathered between March 1 and July 15 of 1975, the worst intra-coder reliability could be expected at the beginnings and after the end of this period. Seven cases were randomly selected from the probation files of a county that was completed before March 15, 1975. On November 29 those seven cases were re-examined and data from all documents had been added to the files or otherwise altered in the intervening months. This "worst case" reliability has been measured after data was coded and keypunched.

   a) The mean Pearson Product Movement Correlation (across seven cases) of twenty-three variables is 0.89 accounting for 79 percent of the variance.

   b) A more complete analysis counted the total number of items in agreement between the first and second data collection. A total of 84.8 percent of responses were in exact agreement.

   c) An analysis of the responses in disagreement shows this breakdown.

      1) 57.7% of disagreements were due to data missing on one administration of the instrument and present on the other. Since the majority of these discrepancies represent data missing from the first collection and present on the second it is suspected that the bulk of this error is due to modifications and additions to the probation files in the intervening eight months.

2) Ten percent of the errors were minor differences in the age of the subject. (No more than a two year discrepancy).

3) Only 32.3% of the error represents discrepancies in the numerical description of data resulting from erroneous collection, coding or key-punching of data.

6. It must be noted that not all the assumptions of Chi-Square, the statistical test of significance used are met. The jurisdictions upon which this is based do not compose a true random sample of the state and more than 20% of the expected cell frequencies are less than the quantity five.

7. Data on jurisdiction was missing from ten cases or 1.9% of total.

8. Minnesota State Planning Agency, Ibid.

9. The standard deviation of victim loss is 334.44.

10. The standard deviation of restitution amount is 566.19.

11. Burt Galaway and Joe Hudson. "Restitution and Rehabilitation, Some Central Issues, Crime and Delinquency, 18:4 (October, 1972), 403-410.

12. Gamma assumes only ordinal variables and both statistics range in value from -1.0 to 1.0 with the value 0.0 indicating no relationship.

13. Edward W. Minium. Statistical Reasoning in Psychology and Education. New York, John Wiley and Sons, Inc., 1970, Pages 386-387, 448.

14. Nearly 19% of the victims were not aware they were to receive restitution. This figure, therefore, is a low estimate of the actual proportion of loss compensated by restitution. While according to victims, courts ordered restitution for 39.0% of uninsured victim loss. There often seems to be a difference in perception of the amount of loss between victims and the courts!

15. Eugene Doleschal, Nora Klepmuts, "Toward a New Criminology", Crime and Delinquency Literature, December, 1973, pp. 607-626.

16. John Harding, "Community Service by Offenders". Proceedings of the First International Conference on Restitution, edited by Joe Hudson, St. Paul, 1975.

17. Eglash, Albert. "Creative Restitution: Some Suggestions for Prison Rehabilitation Programs". American Journal of Correction. (November-December, 1958, 20-22, 34.

18. Burt Galaway and Joe Hudson. "Undoing the Wrong - The Minnesota Restitution Center". Social Work, 19:3 (1974).

19. John Stookey. "The Victim's Perspective on American Criminal Justice: What Happened to Concern for the Victim in Restitutive Programs?" Proceedings of the First International Conference on Restitution, edited by Joe Hudson, St. Paul, 1975.

20. Joseph A. Kahl. The American Class Structure. New York, Holt Rinehart and Winston, 1967.

21. August B. Hollingshead and Frederick C. Redlich, Social Class and Mental Illness. New York, John Wiley and Sons, 1959.

APPENDIX

TABLE A

TABLE B

TABLE C

TABLE D

TABLE A
QUESTIONS ASKED OF JUDGES AND PROBATION OFFICERS

JUDGES

1. How is restitution used?

   A. For what proportion of cases in which an identifiable victim suffers an out of pocket loss is restitution ordered?

   B. What characteristics of the case or offender help to influence whether restitution is to be ordered?

   C. Are the issues of victim culpability or victim offender relationships a factor in determining restitution?

   D. How often is in-kind restitution and partial restitution used?

   E. Is personal contact between victim and offender encouraged?

   F. Is restitution for non-tangible losses (i.e., pain) ever ordered?

2. What does restitution do?

   A. Does restitution help to strengthen the sense of responsibility in some offenders?

   B. Will restitution help to reduce recidivism for some offenders?

   C. Is restitution punishment, therapy or a combination of the two elements?

3. How should restitution be used?

   A. What is its relative importance to the probation sentence?

   B. Should the use of restitution as a condition of probation be actively encouraged or actively discouraged and why?

TABLE A--continued

PROBATION OFFICERS

1. How is restitution used?

   A. What proportion of his current caseload is composed of restitution cases?

   B. What functions does the agent perform relevant to restitution?

   C. Does the agent encourage victim offender contact?

   D. What does the agent do to collect late or delinquent payments?

   E. In what proportion of the agents current caseload is restitution causing a financial hardship for the offender?

   F. Have they in general been fair to the offender?

2. What does restitution do?

   A. Does it aid in strengthening the sense of responsibility for some offenders?

   B. Does it help reduce recidivism in some offenders?

   C. Is restitution punitive or rehabilitative?

3. How should restitution be used?

   A. What importance should it take relative to the other conditions of probation?

   B. Should its use as a condition of probation be actively encouraged or actively discouraged and why?

TABLE B
QUESTIONS ASKED OF VICTIMS AND OFFENDERS

OFFENDERS

1. Characteristics

   a. Race, sex, educational level, occupation
   b. Yearly income
   c. Prior record

2. Circumstances of the Case

   a. Type of offense
   b. Type of victim, his or her loss, the amount of restitution, previous relationship with victim.
   c. Additional sanctions, either jail or fine.

3. Ways the Restitution Obligation was Structured

   a. Was restitution full or partial, in the form of cash or service to the victim.
   b. Was it to be made as regular installment payments? Did a formal (written) contract between offender and victim exist?
   c. Was restitution completed? If not, why not?

4. Opinions

   a. What consequences would follow if the probationer did not pay the restitution.
   b. Does the offender consider the restitution obligation to have been fair to him or her self? Why?
   c. Would the offender have rather been sentenced to pay a fine or serve time than to have to pay restitution?

VICTIMS

1. Characteristics

   a. Type of victim (i.e., individual or business).

      1. If individual, education and occupation level.
      2. If business or government, respondent's relationship to victimized organization.

   b. Prior relationship to offender.

2. Circumstances of Case

   a. Type of offense
   b. Amount of loss, amount compensated by insurance, amount of restitution ordered, amount of restitution collected.

CONTINUED

2 OF 3

TABLE B
QUESTIONS ASKED OF VICTIMS AND OFFENDERS

OFFENDERS

1. Characteristics

   a. Race, sex, educational level, occupation
   b. Yearly income
   c. Prior record

2. Circumstances of the Case

   a. Type of offense
   b. Type of victim, his or her loss, the amount of restitution, previous relationship with victim.
   c. Additional sanctions, either jail or fine.

3. Ways the Restitution Obligation was Structured

   a. Was restitution full or partial, in the form of cash or service to the victim.
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4. Opinions

   a. What consequences would follow if the probationer did not pay the restitution.
   b. Does the offender consider the restitution obligation to have been fair to him or her self? Why?
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VICTIMS

1. Characteristics

   a. Type of victim (i.e., individual or business).

      1. If individual, education and occupation level.
      2. If business or government, respondent's relationship to victimized organization.

   b. Prior relationship to offender.

2. Circumstances of Case

   a. Type of offense
   b. Amount of loss, amount compensated by insurance, amount of restitution ordered, amount of restitution collected.

TABLE B--continued

3. Ways Restitution was Structured

   a. Was the victim aware he or she was to be compensated through restitution?
   b. Was restitution full or partial, cash or service?
   c. Were face to face negotiations or a written contract between victim and offender involved in determining the amount and form of restitution?
   d. Who determined the amount and form of restitution?
   e. Has restitution been completed?

4. Opinions

   a. Does the victim think that he was involved in the determination of restitution's amount and form?
   b. What would the victim do if restitution was late or overdue?
   c. Who should compensate victims of crime?
   d. Was restitution fair to the victim? Why?
   e. Is the victim satisfied with the way restitution was completed?
   f. Would the victim have preferred to see fine or jail sentence rather than restitution?

TABLE C
PERSONAL CHARACTERISTICS OF OFFENDERS

Characteristic	Number	Frequency	Mean	Median	Mode
Residence					Small Town
A. Metropolitan (Minneapolis, St. Paul Duluth)	69	13.1%			
B. Urban (Towns either in the top 25 in population or identifiable as a "Twin Cities suburb")	76	14.5%			
C. Small Town	148	28.2%			
D. Rural Route Address	87	16.6%			
E. Undetermined Rural Address	105	20.0%			
F. Other or Unknown	40	7.7%			
	525	100%			
Age (At time of sentencing)			20.6 yr. (Standard Deviation=8.3)		
7-14	67	15.1%			
15-19	221	49.8%			
20-24	72	16.2%			
25-34	50	11.3%			
35-44	25	5.6%			
45-59	9	2.0%			
Unknown	81	18.2%			
	525	100%			
Marital Status (At time of sentencing)		(Adults+Juv.)	(Adults only)		Single
Married	41	7.8%	13.2%		
Widowed	1	0.2%	0.3%		
Divorced or Separated	25	4.8%	8.1%		

TABLE C--continued

	Number	Frequency	Mean	Median	Mode
Marital Status (cont.)					
Single (includes all 215 juveniles	263 (48 adults)	50.1%	15.5%		
Unknown (Adults only)	195	37.1%	62.9%		
	525	100%	100%		
Race					White
White	306	58.3%	(92% of known sample)		
Black	4	0.8%			
Indian	15	2.9%			
Chicano	7	1.3%			
Oriental	1	0.2%			
Unknown	192	36.6%			
	525	100%			
SEX					
Male	428	81.6%			Male
Female	97	18.4%			
	525	100%			
Education (Highest level completed)				H.S. Grad	H.S. Grad
Grade School (1-6)	5	1.0%			
Junior High (7-9)	22	4.2%			
High School (10-11)	62	11.8%			
High School Graduate	89	17.0%			
Some College or Vocational School	27	5.1%			
College Graduate	6	1.1%			
Some Graduate School	1	0.2%			
Unknown	313	59.6%			
	525	100%			

TABLE C--continued

	Number	Frequency	Mean	Median	Mode
Occupation Level (in terms of social class)[20,21]			Skilled Labor		Unskilled Labor
1. Unemployed	28	5.3%			
2. Unskilled or Semi-Skilled Labor (includes clerical and sales)	114	21.7%			
3. Skilled Labor (Blue Collar)	60	11.4%			
4. Independent Business (Includes farmers)	51	9.7%			
5. Managerial or Professional (White Collar	27	5.2%			
6. Student or Armed Services	15	2.9%			
7. Unknown or Other	230	43.8%			
	525	100%			
Prior Criminal Record					
1. Previous Court Contacts			0.9 (Standard deviation equals 1.7, based on 316 cases)		
2. Previous Juvenile Dispositions			0.3 (Standard deviation equals 1.0, based on 302 cases)		
3. Previous Gross Misdemeanor Convictions			0.3 (Standard deviation equals 1.0, based on 300 cases).		
4. Previous Felony Convictions			0.06 (Standard deviation equals 0.3, based on 296 cases).		

*For Juveniles the occupational and educational level of the parent acting as head of household was ranked.

**Occupations were assigned to these categories and the categories were ranked through a system freely adapted from the works of Hollingshead and Redlich and others on social class and occupational prestige.[8,9] In evidence that the system is valid for the purposes of this study are the result of covariance

analysis between those levels of occupational ranking and the more rigorous ranking of educational level. The relationship between these two scales is high and significant for both juveniles and adults. (Adults: Gamma= 0.52, X^2=43.75, df=12, cases=112, significant at or above the alpha=0.005 level. For the parents of juveniles: Gamma=0.38, X^2=40.49, df=12, cases=87 significant at the same level).

TABLE D
COVARIANCE WITH SUCCESSFUL COMPLETION OF RESTITUTION

VARIABLES	GAMMA	(Significance level) alpha equals:	Chi-Square	(df)	Number of Cases*	Spearmans Correlation Coefficient (Rho)	Significance level, alpha equals)	N of Cases*
Circumstances of the Case								
Type of victim (Victim is personalized, an individual or owner operated business, rather than non-personalized, a corporation, government or non-profit agency).	-0.1	**	0.56	1	461	-0.08	0.04	469
Amount of Victim's Loss	-0.15	**	9.92	8	444	-0.15	0.01	368
Amount of Restitution Ordered (including partial restitution sums)	-0.18	**	10.93	8	444	-0.14 ****	0.005	381
Characteristics of the Offender								
Residence:								
a) Rural (small town or rural route) residence as opposed to urban or metropolitan residence.	0.06	**	1.50	1	481	-0.02	**	454
b) Metropolitan (Mpls., St. Paul or Duluth) as opposed to all other residences.	-0.12	0.01	8.20	1	481	-0.07 **	(0.06)	454
Age	-0.36	0.05	9.74	4	444	***		
Marital Status (Single as opposed to married)	0.32	0.05	12.10	4	361	0.14	0.01	316

TABLE D--continued

VARIABLES	GAMMA	(Significance level) alpha equals:	Chi-Square	(df)	Number of Cases*	Spearmans Correlation Coefficient (Rho)	Significance level, alpha equals)	N of Cases*
Offender is under jurisdiction of juvenile court	0.45	0.001	11.12	1	439	0.26	0.001	477
Ses (male as opposed to female)	0.32	0.05	3	79	420	0.12	0.005	458
Race (being non-white)	-0.71	0.0001	14.59	1	284	-0.20	0.001	320
Education (highest level achieved by offender or offender's parent)	0.10	**	3.90	4	211	0.04	**	196
Occupation (level in forms of social class of offender or offender's parent)	0.55	0.005	12.87	3	244	0.28	0.001	284
Prior Criminal Record:								
a) No. of previous court contacts	-0.56	0.01	31.89	3	359	-0.22 ****	0.001	302
b) No. of previous juvenile dispositions	-0.63	0.01	24.48	2	217	-0.12 ****	0.02	289
c) Having previously been adjudicated delinquent	-0.87	0.01	34.54	1	200	-0.45	0.001	195
d) No. of previous gross misdemeanor convictions	-0.42	** (p=0.07)	3.30	1	273	-0.04	**	287

TABLE D--continued

VARIABLES	GAMMA	(Significance level) alpha equals:	Chi-Square	(df)	Number of Cases*	Spearmans Correlation Coefficent (Rho)	Significance level, alpha equals)	N of Cases*
Prior Criminal Record: (cont.)								
e) No. of previous felony convictions	-0.44	**	1.36	1	271	-0.08		283
The Structuring of Restitution								
Restitution is a full, rather than partial, repayment for victims losses	0.38	**	1.99	1	413	0.08	0.05	462
Payments are made directly to the victim and not routed through an intermediary	0.14	**	2.38	1	448	-0.11	0.01	411
Intermediary was offender's probation officer	-0.51	0.05	7.97	1	448	***		
The probation officer recommended restitution in the pre-sentence investigation report.	0.16	0.5 **	0.39	1	174	-0.05	**	337
Completion was ordered within a specific time period rather than the full probationary period.	-0.33	0.01	7.12	1	435	-0.02	**	485
Payments were specified by the court to be made on a regular installment basis.	-0.45	0.01	10.88	1	513	-0.70	**(0.07)	474

TABLE D--continued

VARIABLES	GAMMA	(Significance level) alpha equals:	Chi-Square	(df)	Number of Cases*	Spearmans Correlation Coefficient (Rho)	Significance level, alpha equals)	N of Cases*
The court required the offender to pay through his own efforts, forbidding help from family & friends	0.01	**	0.04	1	525	0.07	**(0.06)	474
Offender was also sentenced to jail or detention.	-0.60	0.01	7.72	1	528	-0.14	0.002	485
Offender was also ordered to pay a fine.	-0.18	**	0.78	1	533	-0.02	**	485
Offender was also ordered to pay court costs of public defender's fee	0.12	**	0.07	1	534	***		

*The number of cases from which covariances are computed vary because data was not always available for every case.

**This is not statistically significant at the alpha equals 0.05 level.

***Not computed.

****Pearson Product Movement Correlation Coefficient

SECTION IV

The papers in this section by Robert Mowatt and Bill Read deal with the use of restitution within residential, community corrections programs which act at least partially as a diversion from penal incarceration while the paper by Kathleen Smith presents a proposal for implementing a restitution scheme directly within a penal setting.

The self determinate sentence proposal made by Smith is thoughtfully presented in relatively detailed form: Prisoners would be gainfully employed at a reasonable wage and expected to budget part of their income for restitution payments. Obviously, the major obstacle to such a program is the extremely low prisoner work payment system operative in most - if not all - American prisons. If one considers the fact that the vast majority of prison inmates in this country committed for crimes against property have caused very small amounts of property loss or damage, and if one assumes that the federal minimum wage could be paid for inmate work, Smith's scheme would have the effect of drastically shortening prison sentences for property offenders. Clearly, however, until such time as prisons stop depriving inmates of the opportunity to work for reasonable pay, the use of restitution at this level of the criminal justice system will be an impossibility.

Several major program issues appear to be common to the Minnesota and Georgia programs as described in the papers by Mowatt and Read. First, the problem almost endemic to diversion programs of all types; how to insure that the program is, in fact, functioning as a diversion from a more severe criminal sanction? While the program of the Minnesota Restitution Center was originally developed to select clients from the population of eligibles who had actually been received at the Prison, there has apparently been a continuous attempt to have the program take clients either from the courts or at some later point in the prison sentence. In either case, the potential effect would be the common one of piling one corrections sanction on top of another. The Georgia program is - at least in part - an example of the piling on phenomenon in criminal justice programming. The Restitution Shelters may, to some undetermined extent, be providing services to clients who otherwise may have been placed on conventional probation. Especially when the legal status is probation, careful consideration needs to be given to the possibility that residential community programs are generating an increased and unnecessary degree of control over the lives of offenders.

A second major issue common to the Minnesota and Georgia programs concerns the work available for program residents. As in most criminal justice programs, residents in these programs come from the lower socio-economic strata of society and have relatively limited work skills. Quite obviously, any program centering upon monetary restitution is directly contingent upon the offender's ability to obtain and hold employment in order to make good the financial damages done. Poor socio-economic conditions dictate that such programs are confronted with the alternative of forcing residents to seek out and accept work requiring low levels of skill and remuneration or holding off the restitution requirement in order that residents may complete vocational training programs and then complete the restitution

obligation. On-the-job training may offer a potential resolution of this issue for some clients in these programs but would seem to hold little promise for most. Smith's proposal is clear in emphasizing that prison inmates would be afforded work and renumeration comparable to life in the free community. While she notes that trades training programs - as well as educational and therapeutic activities - would be available to prison inmates on a voluntary basis during non-work hours, progress in such programs would play no part in the release decision.

A third issue that appears to run through both the Minnesota and Georgia programs is the tendency to supplement the restitution sanction with other, more "treatment-oriented" sanctions. The residential nature of these programs along with the nature of the clientele and staff would seem to feed into the tendency to mix program ingredients. By their very nature, the close supervisory and intimate nature of residential programs seem to generate a concern with a host of personal, familial, and social problems held by clients in these facilities. As Empey and Erickson have noted in a slightly different context:

> One would not have to have a population of delinquents to anticipate problems if he required them to live against their wills in a correctional setting. One could only imagine what the problems would be if that population were college students, and if one attempted to require them to adhere to the same regimen to which delinquents usually have to adhere- lights out at a certain time, regular attendance at work or school, no fights, drunkenness or smoking pot. ---- College students (perhaps even girl scouts) would be more likely to run away or be defined as incorrigible, especially if they were in a community setting where they could walk away at any time. (LaMar T. Empey and Maynard L. Erickson, The Provo Experiment, Lexington, Mass., D. C. Heath, 1972, p. 91).

Adding further potential fuel to the intrusive character of residential programs is the professional ideology of program staff who have been professionally socialized into an awareness and sensitivity to manifestations of intra-psychic and social dysfunctioning and the clientele who all too frequently can be perceived as having an inordinate share of such problems. As a consequence, the restitution component of a residential program could quickly fade into relative insignificance in the day in and day out operation of the facility. To some considerable extent, the idea of restitution in residential programs could become little more than a legitimation for coercively grubbing in the pysches of others.

Kathleen Smith's proposal is quite clear and specific in relation to this issue. By the very fact of explicitly linking the amount of restitution to be paid to the length of time to be served in prison, Smith is able to avoid the thorny and controversial issue of coercive therapy which currently embroils the field of corrections. However, Smith's scheme does not negate the possibility of making available a host of "therapeutic" programs within the penal setting which could be voluntarily utilized by inmates. She notes quite clearly, however, that engaging in such activity will have no bearing in her scheme on the length of time to be served under penal confinement.

The issue of victim involvement in restitution programs is a further issue discussed in the papers by Mowatt and Read. While the original funding proposal for the Minnesota Restitution Center included a major focus on the involvement of the crime victim with the offender in the negotiation of the amount, form, and payment schedule of the restitution to be made as well as on-going victim/offender contact in the completion of the restitution payment, Mowatt notes that such involvement has become increasingly difficult to maintain. Whether this is more a function of staff priorities or victim desire would seem open to question. The Georgia program places little emphasis on victim involvement with offenders and, while Smith's paper does not directly address this issue, it would not appear to be a feasible element of it given that the offender's payments are to be made to a central compensation fund. In summary, while arguments can be made for or against victim involvement in a restitution program, little empirical support gained from operational restitution programs can be used to support either position. There is, however, a relatively substantial body of research from social psychology which would tend to support the positive benefits which might accure to both victims and offenders from involvement in the negotiation and on-going completion of restitution agreements.

THE MINNESOTA RESTITUTION CENTER:

Paying Off The Ripped Off

Robert M. Mowatt

Introduction

Correctional programming is receiving increased scrutiny and increasing, yet often conflicting, criticism is directed toward existing concepts and programs. The "treatment" or "rehabilitative" models of correctional programming are being criticized as lacking the elements of equal administration of justice, as ineffective, or as "soft" on the offender. At the same time, existing facilities for incarceration are being labeled as archaic and inhumane. Certain factions of the criminal justice system are actively developing community based rehabilitive programming for offenders while other segments of the system are advocating fixed minimum sentences of incarceration and a return to a clear punishment based model. This is the contemporary context of often conflicting models within which new programs in corrections must be developed.

Property Offenders

Criminal offenses have generally been divided into the two major classifications: 1) crimes against property and; 2) crimes against person. Offenses against property constitute a major portion of those offenses which are brought before our courts. Such offenses as burglary, unauthorized use of a motor vehicle, theft by check, forgery, and fraud are passive crimes without direct threat to persons but collectively, they represent the largest single grouping of crimes to be dealt with by the criminal justice system. Most of these offenses are in the "nuisance" category with dollar values ranging between $100 and $500.

The multi-thousand dollar theft is the exception rather than the rule. Consistent with this is the nature of the offender. He is much more apt to be the kind of individual identified by social service agencies as the "multi-problem client" rather than the "slick operator" or "professional."

This particular category also presents a very high recividism rate. More often than not, these clients appear before the court time after time for similar offenses. The most common disposition of these cases has been probation or short workhouse or jail sentences combined with probation. Much restitution has been ordered as a condition of probation by Judges. However, in reality, little of this restitution has been effectively collected. Estimates from court units in the Minneapolis/St. Paul Metropolitan area range from 9-20% successful collection of the restitution obligation imposed by courts.[1] In addition, probation officers often resist the role of collection agent and impersonal computerized systems have been developed whereby offenders receive monthly computer printed bills with payments being made to the court for eventual distribution by the court to the victims.

Those offenders who persist long enough in a pattern of continued property offenses eventually frustrate the courts to the degree that incarceration appears to be the only alternative to break that particular pattern of offenses. At that point, statutory sentences averaging 0-5 years in Minnesota are imposed upon the offender who is then sent to a maximum security correctional institution.

DEVELOPMENT OF THE MINNESOTA RESTITUTION CENTER

The Minnesota Restitution Center has been developed as another option for dealing with a particular group of offenders. The program is a residential facility. The major component of the program is the restitution contract negotiated between the victim and the offender. The offender is then paroled from the institution at the earliest possible date and returned to gainful employment in the community in order to support himself and his family and to make restitution to the victims of his offense.

The program was first conceived by Joe Hudson and Burt Galaway, then graduate students at the University of Minnesota. Two factors strongly influenced the development of the Minnesota Restitution Center program. The first was the concern for the treatment of the victim within the criminal justice system. Generally, the system uses the victim to provide information for investigating law enforcement agencies, to assist prosecuting attorneys in preparation of cases, and to testify in court. However, once the victim has been utilized for successful prosecution, there is little concern or response to his position as a victim by the criminal justice system. By definition, the victim has usually sustained some sort of loss as a result of the offense itself, and then is often required to expend time and energy working with the system to prosecute the offender. Unless the victim has insurance protection, he is left with little recourse to recover his losses. The criminal justice system itself makes virtually no response to the victim's situation.

The second motivating factor was a review of the population at the Minnesota State Prison which revealed a significant number of property offenders whose offenses represented only a relatively small dollar value and who presented no history of violent crimes or other threats against person. Most of these incarcerated offenders had prior convictions for similar crimes or had records of poor adjustment to probation supervision. However, given these factors, it still appeared that incarceration in a granite and steel facility was an "overkill" response on the part of the system toward these particular offenders. In reality, however, there were few other alternatives available. Either the number of prior offenses or the lack of successful adjustment to probation supervision in the past had eliminated additional probation as an option, leaving incarceration as virtually the only available choice.

The consideration of these two factors: 1) lack of response on the part of the criminal justice system to the victim and; 2) the placing of offenders in maximum security custody who did not represent a major danger of threat to the community, led to the development of the model for the Restitution Center program. Initial development of the plan began in early 1972. The Minnesota Department of Corrections became interested in the concept and requested that Hudson and Galaway prepare the concept as a program model to be submitted in grant form for Law Enforcement Assistance Administration (LEAA) funding under sponsorship of the Department of Corrections. The initial LEAA grant was awarded in June of 1972. The project officially opened on August 1,

1972 with the first client intake the following month. Since that initial grant, the project has received second and third year grants from LEAA. A summary of the funding for the initial three years of the project is included in the following table:

	LEAA	LOCAL MATCH	TOTAL
1972 Grant	$110,000	$47,080	$157,080
1973 Grant	$114,165	$52,948	$167,113
1974 Grant	$108,656	$72,438	$181,094

With the completion of three years of LEAA Funding, the Minnesota Department of Corrections has received a Legislative appropriation to continue to operate the program as a regular unit of the Department.

OBJECTIVES OF THE CENTER

The Minnesota Restitution Center was established to provide a diversionary alternative for property offenders at the point of incarceration in one of the state's two maximum security institutions. The program at the Restitution Center substitutes the sanction of complete restitution to the victim of an offense for the sanction of incarceration. The official sanction for the offender becomes repayment of losses to his victim and participation in the program of the Minnesota Restitution Center.

Formally, the Center's purpose is set forth in the following statement.

> "The purpose of the Minnesota Restitution Center is to provide a diversionary program which furnishes an alternative to incarceration for selected property offenders utilizing the concept of offender restitution to the victims of their offenses and to provide the necessary assistance to enable the offender to meet the conditions of his parole agreement and his restitution contract."[2]

The objectives of the program are:[3]

1. To provide the means by which the offender may compensate the victims for their material loss due to his criminal actions.

2. To provide intensive personal parole supervision.

3. To provide the offender with information about his behavior and offer him the opportunity to resolve personal problems and continue to develop personal strengths and interpersonal skills through regular and frequent group and individual counseling.

4. To provide the victim with restitution to compensate for direct losses as a result of the offender's criminal actions.

5. To disseminate information regarding the restitution concept and the Minnesota Restitution Center to other Criminal Justice agencies throughout Minnesota, the United States, and Canada, and to the general public.

6. To continue to undertake valid research and evaluation of the concept of restitution in general, and this program in specific and to disseminate this data within the Department of Corrections and to other interested agencies.

CANDIDATE SELECTION

The Minnesota Restitution Center has established a set of eligibility criteria for participation in the program. These guidelines were established in conjunction with the Minnesota Corrections Authority (M.C.A.), the paroling body. The following criteria are used to select potential candidates for the program.

1. No more than three (3) separate felony convictions including commitment offense. More than one conviction arising out of the same act or immediate series of acts will be considered one conviction for the purpose of this criteria.

2. Not on M.C.A. parole or M.C.A. probation at the time of the commitment offense.

3. No history of dangerous behavior within five years of current incarceration as exhibited by convictions for assault, robbery, forcible sex acts, etc.

4. No detainers which are not negotiated to disposition prior to the initial hearing before the M.C.A.

5. No convictions within the institution during current incarceration for offenses which would be felonies if committed in the free world.

6. No chronic history of drugs/alcohol/chemical abuse.

7. The Center will exclude from consideration the middle class intelligent individual who has adequate social skills and resources and an absence of significant behavioral or adjustment problems such as alcoholism or drug addiction, but who, instead, has chosen to earn his living outside the law with no documented history of consistent attempts at lawful employment as his source of financial support.

8. Offenders with a severe psychiatric problem where present treatment needs are determined to be beyond the resources and structure of the program will not be considered.

9. There must be a period of no less than a year between the day a candidate would be granted parole to the Center and the expiration of his sentence.

10. The candidate's potential earning power must enable him to complete restitution with reasonable monthly payments within the remaining time of his sentence.

11. Candidates who had a gun, knife, or other dangerous weapon on their person at the time of the commission of the commitment offense will not be considered.

12. Candidates must be willing to participate in group treatment at the Restitution Center.

The selection process begins with a review of the intake files for all offenders admitted to the institution during a given month. Those offenders who meet the objective criteria including conviction of a property offense, and a prior record which would not exclude participation in the program, are selected for an interview by three staff members of the Center. All candidates who appear to be eligible meet with the staff from the Center and the program at the Restitution Center is explained to the offender. At that point, any inmate who is interested in becoming involved in the program remains for an individual interview.

During this interview the staff apply the more subjective criteria to each candidate and rank those men interviewed. These recommendations are presented to the entire staff where the final decision is made. A counselor is then assigned to each candidate selected, and the counselor meets with the candidate at the institution within the next week. In this first meeting the counselor explains the program in greater detail and begins to collect information necessary to prepare the restitution contract and the planning report. Potential candidates may turn down the opportunity to participate in the program at any point prior to their parole.

RESTITUTION CONTRACT

The Restitution Center contract is the most significant component of the program. It is a four party contract drawn between the victim of the offense, the offender, the staff of the Minnesota Restitution Center and the Minnesota Corrections Authority. In this mutually agreed upon contract, the offender agrees to repay the victim a set amount of money for damages or losses suffered as a result of his offense and to pay it according to a set repayment schedule. The victim agrees to accept this payment as a full settlement for damages or losses resulting from that particular criminal incident. The Minnesota Restitution

Center agrees to monitor and enforce the terms of the contract and to provide a program at the Center to assist the client to live up to the conditions of his parole and the terms of his contract. Finally, the Minnesota Corrections Authority agrees to grant parole to the client so that he may return to the community to fulfill the terms of his restitution contract.

The repayment schedule is distributed over a minimum of several months and must be completed before the offenders time on parole officially expires. It is not necessary for the offender to completely pay restitution before he leaves residence at the Center, but payments must be up to date according to the terms of the contract. The payments may be completed on regular parole status.

The process of developing the contract begins with identification of the victims through discussions with the offender, review of law enforcement reports, and review of court transcripts. The counselor then contacts each victim and explains the program at the Center to them. Every attempt is made to have the offender and the victim meet face to face at the institution in order to negotiate the terms of the contract. During this negotiation, the counselor serves as a mediator and seeks to insure that the contract is fair to both parties. In those cases where the victim is unable or unwilling to meet the offender at the institution, the counselor acts as a go-between, meeting with both parties and developing a mutually satisfactory contract. The contract is always drawn directly between the victim and the offender although, in those cases where insurance settlements have been reached the insurance company also becomes a second victim in a contract.

Victims, for any number of reasons, may not wish to participate in a restitution agreement with the offender. If such a stance on the part of the victim eliminates a particular offender from consideration for a restitution plan, the victim, in fact, holds a "veto". In order to remove the victim from this powerful position, it may be necessary to set up an account in a local bank in the name of the victim. The offender then agrees in his contract to make regular payments to that account until the figure established as proper restitution has been reached.

When the restitution is paid in full, a check is mailed to the victim. This procedure protects the offender from civil action by the victim after he is placed on parole and has completed his restitution payments. The victim has then been paid in full even though he has not been an active participant in the contract.

This contract is drawn up and signed by all parties except the Minnesota Corrections Authority prior to the offender's first appearance before the Authority within the institution. This generally occurs after three or four months of incarceration.

In the majority of cases, restitution is provided in the form of direct cash payments from the offender to the victim. It is possible, however, to develop a contract calling for direct services to be provided to the victim in lieu of cash payments.

PLANNING REPORT

In addition to the restitution contract, a planning report is also drawn up by the offender and the Center staff. This is essentially a parole plan identifying problem areas and the planned response to these problems on the part of the offender and the Center. It also discusses his employment potential and what resources are available to assist in securing employment in the community.

PAROLE TO THE CENTER

The restitution contract and the planning report are then presented to the Minnesota Corrections Authority along with the intake summary developed by the caseworker in the institution. Utilizing these three pieces of information as well as a personal interview with the offender, the Minnesota Corrections Authority makes the final determination if parole to the Minnesota Restitution Center is appropriate. If so, parole is granted to the offender stipulating that the restitution contract, the planning report, and the rules and structure of the Minnesota Restitution Center become conditions of parole for that particular offender.

The program at the Minnesota Restitution Center requires no special enabling legislation. Sentences for property offenses in Minnesota are indeterminate which allow the Minnesota Corrections Authority to parole any offender to the program when they deem such action to be appropriate. The entire intake procedure is completely within statutory procedures existing at the time the program was implemented.

THE CENTER

The Center itself is located on the Seventh Floor of the Downtown Minneapolis YMCA. Each resident has an individual room. The Center also has office space, a lounge, and a group meeting room. Facilities of the YMCA are available to residents. The eleven staff at the Center include the Project Director, the Program Supervisor, four Parole Counselors who work with clients developing restitution contracts and provide individual supervision throughout their involvement in the program, four Shift Counselors who provide twenty-four (24) hour a day coverage at the Center, and one Office Manager.

Each resident at the Center is assigned a "key person" who is responsible for insuring that the needs and accomplishments of that resident are not overlooked. This counselor serves as the resident's parole agent throughout his stay at the Center and continues in that role until the resident is terminated from parole supervision in the community. There are no parole agents external to the program. This assigned counselor is able to respond to a particular resident's problems on a one-to-one basis.

The Center also has an on going group program. Twice weekly group meetings are mandatory for all residents. Transactional Analysis (T.A.) is the treatment model used within the group. Each group leader has

been trained in the principles of T.A. and the entire staff has also received training in this model to provide continuity and consistency throughout the program.

The purpose of the group sessions is three-fold:

1. To deal with day-in-day-out situations which may arise from a large group of people living in close proximity

2. To monitor, evaluate, and make decisions relative to each resident's progress in the program.

3. Help a resident look at himself and assist him to make any desired changes or adjustments in his behavior.

The group is also the vehicle in which decisions are made regarding the granting of privileges to residents and also serves as the first line disciplinary unit for dealing with infraction of Center rules.

Although the Center provides individual counseling and a group program within its own structure, clients are urged to make appropriate use of community resources for specialized needs and problems. The Center has an active liaison with several community social agencies, particularly those providing employment and medical assistance. Referrals are encouraged in cases where long term involvement is anticipated.

PROGRAM PHASES

Three phases are specified in the Center program. Two phases are within the premises of the Center which houses the resident portion of the program. The third is "community re-entry", in which the resident returns to live in the community area of his choice.

Each phase is designed to facilitate and measure behavioral progress. Each phase has also been designed to place more responsibility demands on the individual resident.

The first phase of the program is the "orientation phase". This is a six week phase designed to allow the client to readjust to the community, to acquaint himself with the program at the Center, and to secure employment. During this time the Center provides free room and board for incoming clients. Residents in Phase I begin with a restrictive curfew and few special privileges, but with the demonstration of satisfactory adjustment, particularly the securing of employment, those limitations are extended. During this phase, residents move from a 7:00 P.M. curfew to an 11:00 P.M. curfew and become eligible for overnights away from the Center.

At the end of this six week period residents who are successfully employed move into Phase II. This phase lasts a minimum of eight weeks but is open ended. This phase is referred to as the "responsibility phase". During this phase residents begin assuming respons-

ibility for their own maintenance in the community. They share in the costs of their room at the Center and are completely responsible for their own food costs. In addition, after the first six week phase, their first restitution payment to their victims becomes due. The residents then make one payment per month until their contracts are completed. Residents in this phase have a 1:00 A.M. curfew and are eligible to spend two days away from the Center each weekend with the approval of group. This decision is based on successful adjustment during the previous week.

After a minimum of eight weeks in Phase II, the resident is eligible to move into the community, to rejoin his family or establish a residence of his own, and enters the "community" phase of the program. Initially, he returns to the Center twice weekly to attend group sessions. After several months of involvement with the group program, the resident may drop regular group attendance and establish a conventional parole supervision plan with the approval of staff and group. The resident's counselor continues to provide parole supervision until the resident is either discharged from parole by action of the Minnesota Corrections Authority or until their sentence has expired. No recommendation for discharge from parole will be made by the Center until restitution has been completed.

RELATIONSHIP WITH THE COMMUNITY

The Minnesota Restitution Center has been favorably received by both the professional and lay communities. Positive coverage has been provided by community media sources. The concept of the Center appears to appeal to both the liberal and conservative elements of society. The more liberally inclined support the notion of development of an alternative to maximum security incarceration and the program structure which places only limited restrictions on the offender within the community while stressing clear expectations for remaining in the program. Conservatives find the theme of offender accountability and restitution to the victim attractive. The result has been a broad base of support with no expressed opposition to the program presented in more than three years of operation.

The community, although divided on other forms of community correctional programming, seems to be comfortable with the Minnesota Restitution Center. In order to remain attuned to the community, the Center has an Advisory Board representative of the community. The purpose of the Board is twofold:

1. To represent the community and advise the center as it develops and evaluates policy and program. The Board should help the staff of the Center to be aware of community concerns and keep the program sensitive to the needs of the community as well as the needs of the clients.

2. Assist the Center to accomplish its goals and objectives. The members of the Board make available to the Center their expertise,

community contacts, and services to help accomplish the overall mission of the program. The Board also serves as an advocate for the program in the community.

The Board has representatives from the Metropolitan area criminal justice system, business community, and professional community, as well as residents and alumni of the program. It meets quarterly for regular meetings while subcommittees and individuals work on special tasks or assignments as needs arise. The Board is not governing in nature, but rather serves to advise the program and be an advocate for it.

PROGRAM EVOLUTION

The actual program of the Minnesota Restitution Center has changed and developed significantly since its inception. However, the restitution contract between the victim and the offender continues to be the central focus of the program and the issue around which the rest of the program has been developed.

Program change has been essentially an evolutionary process. Initially there was little structure to the program itself with the initial thought being that the idea of offender restitution to the victims would be the primary variable supporting successful adjustment for program clients in the community. However, the program discovered very quickly that the clients had numerous other problems which needed to be responded to in order to allow clients to meet their restitution obligations. Therefore, a group therapy component was added to the program relatively early in its development. Initially the group program was primarily a "housekeeping group" and then grew into a more treatment oriented "reality therapy" based program and finally has evolved in a "Transactional Analysis" based program meeting twice a week for all clients.

As indicated previously, the Center initially had very little program structure. As the program grew, structure and program expectations became more formalized. A series of phases has been developed with clients being given expanded privileges with the passage of a certain amount of time and the completion of certain goals and objectives. In addition, the rules and expectations of the program have been organized and a consistent internal discipline system has been developed as well.

The program has moved from a open, informal setting with few demands made on residents to an organized and formally structured residential Center complete with house rules and established consequences for violations.

BENEFITS OF A RESTITUTION PROGRAM

There are several major benefits of the Restitution Concept. The following are some of the outstanding benefits of a meaningfully constructed restitution program.[4]

1. The right of the victim to be compensated for his losses as a result of criminal activity is considered to be an essential part of the program. Historically, once the criminal justice system has utilized the victim for successful prosecution of the offender, there is little consideration of the victim. A major tenet of the restitution program is the responsibility of the offender to repay the victim directly. This is a major step in considering the rights of the victim of property offenses.

2. A diversion of offenders from the expensive and often dehumanizing atmosphere of incarceration. Sooner or later, the vast majority of incarcerated offenders come out to live in society. Too often the incarceration experience has had the major effect of reinforcing the individual's original problem. The assumption in a community based program is that the estrangement of many offenders from society can best be handled under supervision within the context of the community itself. The experience of incarceration is often counter productive. An alternative which considers the victim and provides a more meaningful correctional experience for the offender is a sound idea.

3. The restitution sanction is rationally and logically related to the damages done. This is not the case in the situation where the offender is either housed in a lockup situation or placed in a relatively unstructured probation situation and the victims are largely ignored. Making restitution on a regular basis compels the offender to deal with the specific results of his crime.

4. The restitution sanction is clear and explicit with the offender knowing at all times where he stands in relation to completing goals. The offender will be in the position of being able to experience ongoing success as he moves towards the completion of his goals. Again, this is not the case when the offender is placed in a lock-up setting and the goal of "rehabilitation" is at best vague, and at worst, misleading. The same vagueness often exists in a probation agreement, with the major goal being the passage of time until the expiration of probation.

5. The restitution sanction requires the active participation of the offender. In this sense, the offender is not in the position of being the passive recipient of either "treatment" or "punishment" approaches to changing his behavior. The offender's active involvement in undoing the wrong done has the potential of increasing his self esteem and self image as a responsible and worthwhile member of society.

6. The Restitution sanction should result in a more positive response from members of the community towards the offenders. The offender should be more readily perceived as a person who has committed an illegal act and is attempting to undo his wrong. In this way, he should be seen as a person who is actively contributing to society and assuming a responsible position rather than a person who is "sick", "sinful", or "irretrievably immoral."

In addition to these more philosophical benefits of the restitution concept, there are some real financial benefits to this approach.[5]

1. Restitution is being made to the victim of offenses. This restitution is impossible when the offender is placed in a strictly lock-up setting and evidence has shown that the restitution requirements in a straight probation agreement have been only minimally successful.

2. Offenders placed in the restitution program are gainfully employed. As such they are paying taxes like any other worker. Instead of living their correctional experience at the taxpayers expense, they are assuming the responsible position of a taxpayer contributing toward the overall cost of governmental operation including the corrections component. Also, as wage earners, they are contributing to the overall economic structure of the community.

3. Welfare costs to families of offenders can be reduced. If an offender is incarcerated, the welfare department often must assume the responsibility for maintenance of that offender's family while he is unable to provide support. If an offender is gainfully employed, he is able to provide much of his family's support. In those cases where his ability to provide for his family is still short of actual needs, the amount of welfare assistance required is significantly less than that represented by the total inability of the offender to assist his family if he is locked up.

4. Program participants share in the cost of their own correctional experience. The program requires that participants share the board and room expenses while they are in residence at the Center. With the exception of those inmates on work release or serving under the Huber Law, clients incarcerated do not share the cost of their lock up.

5. The overall cost of the Restitution Center program has been demonstrated to be roughly equivalent to the per diem cost of a workhouse situation and significantly lower than the cost of the maximum security institution.

The combination of these financial variables creates a program that provides a more economical correctional response to the property offender. The costs are more expensive than traditional probation but the results are significantly improved. The costs are significantly less than an incarceration response.

The third type of benefit is provided by the program structure itself.[6]

1. The contract drawn up between the victim and the offender is an essential part of the program. It is drawn directly between the parties involved with both the victim and the offender having an active part in the formulation of that contract. The contract then becomes a condition of probation/parole. This formal contracting procedure is often not a part of other restitution attempts.

2. The program is residential which provides a great deal of control and support for the client. The program is structured so that a client may, after demonstrating a period of successful adjustment, return to his home in the community and continue to meet his ongoing restitution obligations to the victim. This residential component is obviously less structured and less punitive than incarceration but provides significantly more controls than straight probation.

3. Intensive parole/probation supervision can be provided by such a program. The 24 hour-a-day contact with staff at the Center enables the program to deal immediately with client problems. The smaller caseloads enable the workers to provide more intense and direct services to the client.

4. The program structure itself incorporates many components absent from traditional incarceration or from a straight probation program. The Center offers an ongoing group treatment program. In addition, drug and alcohol monitoring is much more efficient. The immediate availability of staff in time of crisis can often mean the difference between the resolution of difficulties quickly rather than the extending of those crises into major problems. Referrals to other social agencies are very easily accomplished in this type of program with much more control on follow through.

PROGRAM RESULTS

During the thirty-six (36) month period from August 1, 1972 through July 31, 1975, a total of eighty-seven (87) men have been paroled to the Minnesota Restitution Center from either the Minnesota State Prison (M.S.P.) or the State Reformatory for Men (S.R.M.). These individuals were all paroled after serving approximately four months in the instit-

ution. They were released to the Minnesota Restitution Center from the institution at their first appearance before the Minnesota Corrections Authority (MCA).

On July 31, 1975, there were approximately twenty-two (22) clients active in the program. This is a relatively low number and reflects the lack of intake during much of the latter part of the Third Year Grant. Had intake proceeded at the normal rate through the past twelve months, that figure would be significantly higher.

A total of twenty-five (25) men have successfully completed the entire program of the Minnesota Restitution Center. Successful completion is defined as remaining in the community without parole revocation until discharge from parole supervision by action of the MCA or by successful expiration of sentence. Three others were also discharged to interstate parole and another individual was transferred to regular parole supervision by action of the MCA and remains in the community. Therefore, a total of forty-eight (48) of the eighty-seven (87) men originally paroled to the program remain in the community at this time.

A total of 33 men or 37.9% of those paroled to the program have been returned to the institution for violation of the conditions of their parole. By far the largest number, 22 or 25.4% have had their parole revoked for absconding from parole supervision. Of this number, three have subsequently been involved in new felonies while they were on fugitive status but were returned on a specific parole violation of absenting rather than a new felony offense.

Only 8% of the men paroled to the program have been returned to the institution for conviction of a new felony offense. These seven men plus the three men convicted of felony offenses while on fugitive status bring the total number of program participants convicted on a new felony to 10 or 11.5% of the total number of men paroled to the program. In addition, two other men have been returned for alleged new felony offenses. No conviction was achieved in either of these cases, but evidence was sufficient to cause revocation of parole. Adding these two men whose parole have been revoked for alleged new felony to those 10 who have been convicted of new felony offenses gives a combined total of only 13.8% of all men paroled to the program having been involved in a felony offense.

The Center's goal was to maintain 60% of those men paroled to the program in the Community. At the end of this 36 month period, 55.3% of the men remain in the community, so the program is 4.7% short of its goal. The figure of 37.9% returned to the institution for violation of conditions of parole is very high. However, of those 33 men returned to the institution, 21 were returned for technical violation of parole which did not involve the commission of new offenses nor a threat to society at large. As indicated previously, most of these technical violations were for absconding. This is a direct result of a structured residential parole setting. This same structured setting provides a 24-hour-a-day supervision and much more intensive monitoring of the parolees behavior than is possible on regular parole. Therefore, the very nature of the

structure of the Minnesota Restitution Center program will result in significantly higher number of technical parole violations than would be encountered in the regular parole supervision situation.

In review of these statistics, the most impressive figures are those regarding involvement of clients of this program with new felony commitments. Only 8% have been returned to the institution for new felony commitments. Only 11.5% have been returned for new felony convictions while in the program and while on fugitive status. Finally, a total of 13.8% of the men paroled to the program have been involved in new felony convictions while in the program or on fugitive status or have had their parole revoke for alleged new felony commissions.

During the 36 month period covered by this report, $34,704.25 in restitution was negotiated between program clients and the victims of their offenses. As of July 31, 1975, $14,600 or 43% of this total has been repaid to victims. $12,386.44 or 35% of that figure has been lost.

(Restitution is lost when the client returns to prison, becomes a fugitive, dies, or his sentence expires before the restitution obligation is completed.) That leaves a total of $7,717.81 or 22% of the total as outstanding restitution. That sum represents the remaining restitution for those clients active in the program on July 31, 1975.

The average amount of restitution contracted for by the 87 men involved in the program has been $407.

In order to evaluate the effectiveness of the Minnesota Restitution Center program random selection procedures have been followed in the research design used for the evaluation of this program with a total of seventy-five (75) offenders assigned to the experimental or restitution group and sixty-nine (69) assigned to the control or prison group. On-going follow up on these cases is being conducted.

Personal, social, and demographic characteristics of the study groups reveal that the vast majority of the offenders have been committed from the two large metropolitan counties of Minneapolis/ St. Paul overwhelmingly, the commitment offense has been five years or less and most of the offenders have a history of prior felony convictions even though the majority are thirty years of age or younger.

Analysis of the characteristics of victims reveals that the largest proportion are private individuals followed by retail sales establishments and large sales organizations. The most common offense committed against individuals is burglary while forgery is the most common offense committed against corporate victims.[7]

Comparison of the community performance of both groups will be forthcoming in the immediate future. The research project has been designed to reveal if offenders diverted to the Minnesota Restitution Center encounter fewer difficulties in completing their parole and

commit fewer offenses after completing the program than did the control group which served straight time without the restitution contract or early parole to the Center.

A post hoc design in which the first eighteen (18) residents admitted to the Restitution Center were individually matched on crucial variables with eighteen (18) men released from the prison to conventional parole reveals that in a sixteen (16) month follow up the Restitution Center Clients had fewer parole violations, fewer new offenses, and better records of employment and school stability.[8]

PROBLEMS & ISSUES

The operation of the Minnesota Restitution Center has not been without problems and a review of the program and its results over more than three years raises many issues.

1. Originally, the Minnesota Restitution Center was established to test the hypothesis that offender restitution to victims would provide the primary and sufficient variable to reduce involvement with future criminal offenses of a similar nature. However, as the program at the Center developed, residents presented numerous problems which made it extremely difficult for them to meet the terms of their restitution contracts. The program began to add components such as group therapy programs and employment counseling, to respond to those problems. As a result, it is no longer possible to clearly determine to what extent the variable of restitution accounted for any differences that may appear between their performance and that of a control group. Other variables such as the residential nature of the program or intensive parole supervision have been introduced which obviously affect the adjustment of the residents.

2. The fact that restitution is not considered to be the sole determination of time on parole in this program means that restitution is not the sole sanction for the offender. Completing restitution does not automatically remove an offender from the controls of the criminal justice system. Therefore, the program at the Minnesota Restitution Center is not a straight restitution program, but rather a program with several types of expectations placed on participants -- restitution being only one. Serving additional time on parole appears to be a necessary compromise with the paroling authority but does not allow the concept of restitution to be used as a complete sanction substitute.

3. The original model of the Minnesota Restitution Center stressed victim-offender, face-to-face negotiation of the restitution contract. In reality, this type of direct contact has ocurred in about 50% of all contracts written. Victims are often reluctant to meet with the individual who has committed a crime resulting in direct loss to them. Many are frightened of a negative experience during or after that interaction. Others are reluctant to expend one half day's time to travel to the prison to meet with the offender. Still others, while interested in receiving restitution, will not subscribe to any benefits of a face-to-face meeting and therefore will not participate in direct negotiations.

   In those cases where it is not possible to arrange direct meeting, the important element of personalizing the victim to offender and the offender to the victim is not achieved. The restitution becomes a mechanical procedure for the offender without any relationship with the victim. It is this direct relationship between a crime against property and a personalized victim which should become the difference between this program and court ordered, computerized billing of offenders to eventually repay victims.

4. The Minnesota Restitution Center can have only a limited impact on the number of potential offenders who could utilize such a program. The Center is only able to handle forty (40) new admissions per year. This is only a fraction of those offenders convicted of such crimes. Somehow, the model and concept must be adopted on a broader base to have a significant impact and to provide a meaningful alternative on a larger scale.

5. Maintaining a good working relationship with the decision making body is crucial. The individual or body who controls intake must support the concept upon which the program is built and must maintain confidence that the program is accomplishing its objectives.

6. Goals for such a program must be realistic. Setting objectives which cannot be achieved sets up an obvious failure situation in the eyes of the external evaluators. The temptation to set attractive goals is great when attempts to secure funding are undertaken. However, if

a project cannot produce what it has promised, many problems and pressures are encountered. Realistic, achievable goals have a bigger long term payoff than inflated projections. Once a project has been accepted, the most meaningful evaluation is that made against goals established within the program at the outset.

7. The promise of reduced cost to the system by such a program only has meaning if an actual savings is realized someplace else within the system. Often, alternative programs are set up as cost on top of cost. The Minnesota Restitution Center is an example of such a situation. If the Center were to actually represent a savings, the operating expenses of the program should be deducted from the budget of the facilities from which clients are diverted - the Prison and the Reformatory. Such is not the case. The expenses of operating the Center are in addition to the expense of operating those facilities.

8. The profile of the offender identified as a potential candidate for the Minnesota Restitution Center program closely parallels the profile of the alcoholic offender. The majority of residents who have not been successful in the program have had significant drinking problems. Given this correlation, the program must respond more appropriately to the individual with alcohol related problems. Better services must either be structured within the program or meaningful services must be established on a referral basis.

CONCLUSION

The Minnesota Restitution Center is an example of a workable program model built on the restitution concept which can provide a viable correctional alternative for dealing with the property offender in the community.

Other program models, residential or non-residential, could also be developed from the same sound principles. This program has enjoyed widespread public support and has demonstrated reasonable success. It is an option to be considered by the criminal justice system.

F O O T N O T E S

[1]Hennepin County Court Services.
Ramsey County Court Services.

[2]"Goals & Objectives - Minnesota Restitution Center"
Mimeograph, July 1, 1975

[3]Ibid

[4]THE MINNESOTA RESTITUTION CENTER: A Viable Correctional Alternative For Dealing With Property Offenders In The Community. Mimeograph, May 15, 1975.

[5]Ibid

[6]Ibid

[7]MINNESOTA RESTITUTION CENTER - INTERIM RESEARCH REPORT, January 15, 1975. Minnesota Department of Corrections, Minnesota Restitution Center, 30 South 9th Street, Minneapolis, Minnesota 55402

[8]Ibid

APPENDIX I

S A M P L E C O N T R A C T

SPECIAL CONDITIONS PAROLE AGREEMENT OF JOSEPH RESIDENT

As special conditions of this certain parole agreement of Joseph Resident, executed on the _____ day of _____, 1975, the following conditions have been agreed to by Joseph Resident, Sam Victim, and the staff of the Minnesota Restitution Center, a program operated by the Minnesota Department of Corrections.

In addition to the terms and conditions provided in the above described parole agreement, I, Joseph Resident, do also hereby agree to the following conditions:

1. To make restitution to the victim of my offense to the total amount of Two Hundred Forty and no/100 ($240.00) Dollars. This total amount of restitution is made up of damages to a vehicle owned by Sam Victim.

   a.

Replacement of a Transmission	$150.00
Labor Costs of said replacement	90.00
TOTAL	$240.00

2. To make restitution in the amount of Forty and no/100 ($40.00) Dollars per month for a period of six (6) months.

3. To live under the direct supervision of the Minnesota Restitution Center, to honor faithfully all conditions of the planning report prepared in my behalf and to live in accordance with the rules and regulations of said program. I understand and agree that the staff of the Minnesota Restitution Center has the responsibility to supervise my parole/probation on behalf of the Corrections Board, of the State of Minnesota.

4. I understand that failure to comply with any and all of the terms and conditions of this special parole agreement, shall be grounds for the revocation of my parole. I also understand that any two (2) month delinquency in my satisfying the schedule of my restitution payments, unless I am unemployed during this period, will result in a written report to the Corrections Board.

The staff of the Minnesota Restitution Center agrees to the following:

1. To supervise Mr. Resident's parole/probation, and provide in this connection all reports required by the Corrections Board, as to Mr. Resident's continuing progress in the Restitution Center program.

2. To make recommendations to the Corrections Board as to Mr. Resident's continuance or discharge from parole/probation. In all cases, the final decision as to these matters will be solely the responsibility of the Corrections Board.

Sam Victim, the victim, agrees to the following conditions:

1. That payment of the above described restitution, shall constitute full payment of any and all obligations for which Mr. Resident was duly convicted, and sentenced to the Minnesota State Prison/Reformatory.

2. To maintain involvement with Mr. Resident to the extent that this involvement is seen as appropriate by the staff of the Minnesota Restitution Center.

Any major changes in this agreement can occur only after the formal approval of the Corrections Board.

NOTE: The Restitution Conditions of this special parole agreement are valid only as long as Mr. Resident is a member of the Minnesota Restitution Center program.

Joseph Resident #32-00-00	Date
Sam Victim	Date
Parole Counselor, Minnesota Restitution Center	Date
Chairman, Corrections Board	Date

APPENDIX II

STATUS OF MEN PAROLED TO THE
MINNESOTA RESTITUTION CENTER

From August 1, 1972 to July 31, 1975
(36 Months)

Currently Active		22	25.4%
Phase I and II	9		
Community Phase	13		
Completed Program		25	28.8%
Discharged from parole	10		
Successful Expiration of Sentence	9		
Deceased	2		
Discharged to Interstate Parole	3		
Transfer to Regular Parole	1		
Returned to Institution		33	37.9%
Parole Violation - New Felony	7		
Parole Violation - Absconding	22*		
Parole Violation Rule Violation	2		
Parole Violation - Alleged New Felony	2		
Parole Violation - Transferred to Regular Parole		1	1.1%
Fugitive		5	5.7%
In Custody		1	1.1%
TOTAL		87	100%

*Three of these men were also convicted of New Felony Offenses while on fugitive status from the Center

APPENDIX III

SUMMARY OF RESTITUTION COMMITMENTS COMPLETED AND LOST

	RESTITUTION COMMITMENT		RESTITUTION COMPLETED		RESTITUTION LOST *	
	Monetary	Service Hours	Monetary	Service Hours	Monetary	Service Hours
August 1, 1974 to July 31, 1975 (12 months)	$9,233.33	0	$7,594.00	30	$5,536.53***	0
August 1, 1972 to July 31, 1975 (36 months)	$34,704.25	2,167	$14,600.00	595.5	$12,386.44 ($2,343.00)**	1,319 (780)**

* Restitution is lost when the client is not released from prison, or returns to prison, becomes fugitive, dies or sentence expires before the restitution obligation is completed.

** Portion of the total restitution loss which occurred because the client was not released to the Restitution Center.

*** Effective August 1, 1974, losses incurred because client was not paroled to the Center are no longer included. Losses reflect only men who returned to the institution without completing restitution or clients whose sentence expired before restitution was completed.

APPENDIX IV

MINNESOTA RESTITUTION CENTER

S E L E C T E D B I B L I O G R A P H Y

**BOOKS

Joe Hudson, and Burt Galaway, Considering the Victim; Charles C. Thomas Publishers, Springfield, Illinois; 1975.

**JOURNAL ARTICLES

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"Restitution and Criminal Justice: A Minnesota Experiment", David Fogel, Burt Galaway, and Joe Hudson; CRIMINAL LAW BULLETIN: 8, October, 1972.

"Undoing the Wrong: The Minnesota Restitution Center", Burt Galway and Joe Hudson; SOCIAL WORK, Vol. 19, No. 3, May, 1974.

"The Minnesota Restitution Center", Michael S. Serrill; CORRECTIONS MAGAZINE. Vol 1, No. 3, January/february, 1975.

**NEWS ARTICLES

"Focus on Felons Paying Back Victims"; Michael W. Fedo; THE CHRISTIAN SCIENCE MONITOR, March 17, 1973.

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"Making Good on Thefts", TIME MAGAZINE, June 3, 1974.

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"Issues in Correctional Implementation of Restitution to Victims of Crime", Burt Galaway and Joe Hudson; American Society of Criminology, 1973, Annual Meeting, New York, November, 1973. Available from Author, Hudson, Minnesota Department of Corrections, Research and Planning, 430 Metro Square Building, St. Paul, Minnesota 55101.

"Minnesota Restitution Center", Minnesota Department of Corrections.

"The Minnesota Restitution Center: A Viable Correctional Alternative for Dealing With Property Offenders in the Community". The above two articles are available from the Minnesota Restitution Center, 30 South 9th Street, Minneapolis, Minnesota 55402.

THE GEORGIA RESTITUTION PROGRAM

Bill Read

INTRODUCTION

The Georgia Restitution Program is operated by the Georgia Department of Corrections/Offender Rehabilitation (DCOR) under funding provided as part of a two-year discretionary grant from the Law Enforcement Assistance Administration.[1] The restitution component of this pilot project provides for the establishment of four residential restitution centers in metropolitan areas of Georgia and is intended to serve as the initial phase of a future statewide restitution program. The Georgia Restitution Program is presently completing its first year of operation.

Specific goals of the Georgia Restitution Program are:

(1) To demonstrate effective methods of victim compensation and offender restitution;

(2) To involve citizen volunteers in the rehabilitation of offenders from their local community;

(3) To reduce the prison population by diverting eligible offenders to the restitution program in lieu of incarceration; and

(4) To determine the cost-benefit factors associated with a residential program.

The target population of the Georgia Restitution Program consists primarily of probationers but also includes some parolees. An eligible program participant is defined as any male offender whom the judiciary (or the Parole Board) deems to be a "marginal risk but non-violent offender" who would normally be (or would remain) incarcerated in lieu of program participation and for whom financial or symbolic restitution would be appropriate. Referrals of prospective program participants are obtained both through direct court sentencing (or direct parole) and through revocation proceedings. Thus, the restitution program functions as a diversionary alternative to incarceration for eligible probationers and parolees.

LEGAL FRAMEWORK

The Georgia Restitution Program operates under the legal auspices of both the Georgia Probation Act and the Executive Reorganization Plan of 1972. The Georgia Probation Act states that "the court shall determine the terms and conditions of probation and may provide that the probationer shall. . . remain within a specified location" and shall "make reparation or restitution to an aggrieved person for the damage or loss caused by his offense in an amount to be determined by the court. . ."[2] The Executive Reorganization Plan of 1972 created the Georgia Department of Offender

Rehabilitation and provided that this Department "shall administer the supervision of parolees, probationers, and other offenders who are being treated outside correctional institutions."[3]

Thus already existing legislation enabled the Georgia DCOR to establish a residential restitution program for eligible offenders simply by making residence at a restitution center and participation in the restitution program a mandatory special condition of the probation order (or the parole decree). Failure by an offender to satisfactorily participate in the restitution center program results in revocation proceedings being initiated which can result in his subsequent incarceration.

PROGRAM ORGANIZATION

The Georgia DCOR is headed by Commissioner Allen L. Ault and is comprised of three administrative divisions and three field divisions. As a federally funded grant project, the Restitution Program is coordinated and monitored by the Research and Development Division. However, the program is functionally administered by the Community Facilities Division, which has responsibility for all types of DCOR residential community facilities (e.g., work release centers, pre-release centers, adjustment centers, transitional centers, etc.).

The Restitution Program consists of four restitution centers located in four metropolitan cities--Albany, Atlanta, Macon, and Rome.[4] The centers operate 24 hours per day, 7 days per week and have residential capacities which range from 20 to 36 offenders, with the total program capacity being 118 offenders. Each center has a basic staff of 9 personnel, with the typical staffing pattern being 1 Superintendent, 1 Business Manager, 1 Clerk-typist, 1 Probation/Parole Supervisor, 1 Counselor II, and 4 Counselor Aides. This core staff is supplemented by VISTA Volunteers, student interns, and citizen volunteers. Citizen volunteer involvement covers a broad spectrum of activities which range from direct one-to-one contact between citizen and offender to general support and sponsorship of the restitution center programs by schools, churches, civic organizations, etc.

The basic policies and procedures governing the general operation of the restitution centers are of course determined by state laws, Departmental Rules and Regulations, LEAA grant requirements, and the administrative leadership provided by the Community Facilities Division. However, individual center flexibility also exists in that each center is encouraged to develop specific treatment programs based upon such varied factors as staff strengths and abilities, the extent and nature of local community support, the particular needs of the fluid offender population, and the physical nature of the restitution center itself.

Each offender residing at a restitution center is assigned to an in-house Probation/Parole Supervisor who supervises only center residents. This small caseload size is designed to allow the supervisor to work intensively with all of his clients. The Probation/Parole Supervisor

assists the offender when necessary in locating and maintaining steady employment in the local community and also helps the offender to develop a reasonable money management plan. The offender is then required to turn in all pay checks to the Business Manager, who disburses the money each pay period into standard budget category accounts such as restitution payments, family support, room and board, incidental living expenses, savings, etc. The offender then draws against these accounts on a regularly scheduled basis.

Close surveillance of an offender's behavior and activities continues throughout his residence at the restitution center. Each offender is required to sign out and identify his destination each time he leaves the center and is also required to return to the center by a specified time. Overnight home visits with family on alternate weekends are contingent upon the offender obeying center rules and satisfactorily participating in center programs during the intervening period.

Each offender receives basic individual and/or group counseling from center staff, and referrals are made to local community resource agencies for specialized assistance (e.g., medical, legal, vocational, educational, etc.) when such needs are identified. Also, citizen volunteers are actively solicited to become involved in in-house educational and informational programs and in meeting the needs of individual residents in a variety of ways. In short, every effort is made to not only involve the local community in the treatment and rehabilitation of local public offenders, but also to increase both the offender's sense of community responsibility and his awareness that life goals can in fact be attained through socially acceptable methods.

MECHANISMS OF RESTITUTION

The Georgia Restitution Program uses both financial and symbolic restitution, with financial restitution being used primarily with probationers and symbolic restitution being used primarily with parolees.

With probationers, the actual amount of financial restitution to be paid is determined by the judge in conjunction with both the prosecuting and defense attorneys. The judge may require the probationer to make either full or partial restitution depending on the circumstances of each individual case. The probationer then begins residence at the restitution center and must save a certain amount of each paycheck toward payment of restitution. Typically the probationer is required to reside at the restitution center until the total assigned restitution has been paid. However, sometimes a probationer who has demonstrated adequate stability and responsibility will be transferred after several months to regular probation/parole supervision and will finish paying his restitution on a non-residential basis. Probationers may also be required to make symbolic restitution either in lieu of or in addition to making financial restitution.

Parolees who are deemed eligible for program participation are typically required by the Parole Board to reside at the restitution center for a specified period of time, to maintain stable employment, and to participate in unpaid symbolic restitution activities after work on

evenings and/or weekends. In such cases, the restitution center staff usually determines the actual nature and extent of the symbolic restitution activity. To date numerous forms of symbolic restitution have been used, including such examples as working in mental hospitals and health centers, repairing the houses of aged pensioners to prevent their condemnation, working with children in the recreational programs of church and youth organizations, assisting in volunteer counseling with juvenile offenders, doing charity work, and conducting community clean-up projects. Some parolees can also be required by the Parole Board to make financial restitution, depending on the particular circumstances surrounding their original incarceration.

In the Georgia Restitution Program, the extent of victim involvement in the actual payment of restitution by the offender is minimal, as it has been our experience that most victims just want to recover their losses without having further contact with the offender. Consequently the victim typically is sent a letter explaining that the enclosed check represents financial restitution being made by the offender. However, in those cases in which confrontation is feasible and is deemed to be important, center staff will arrange for the offender to repay his victim in a mediated face to face situation. Most such confrontations have been well received by both victim and offender. Symbolic restitution has thus far always been made to the community at large rather than to individual victims.

REACTIONS OF PROFESSIONALS

Reactions to the Restitution Program by criminal justice professionals have been almost totally positive. Judges like the Restitution Program primarily because it provides them with an intermediate sentencing alternative between regular probation/parole supervision and incarceration and thus allows them to measure out a better quality of justice. A second reason that judges like the Restitution Program is that the judge maintains jurisdiction and ultimate control over the offender, whereas the judge loses such jurisdiction and control over any offender who is incarcerated. Judges also like the offender progress reports which the probation/parole supervisor provides on a regular monthly basis.

The Parole Board likes the Restitution Program because eligible marginal risk parolees can be released to an appropriate community transitional experience rather than having to remain incarcerated until eventually being released outright or released to regular probation/parole supervision. Also, the Parole Board likes the symbolic restitution aspect of the program because it allows the offender to finish paying his debt to society through positive actions and responsible behavior in his local community.

Probation/Parole Supervisors like the Restitution Program because it represents a meaningful revocation alternative which they can recommend to the judge in lieu of revocation to incarceration. Also, those probation/parole supervisors who work directly with the Restitution Program greatly enjoy the small caseload sizes and the opportunity to work intensively with their clients.

Social Workers like the Restitution Program because both the offender and the offender's family can be worked with in the local community without the extreme family relationship disruption which accompanies penal incarceration. Also, the offender is able to continue providing family support rather than forcing them to become welfare recipients.

Defense attorneys obviously like the Restitution Program because it represents another option for his clients aside from incarceration. Most prosecuting attorneys also favor the Restitution Program because it provides the victim with a means to obtain full or partial restitution for his losses.

COMMUNITY REACTION

Community reaction to the Restitution Program concept has been quite strongly positive. One aspect of the Restitution Program which citizens like relates to the fact that they can expect to obtain either full or partial restitution of their losses if they should ever become the future victim of an offender. This aspect of the Restitution Program concept has a particularly broad base of support since many victims of crimes are relatively poor and often uninsured and since even insurance companies are happy to recover losses paid to their insured client-victims.

Citizens also like the aspect of public offenders working constructively, paying taxes, and partially defraying the cost of their own rehabilitation. Generally, citizens view the restitution concept as a more positive and appropriate approach to much of today's crime than simply locking the offender away and having him be a drain on society. In today's inflationary world, citizens are becoming increasingly aware and appreciative of the efforts of criminal justice systems to develop correctional programs which make public offenders pay their debts to society in responsible, relevant, and cost-effective ways.

Specific examples of community support of and involvement with the restitution centers themselves are numerous and varied. Local colleges provide diagnostic testing for new center residents, assist in the recruitment of one-to-one student tutors, provide free tickets to college sports events, movies and plays, and allow center residents to use recreation equipment and such campus facilities as the gymnasium, swimming pool, and lake. Local libraries have donated encyclopedias, books and educational materials, provide bookmobile service, loan films and projectors to the centers, and have established a reading program for center residents of all ability levels. Local churches provide transportation to church functions, provide movies and literature, and have furnished curtains and other such amenities which help make a half-way house a half-way home. Bankers, realtors, and other businessmen from local civic organizations speak at in-house consumer education programs on such topics as installment buying, obtaining credit, income tax, insurance, and employment trends, etc. Local helping agencies provide speakers who discuss such topics as health care, family planning, budgeting, and available community resources. Additionally, citizen

volunteers from all walks of life are the backbone of in-house education programs which provide instruction in basic and remedial education and prepare residents to obtain a General Educational Development (GED) certificate.

PROBLEM AREAS

One problem area which any new program encounters concerns the task of becoming an integral part of the total system to which it belongs, and the Georgia Restitution Program has been no exception in this regard. The initial problem was one of transforming the basic residential restitution concept into a functional program. Since Georgia's Criminal Justice System had no previous experience with a residential restitution program, considerable time and effort has been spent this first year in developing specific program policies and mechanisms and in making and formalizing agency linkages. The most critical aspect of the program development involved explaining and publicizing the program to the judiciary and to attorneys. Now that the initial inertia which plagues a new program has been overcome, more time and effort is being directed toward program refinements, research, and expansion.

A sporadic problem encountered during this first year concerned the general economic decline and resultant limited availability of employment opportunities. Obviously an offender cannot make financial restitution when he cannot find a job, and many offenders have difficulty finding employment because they are vocationally unskilled. However, Restitution Center staff worked closely with citizens in the local communities and jobs were eventually found for unemployed residents. And, happily, these situations provided excellent opportunities for restitution center staff to motivate residents toward vocational training programs. It should also be noted here that an individual's status as a public offender per se is often more of an employment asset than a liability, since employers can be reasonably certain that center residents will report for work regularly, on time, and sober. Indeed, many employers have stated their willingness to employ offenders from the restitution centers as soon as the economy improves.

Another problem area related to employment is that the typical public offender has a relatively low earning power. One direct result of this fact is that some offenders--depending on the amount of restitution owed--can realistically require a very long time to make full or even partial financial restitution. Consequently, the turnover rate of a totally residential restitution program will be slow and cost-effectiveness will be reduced. One means of dealing with this problem is, of course, to help the offender to increase his earning power through vocational training, but this process itself can take considerable time. However, employers are often willing to provide on-the-job training for restitution center residents, since the offenders are from and will remain in the local community. Another approach is to release those offenders who demonstrate adequate stability and responsibility from residential supervision and supervise them on a non-residential basis so long as they continue to make

restitution payments. A third approach is to use more symbolic restitution both in lieu of and in conjunction with financial restitution, thus reducing the actual amount of financial restitution which the offender must pay.

RESEARCH DATA

The research design for the Georgia Restitution Program dictates that a partial random selection procedure be used with program referrals in order to generate comparable experimental and control groups. Under this design, each center accepts all eligible program referrals unconditionally until a ninety percent capacity is reached. Thereafter, all program referrals are accepted or rejected based on a table of random numbers. This procedure is intended to insure both that the centers will be maximally utilized during their initial phase of operation and that acceptable program research can be conducted. To date, three of the centers have been operating for eleven months and one center has been operating for six months. Therefore, the only data which are currently available are descriptive in nature.

Through October 15, 1975, 217 offenders have been served by the Georgia Restitution Program, with 84 percent being probationers and 16 percent being parolees. The major types of convictions represented are: burglary (32%), forgery (13%), and theft (12%), with 76 percent being felony convictions and 24 percent being misdemeanor convictions. Of the total 217 offenders served thus far, 104 still remain in the program while 113 have been terminated. Approximately half (57) of the program terminations have been positive (i.e. full release or release to non-residential supervision) and approximately half (56) of the program terminations have been negative (i.e. revoked or absconded). Preliminary data would thus seem to indicate that the offender population which is being diverted into the program does in fact meet the "marginal risk but non-violent" eligibility criterion. It is, of course, far too early to be able to look at possible differential recidivism between the experimental and control groups.

Through October 15, 1975, restitution program participants had earned a total of $147,273 at an average salary rate of approximately $2.50 per hour. Financial restitution assigned for payment totalled $99,670, and $17,650 in restitution and $4,670 fines have been paid. Additionally, $19,882 has been paid in taxes and FICA, and $24,732 has been paid to the State by residents to defray the cost of their room and board. Remaining monies have been applied to the support of the offenders' families, have been consumed by incidental living expenses, and are being saved for the offenders' eventual release. Initial indications are that the operational costs of a residential restitution center are no greater than the operational costs associated with most other residential community facilities. However, a comprehensive cost-benefit analysis of the Restitution Program will not be available until the grant terminates in July, 1976.

FUTURE DIRECTIONS

One important future direction which the Georgia Restitution Program will undoubtedly take is that of program expansion. In addition to continuing the present four restitution centers in fiscal year 1977 under total state funding, the Georgia DCOR will be opening three new adjustment centers for probationers and parolees and these centers will include financial and symbolic restitution as an integral part of their program operation. The long range goal of the Community Facilities Division is to locate one restitution center in each of Georgia's forty-two judicial circuits. Obviously, such program expansion will require considerable time, money, and local community support.

This local support for the growth of community correctional programs will be generated largely by an increasing emphasis on involving local citizens in the actual functioning of such correctional programs. For example, the Community Facilities Division has already begun to organize local civic and community leaders to serve on a Citizens' Advisory Board of Directors for community correctional programs located in their area. This Citizens' Advisory Board will be instrumental in determining center policies, developing center programs, and in soliciting widespread citizen awareness of, involvement in, and support for community correctional programs of all types.

A third future direction involves the probable increased development and use of symbolic restitution both in lieu of and in conjunction with financial restitution for offenders in residential restitution centers. The previously discussed typically low earning power of the public offender and his realistic inabilities to make full financial restitution is, of course, the primary reason for this possible shift in program emphasis. However, any such program shift would have to be approached carefully, for both programmatic cost-benefit factors and considerable citizen support of the restitution program are directly related to the financial restitution aspect of the restitution concept.

A fourth future direction of the Georgia Restitution Program concerns improving the basic functioning and efficiency of the program itself. It is in this area that ongoing research will play a major role. One primary goal is to determine the cost-benefit factors associated with the present program so that action can be taken to improve service delivery while minimizing program costs. As soon as sufficient data are available, research into the profiles of successful and unsuccessful program participants will allow us to define an appropriate offender target population more precisely and will also assist us in expanding and refining the treatment aspects of the program.

As data on the Georgia Restitution Program and other restitution programs become more available and widely publicized, the twin concepts of victim and public restitution will increasingly move to center stage and the trend toward citizen involvement in community

correctional programs will continue. And a giant step in publicizing the restitution concept has already been taken by the Law Enforcement Assistance Administration and the Minnesota Department of Corrections through their sponsorship of the International Symposium on Restitution.

OPERATION PERFORMANCE - A NEW DIRECTION IN GEORGIA

In summarizing the future of the Georgia Restitution Program as a part of the community-based corrections movement, it seems appropriate to also look at the total context into which community correctional facilities in Georgia will fit. Presently, the Georgia Correctional System is acknowledged to be largely ineffective. Probation caseloads are excessive, sentencing alternatives are few, and prisons are seriously overcrowded. Something must be done to redirect a negative, unproductive, and overcrowded correctional system that all too often presently breeds rather than corrects criminal behavior. The Georgia Department of Corrections/Offender Rehabilitation, under the leadership of Commissioner Allen L. Ault, is ready to do something about making corrections more effective through OPERATION PERFORMANCE--a four point program designed both to correct deficiencies in the current correctional system and to make the offender responsible for the consequences of his or her own behavior. Thus, OPERATION PERFORMANCE shares with restitution programs the concept that public offenders should be held accountable for their behavior in a responsible and positive manner. The four points of OPERATION PERFORMANCE are as follows:

Pre-Trial Diversion. Many youthful offenders and misdemeanant offenders can be diverted from the correctional system. Through pre-trial diversion and intervention programs, pre-trial workers assigned to the court would work with individuals, and help them solve their problems. If these individuals demonstrate responsibility and positive behavior, then they can complete the pre-trial program and return to the free community. This process can divert many individuals out of the criminal justice system altogether, without bringing them to trial. Successful pilot programs in Georgia have demonstrated the value of this concept.

Specialized Probation Alternatives. A much broader spectrum of probation is needed, whereby the judge would have more options for sentencing than his current choice of either imprisonment or assignment to a probation officer. Currently, probation supervisors--because of excessive caseloads--cannot supervise their clients as effectively as is desirable. This broader spectrum would include specialized probation supervision to address the individual needs and problems of each client through reduced and special caseloads. Also, many offenders would be sentenced in lieu of incarceration to residential community restitution and adjustment centers where close supervision could be imposed. These programs require offenders to maintain employment, make financial or symbolic restitution, defray the costs of their upkeep and supervision, and actively participate in their own rehabilitation.

Performance Earned Release Model. Over ninety percent of all prison inmates will eventually return to their home communities. The prison experience should therefore prepare these offenders to successfully adjust to society without returning to crime. The PERFORMANCE EARNED RELEASE MODEL (PERM), tied to flat sentencing by the court would accomplish this by allowing the Department of Corrections to contract with each inmate regarding the work, education and rehabilitation programs he would be required to complete to earn early release from the prison. An exemplary inmate, who is involved in quality and quantity, eight-hour-a-day work, as well as education and personality treatment programs, could earn up to two days release time for every day he or she served in prison (equal to current parole eligibility after serving one-third of the sentence). An inmate who accomplishes less than quality and quantity participation in such programs would accumulate earned release time at a slower rate.

The State Board of Pardons and Paroles would review primarily capital offense cases, and would monitor the Performance Earned Release Program to assure equitable operation. It would be up to the inmate to earn his or her way out of prison. Positive motivation for work and program participation is provided through earned release. However, if an inmate does not participate in the programs assigned, or insists on inappropriate behavior, that inmate would automatically have to serve all of his or her sentence.

Release and Aftercare. It is virtually impossible for anyone to eat, pay rent, and find a job on the $25.00 inmates receive upon release from prison. Through pre-trial release centers, the inmate is placed in a community center three months prior to his actual release, and is provided assistance with job placement, consumer and budget affairs, and other forms of practical assistance which help in their adjustment. In these centers, inmates work, pay taxes, support dependents, and become accustomed to community life.

Additionally, all inmates being released from prison should be placed on at least one-year aftercare supervision in order to provide crisis intervention and problem-solving assistance. Currently, the best inmates get paroles, with community supervision and assistance, while the rest must fend for themselves with $25.00 and no help from the correctional system. All inmates should have community supervision after their release from prison.

Thus, the Restitution Program in Georgia presently represents only part of one aspect of the comprehensive corrections system which lies in Georgia's future. However, since OPERATION PERFORMANCE itself is based upon the concept that public offenders must be held responsible and accountable for their behavior in positive and meaningful ways, the future continued development of the restitution concept as a fundamental feature of community corrections in Georgia seems virtually assured. OPERATION PERFORMANCE will doubtless take time to become fully operational, but its basic concepts are sound ones and should generate the citizen support and involvement which is required to evoke a total system redirection.

Footnotes

1. The grant is the Georgia Citizen Action Program for Corrections (#74ED-99-0004) and is funded by the LEAA Office of National Priority Programs, Citizens' Initiative Division.

2. Source: Code of Georgia Annotated, Vol. 27 (2711).

3. Source: Code of Georgia Annotated, Vol. 77 (507a).

4. For futher information, contact the following:

   Bill Read, Grant Coordinator
   Georgia Citizen Action Program
   Dept. of Corrections/Offender Rehabilitation
   800 Peachtree Street, N. E.
   Room 605
   Atlanta, Georgia 30308
   (404) 894-5382

   A. L. Dutton, Deputy Commissioner
   Community Facilities Division
   Dept. of Corrections/Offender Rehabilitation
   800 Peachtree Street N. E.
   Room 321
   Atlanta, Georgia 30308
   (404) 894-4130

   Albany Restitution Center
   Box 691
   418 Society Avenue
   Albany, Georgia 31701
   (912) 439-4309

   Atlanta Restitution Center
   39 11th Street, N. E.
   Atlanta, Georgia 30309
   (404) 894-4095

   Macon Restitution Center
   873 Cherry Street
   Macon,Georgia 31208
   (912) 743-0303

   Rome Restitution Center
   C/O Northwest Regional Hospital
   Redmond Road
   Rome, Georgia 30161
   (404) 295-6418

IMPLEMENTING RESTITUTION WITHIN A PENAL SETTING: The Case For The Self Determinate Sentence

Kathleen D. Smith

The type of restitution I wish to suggest is direct payment in money by offenders to their victims. I believe it is possible to combine the payment of monetary restitution with every form of treatment now being used for physically and mentally fit offenders who have reached the legal minimum age for full-time employment; and that the success rates of all treatments would be improved by the combination. But an essential prerequisite to restitution is a sanction that ensures that offenders cannot default in making payments. The ultimate sanction are prisons equipped as factories, in which inmates work fulltime, receive full union rates of pay for all work done, and are obliged to use most of their earnings to compensate their victims. Such prisons would be the immediate home for major or persistent offenders and the ultimate destination for other offenders who were permitted, but failed, to pay restitution in non-custodial surroundings.

The benefits of introducing direct restitution from offenders to victims are manifold: it would demonstrably bring better justice to victims, who now understandably feel bewildered and indignant as the rights of offenders are meticulously considered and protected by the Courts, while the rights of victims seem hardly to exist. Improved justice for victims would, in turn, improve the relationship between the public and the offender: a law-breaker who paid for his crime in cash would be far less stigmatised-far more acceptable, than one who merely undergoes treatment as a non-paying guest of the nation. Equally important, the self-esteem of offenders would improve as they paid their way back to equality in society. Above all, the incidence of crime would be diminshed by the requirement of restitution - crime would not be nearly so attractive a proposition if criminals, when caught, had to pay back every penny of damage done and gains illegally acquired.

Since leaving the British Prison Service in 1960 convinced of the efficacy of restitution as a curb to the crime wave, I have been campaigning in Britain through the media and politics to get the benefits of restitution understood and implemented. By 1968 the Conservative Party had accepted the principle of restitution and in its manifesto of 1970 declared that, if returned to Government, it would "change the law so that the criminal who causes personal injury or damages property will be obliged to compensate his victim in addition to other punishments imposed by the Courts".

Having won the General Election of 1970, the Conservatives produced the Criminal Justice Act 1972, which permits Magistrates' Courts to order offenders to pay up to four hundred pounds (just over eight hundred dollars) in compensation for each offence committed; and allows the Crown Courts to order limitless compensation, and to declare bankrupt those offenders involved in crimes valued at over fifteen thousand pounds (thirty thousand dollars) and to use their assets to compensate their victims.

Unfortunately, in practice these provisions are not so forceful as they appear on paper, for the Courts are directed to have regard to an offender's means before making a compensation order against him. If he

has money, the Court proceeds to make him pay, or if he has a job compensation can be deducted in installments from his wages. However, if he is unemployed with no visible means of support other than Social Security benefits - and these are the circumstances of most persistent offenders - then the Courts refrain from making compensation orders, since there is no way in which an offender without resources can be obliged to pay. The ability of the Crown Courts to declare major offenders bankrupt is similarly an abortive provision, since major criminals are usually astute enough not to have any property in their own name. Consequently, to declare them bankrupt produces nothing. The only remedy left to the Courts is to send them to prison - where it currently costs sixty pounds (one hundred and twenty dollars) weekly to keep them; where the average inmate is employed for twenty four hours and many for fewer than twenty hours each week, for which they receive wages averaging about eighty pence (one dollar and sixty cents) weekly; and where the pace of their work may be calculated from the fact that they produce on average a mere eight pounds (sixteen dollar) of goods each a week.

The moral of this situation is that until we have prisons that oblige offenders to work to pay through their earnings, the restitution they owe, law-breakers - particularly the professionals - will continue to avoid compensation orders and welcome jail as an easy option.

There are, of course, both complications and objections to turning prisons into workshops for restitution. In Britain the main complication comes from the two lines of thought about prison reform which emanate from the Home Office.

One of these can best be illustrated by an eight year and fourteen million pound (twenty eight million dollar) project, now half completed, at Her Majesty's Prison, Holloway, London: the largest women's prison in the United Kingdom. The Victorian edifice, opened in 1852, is being demolished, and in its place is rising a new prison, the design of which is to be the prototype of future men's prisons. Officially described as "a medically-orientated establishment with a comprehensive, versatile and secure hospital as its central feature", the new Holloway will have an operating theatre manned by visiting surgeons; a psycho-diagnostic unit caring for disturbed inmates and those in the withdrawal stages of alcoholics and disturbed women; an obstetric unit giving pre- and post-natal care; a unit for mothers wishing to have the company of their children up to the age of five; another unit for illiterate prisoners who will have daily specialist teaching; and one for remand prisoners who are also first offenders, who will be segregated from other prisoners. Women not requiring any of the special care units will have the services of a psychotherapist, will be part of a psychotherapeutic community and will join in an hour-and-a-half of group counselling each week.

In addition to the leisure aids available in the old Holloway - radio, television, games and evening classes - women in the new prison will have the use of a swimming pool, a gymnasium, and a hairdressing salon. Another innovation will be a dress boutique where they will be able to buy clothes for wearing when they leave prison, or during their sentence.

When I wrote an article on the new Holloway for the Daily Telegraph in 1972, two years after the project was begun, I was impressed by the detailed consideration that had been given to the ways in which the prison would care for the women, and wondered how much provision had been made for the ways in which the women could make a contribution to society. I asked what plans there were for the women's work. I was told by an official who was one of the leading inspirers of the design of the new Holloway that while a workshop was included in the prison, what work or working hours it would offer had not been decided. "What Holloway wants" - to quote this official - "is a Government contract for the sort of work for which there is an everlasting demand, which requires little skill, and which can be put down at any moment when prisoners are called away for treatment or legal matters. What I have been suggesting is that they should knit dishcloths. There must be an endless need of dishcloths in all the Government establishments throughout the country."

It struck me as tragic that the planners of the new Holloway had devoted so much attention to providing comforts, amusements, and treatments for all possible sickness and abnormalities of prisoners, while scarcely concerning themselves with outlets for the useful, responsible, constructive and contributive activities of prisoners.

No one doubts the desirability and value of useful employment for non-prisoners. To prisoners it is far more vital. An unemployed civilian has at least some of the other blessings of life - home, family, friends, freedom, decision. In addition, he always has the prospect of getting a job. A prisoner has only those prospects and actions that prison allows him. Every important attachment, choice possession of normal life is reduced for him to a minimum. His family and friends are relegated to a controlled number of letters and visits. Wherever he goes he is watched or thinks he is watched. Everything about him is subject to criticism, from the way he talks to the way he walks and cleans his shoes. If he is not permitted to displace his energies and frustrations in the satisfaction of work, there is a low probability of his recollecting enough of the habit, interest and confidence of normal life to be able to fit into it again when the time comes. To expect him to do so is something worse than stupidity.

For these reasons, a work schedule should have been planned in as meticulous a manner as all the other amenities in the new Holloway.

The second school of thought on prison reform which emanates from the Home Office is expressed in The Report on the Work of the Prison Department, 1974, which says that "there has been a move away from the medical model that persistent offending is a sickness susceptible to individual diagnosis, treatment and cure". Since 1969 this attitude has been applied in practice at Coldingley Prison, Surrey, where work is regarded as the main treatment. Up to three hundred men work forty hours a week in a fully modernised laundry or in workshops making steel shelving or signposts, for which they receive about two pounds a week, which they can spend as they wish. In its five years of operation, Coldingley has had no serious trouble and has met its production

targets. While this success shows that it is possible to incorporate into the prison system a full working week, it must be remembered that the population of Coldingley is less than one percent of the total British prison population of 40,000; that the inmates at Coldingley are carefully selected and are removed to other prisons if uncooperative; that it has been found difficult at times to motivate even these selected men to produce work to the standards required by outside industries; and that, so far, a study of reconviction indicates that there is no significant difference either in reconviction rate, or speed of reconviction, between Coldingley men and similar men in other prisons.

It is evident, then, that to persuade one hundred percent of prisoners to work full-time with full effort; to motivate them so that their work is consistently of an acceptable standard; and to have a beneficial effect on their reconviction rates, is going to require more of an incentive than two pounds per week. It is going to require the incentives of the self-determinate sentence: a 42 hour working week rewarded with full union rates of pay for all work completed to acceptable standards, and the requirement for prisoners to remain in prison until they have paid for their crimes out of earnings by compensating their victims.

This system I have called the self-determinate sentence because the length of sentence an offender serves under it is to be the greatest possible extent his own responsibility. It is determined first by the type of crime he commits, and secondly by the effort he makes during his sentence to compensate for his crime. It would apply equally to men and women.

While I shall mainly describe the effects of the self determinate sentence on British Courts and prisons, I think there are enough similarities with those of other nations to show that the principles are internationally applicable.

Instead of assessing offences in terms of time to be served in custody, the Courts would assess them in money to be earned. Offences involving victims would be assessed in two ways: first, by the restitution due to the victim for physical, material, and in cases of terrorisation, for psychological damage sustained. I would suggest that psychological damage, which is often the most serious of harms suffered by victims, is at present too often disregarded by the Courts, and should have more consideration given to it in sentencing. Secondly, fines would be levied at the Court's discretion in relation to the offender's persistence and intent.

The proceeds of fines would be directed into a National Compensation Fund, from which compensation would be paid to victims of offenders too sick-physically or mentally-or too old to work; or by those whose death took place subsequent to conviction. Offences involving no victim-drunkeness, prostitution, drug-taking would be subject to fines which would also be paid into the National Compensation Fund.

The Courts would direct whether the whole or part of any fine or compensation should be paid from earnings in prison; and what part, if any, could be paid from private monies.

Crimes against property would be assessed according to the value of the property damaged or stolen, and stolen property voluntarily restored might, as the Court directed, be deducted from the compensation ordered. This would not, however, provide an automatic discharge for offenders who restored all their ill-gotten gains. Few crimes can be so simply dismissed. If terrorisation had been caused to the owner of the property because of the offence committed against his property, this would have to be compensated for and fines would be in force according to the record of the offender and the strength of the deterrent deemed necessary. Nevertheless, stolen property which was voluntarily restored would generally have the effect of reducing compensation. This would encourage the recovery of much stolen property: an incentive lacking in our present system of committal.

The machinery required for assessing compensation for victims of crimes of violence already exists in Britain. Since 1964, victims of assaults have been able to apply to the Criminal Injuries Compensation Board for reparation. The Board has paid out nineteen million pounds since its inauguration and now receives upwards of 12,000 claims a year, eighty five percent of which result in monetary awards. No compensation is paid for damages valued at less than fifty pounds. Ninety nine percent of victims receive less than five thousand pounds. The highest award made so far has been fifty five thousand pounds. These awards are paid out of the National Exchequer. Although it is possible to sue assailants in the Civil Courts to recover damages for personal injuries, the Criminal Injuries Compensation Board have estimated that in less than one percent of the cases which they resolve is there an identified offender worth suing. So the most that is required of the vast majority of attackers is that they spend a useless term in prison.

While it is laudable that victims of violence now receive compensation for the damage done to them, it is heinous that assailants are not required to pay for the injuries. If they were obliged to compensate for the harm they inflicted through the self-determinate sentence, it is reasonable to predict that crimes of violence would be far less frequently resorted to.

Under the self-determinate sentence the compensation due for murder or manslaughter would vary, not according to the value of the life taken - for who can assess that? - but according to the motive, provocation and method of the killing. For instance, a killing in which the motive was one of releasing a person from suffering is less culpable, and would attract less compensation, than a murder committed in order to obtain the victim's property. Similarly, there are exonerating degrees of provocation: some murders are committed under provocation of such intensity and duration that the victim of the killing becomes almost as responsible for the killing as the assailant himself. Murder provoked by a personal relationship is more excusable than one committed on a

passer-by whom the criminal regarded as an obstruction or as fortuitous prey. As to method, homicide with an instrument picked up in the heat of the moment is less to be condemned than, for instance, murder by systematic poisoning over a period of time.

Instead of the deadly, irredeemable practice of executing a killer - a practice which, in fact, a substantial majority of people in Britain would like to see restored - or of assessing murder by the number of years a murderer shall be confined in prison before atonement is presumed complete, the self-determinate sentence would require all killers to make it a major part of their life's work to compensate, as far as is possible, the dependents of their victims. In the case of a victim with no dependents or of a victim with dependents unwilling to accept compensation, the compensation due would be paid into the National Compensation Fund.

Except in exceptional circumstances - for example, the natural death of a person concerned in committing a crime - the whole of the compensation due to the victim of any crime would be payable in full by the person or persons convicted of that crime, even though it was known that other people were involved in committing it. This would induce convicted offenders to name their confederates, assist the police in making arrests, deter gang crimes, and break up the solidarity of the underworld.

Compensation would not necessarily be ordered to be paid equally by all accomplices. The Courts would order the proportion to be paid by each according to the available evidence as to the degree of participation and anticipated gain of each offender. Likewise, fines would not necessarily be imposed equally on all offenders.

Offenders who volunteered information leading to the conviction of others might, at the Court's discretion, have the whole or part of the compensation ordered against them made payable by the National Compensation Fund. Fines imposed might be waived in whole or in part for the same reason. These acts of leniency would be an additional incentive for offenders to name their accomplices.

Before any compensation or fine could be paid from his earnings, each prisoner would be required to make the appropriate contribution towards his pension and health benefits, to pay income tax, and to contribute towards his keep in prison. A sum of five pounds a week would cover food and clothing in British prisons. The act of paying for basic keep would have the favourable side-effect of inducing prisoners to request that it should remain simple, rather than to clamour for it to be made increasingly elaborate.

Compulsory savings of twenty five pounds (fifty dollars) would also be deducted from prisoners' wages for their use on discharge. This sum, added to the Social Security benefits already paid to prisoners on their release, would add to their sense of freedom and security and would reduce, or at least postpone, the temptation to re-embark on a life of crime in order to maintain themselves. Furthermore, it would give them an opportunity to get decent lodgings

if they had no home of their own. Too often, for lack of funds, the homeless ex-prisoner lands up at a hostel full of other ex-prisoners - which is not the most favourable circumstance for beginning a law-abiding life.

Pocket-money for use in prison would be allowed as five percent of earnings after the basic charges for National Insurance, income tax, keep and compulsory savings had been met. The salaries of prison staff and the cost of maintaining prisons - the two chief items of prison expenditure - would not be made a charge on prisoners' earnings but would continue to be financed out of public money as public services.

A large proportion of people in prison are not guilty, or have not been found guilty, of criminal offences. The self-determinate sentence would be modified to suit their circumstances. The largest group of these are on remand awaiting trial. They would be allowed full-time, fully-paid work during their remand period, or, as now, would be free to devote all or part of their time to preparing their case. Their earnings, after the basic deductions, would be their own property to use as they wished. Should a remand prisoner not be convicted at trial, any payment made for board and lodging while in prison would be refunded.

Remand prisoners convicted upon trial and waiting in prison for sentence would receive no refund of payments made for their keep in prison, whether they finally received a sentence of imprisonment or not. Money earned by prisoners after conviction and while awaiting sentence, which exceeded the amount needed for basic deductions, would be saved for the prisoner either for his use on release, in the event of his not receiving a prison sentence, or for use towards compensation or fines, in the event of his being sentenced to imprisonment.

In addition to criminal cases, British prisons house civil prisoners. These are mainly imprisoned for refusal to pay income tax, National Insurance contributions, or wife and child maintenance. Under the self-determinate prison sentence they would remain in prison until their debts had been paid. Other civil prisoners are committed to custody because of contempt of Court, and remain in prison for unspecified periods until the Court considers that their contempt has been purged. The dignity of the Courts and the majesty of the law must obviously be upheld, but to sentence a person sine die in order to appease a Court too often causes suffering quite out of proportion to the person's offence. It is a distressing, oppressive and archaic sentence which can cause cruel mental suffering by coercing those merely guilty of speaking their mind, or of acting according to their own concept of justice, into apologizing for and retracting what they consider right. The self-determinate sentence would provide for a maximum fine to be imposed upon those committing contempt of Court, which fine would be re-imposed if the contempt recurred.

Prisoners detained for deportation would be liable to pay compensation and fines if found guilty of an offence in the country deporting

them. However, if deportation was being carried out at the request of another country, these prisoners would not be subject to the self-determinate sentence. They would, however, be given the opportunity of of working and earning.

Prisoners appealing against conviction or sentence would be granted time from work to prepare their case. No wages would be paid in respect to this free time but the prisoner would be responsible for paying basic charges. However, prisoners acquitted upon appeal would have refunded the total sum paid for prison keep, compensation and fines, since the date of their first committal to prison for the offence in question. A victim of crime who had received compensation for the crime committed against him would not be required to refund the compensation, even though the offender originally convicted of the offence was subsequently acquitted. Compensation arising from this contingency would be the liability of the National Compensation Fund.

The compensation for all offences would be ordered and paid in the form of a lump sum, not as a series of installments. The lump sum would be paid to the victim by the National Compensation Fund immediately upon the sentence of the offender. It would then devolve upon the prison authorities to recover this sum from the offender by means of his work for the reimbursement of the Fund.

Upon medical advice to a Court of an offender's inability to work because of senility or chronic physical or mental illness, the Court would be empowered to impose a term of imprisonment instead of a sum of compensation on the offender. Similarly, should a prisoner's health seriously deteriorate during a self-determinate sentence rendering him incapable of work for a prolonged period, it would be possible for his sentence to be reviewed and converted to a timed sentence. Such provisions would be small invitation to malingering. Senility and the more malignant diseases are hard to fake, and not worth the agony of trying.

The compensation due from chronically sick or senile offenders would be paid out of the National Compensation Fund. Should an offender regarded as chronically sick recover sufficiently during his sentence to resume work, facilities would be provided for him to do so. Any money he earned above that required for basic deductions would be paid into the Fund.

The amount of compensation and fines due would not be affected by prisoners' temporary sickness. They would be required to resume the payment of these after their recovery. Temporary illness does not excuse civilians from their liabilities (on the contrary, it often increases them); nor would it excuse prisoners from theirs. During their sickness they would, however, receive the sick pay to which civilian workers are entitled and this would cover basic deductions and make a small contribution towards compensation or fines due.

In order to give further incentive to sustained effort as well as an opportunity for a more normal life for all prisoners, two weeks vacation with pay would be awarded for the completion of fifty weeks (not necessarily consecutive) of satisfactory work. This right would

be granted for reasons that vacations are granted to every working person: for health; as a reward for work done; as a recharge for future effort.

Prisoners completing their sentence before becoming eligible for an annual vacation, would be paid on release the proportionate vacation pay which is due. The vacation pay of each inmate would be based on his average earnings during the past fifty weeks. The days during which a prisoner was sick would count towards the fifty weeks qualifying him for a vacation. The days during which he was absent from work through idleness, offence or escape, would not count towards this qualification.

Suitable prisoners would be allowed out of prison for their vacation. For others there would be a Rest Prison, maintained for vacation purposes. Extensive visits would be allowed from family and friends, comforts would be more liberal, food less plain, entertainments and sports freely organized and alcohol available. The tariff for this fare would naturally be be somewhat higher than that charged for keep in a working prison. If he so wished, a prisoner could continue to work instead of taking an annual vacation, thus enabling him to hasten his release, should he choose to devote his vacation pay to the sum of money outstanding against him.

As an extra incentive to sustain prisoners in their work, parole might be granted to those not regarded as a menace to public safety, when three-quarters of their restitution had been paid, so that they might make the final quarter of their payment from work in civilian life. If parolees failed to maintain regular payments they would be returned to prison.

The self-determinate sentence makes work as attractive as possible to prisoners. The overriding factor that would persuade most prisoners to make an effort would be that on their work would depend their pay, and on their pay would depend their release date. Few would consider it worthwhile to sabotage a system that settles the length of their sentence in their own hands.

Moreover, this system would give the greatest possible encouragement to offenders not to offend again as well as to potential offenders not to offend at all, for it would reduce the value of crime as an investment. At present major robberies represent a very good investment: the larger the robbery, the more it is worth the risk of the criminal having to wait a few years in prison before enjoying the proceeds. The offender obviously counts on not being caught, but he also reckons that being caught is not so important provided that the loot is big enough and he has held it long enough to get it stored away safely for future use. Prison lounging becomes a well-paid occupation in these circumstances. The self-determinate sentence would offer no such bargain. There would be very little attraction in salting away a stolen fortune for enjoyment after sentence if the sentence consisted of working until the fortune was restored.

The self-determinate sentence would provide persistent petty offenders with practice in regular work, which would aid them in

returning to civilian life and confer on them the dignity of at least paying their way while in custody. Some recidivists become incapable of making a satisfactory life outside of prison. Prison is the place best known to them, where their friends are, and provision and order and guidance and no worry. These people are not professional criminals. The only hope of gain from their crimes they can possibly have is the privilege of living in an institution. They nearly all commit crimes against property and if the total value of all their offences was added up and divided by their sentences, it would reckon out at a handful of pounds worth of crime for every year spent in jail. By means of the self-determinate sentence their offences would be paid for in a matter of weeks. This fact may cause some to object that the self-determinate sentence would release persistent petty offenders frequently, thus causing society and the police the nuisance of more minor crimes and the expense of more detection and trials. But society has no moral right to imprison people for years for the sake of a few pounds' worth of goods. However much some offenders may need prison as a haven, and repeatedly return there, we are not justified in prejudging their actions and prejudicing their future by detaining them in prison for longer than is merited by the actual offences they have committed.

The most beneficial effect of the self-determinate sentence is likely to be felt by those undergoing their first prison sentence. The encouragement of their ability as wage-earners and their restoration to respectability by their own efforts would fit them both psychologically and practically to renounce crime - and in so far as first-time prisoners are persuaded from crime the unhappier problem of recidivist offenders is diminished.

In order to change the present prison system to that of the self-determinate sentence the practical considerations are: the types of industries most suitable; the finance required to establish them; the effect of the system on prison routine; and the means by which the self-determinate system shall gradually be introduced into the present system.

Initially, the type of industries required are those which offer productive work that can be learned in a few hours so that from the beginning of his sentence every able prisoner is fully and gainfully employed. Such jobs are often repetitive and dull; they are also essential, commercial and remunerative. Such jobs are also endured by millions of law-abiding workers throughout the world as a means of making a living. Assembly work, press work and production line work on components for the car industry, for electrical and household appliances, and for the furniture trade could provide such jobs. Equipment for Government departments, which provides the main source of employment for prisoners at present, could continue to be manufactured, but under the self-determinate sentence this work would need to be highly organized, highly productive, guaranteed as to standards and delivery, and costed and paid for at commercial rates.

Once these types of industries had been established in several

prisons, a more adventurous approach to the provision of work could be considered in order to extend the skills of the more able prisoners. Nor would work then be confined entirely within the prison precincts. The formation of working parties for road construction, building, forestry, farming and land reclamation would be encouraged.

In the prison factories, as in outside factories, there would be scope not only for production workers, but for the talents of clerks, cleaners, typists, cooks, canteen staff, maintenance workers, labourers, packers - enough for most ages and abilities. The wages of non-productive workers would be based on the overall average wages of productive workers, to ensure that prisoners with comparable amounts of compensation ordered against them would have comparable opportunities of earning their release. However, in order that high average wage-rates were maintained, it would be necessary that production workers should enjoy the incentives of piece-work rates and group-bonus schemes, which would mean that some might earn considerably more than others. It might be argued that this would cause unfair discrepancies in wages and the consequent ability to purchase freedom. There are three counter-arguments to this: first, that income tax would somewhat reduce the effective amount that high-earners received; second, that the opportunity to reach top wages would be equal for all; third, that high wages for production workers would benefit non-production workers since the wages of the latter would be based on the average of the former.

It would not be part of self-determinate sentence policy to submit prisoners to lengthy trade training during their working hours. The wages of apprenticeship would be neither adequate nor attractive to people trying to earn their way out of custody. However, voluntary evening and week-end trade training schemes would be available.

In order to allow for adjustment and experiment during the initial stages of the industrialisation of prisons, prison factories would be financed by the Government. Subsequently, as the scheme expanded, private firms might well be found willing to put up factories to their own requirements and to employ prisoners exactly as they would employ civilian workers - leaving discipline of prisoners to prison staff. Alternatively, the Government might provide factory buildings and rent them to firms which would install the plant.

Fortunately, in Britain at least, there would be no expense or problem in acquiring suitable sites for factories, for there are ample grounds within the precincts of prisons, both in rural and urban areas. Most existing workshops would also be suitable for adaptation.

The chief effect of the self-determinate sentence on prison routine is that work would take priority over all other activities. At present, the loopholes allowed to prisoners to escape from what work they have are liberal and inviting. Interviews with the Governor and consulations with the Doctor are available daily upon application and take place during working time. Queueing for these interviews usually take longer than the interviews themselves, and this time-waste and chance for gossip are frequently the only real reasons for prisoners visiting these officials. Baths, attendance at clinics, sessions with psychiatrists

and visits from loved ones and solicitors are also enjoyed during working hours. As wages are not docked - except in the few cases where work is paid for at piece rates - for absenteeism on these excursions, prisoners are encouraged to exploit them. This would be changed so that interviews and visits would take place outside of working hours, except that remands and appellants would be allowed time off work for legal preparations and emergency medical treatment would be given immediately. Otherwise, prisoners wishing to consult a doctor would do so at evening surgery, as working people do outside prison. Similarly, psychiatric treatment would also be given during inmates' leisure time. It is quite usual for civilians to combine a full working life with psychiatric treatment. Many psychiatrists consider a full working life helpful to such treatment.

The self-determinate sentence would not circumscribe any treatment or amenity now available to a prisoner. Making them available to him only during his own time, however, would end false demands on them. Inmates would no longer use them because they were work-avoiders, but only if they were of intrinsic value to them. Some types of activity now fairly well supported might disappear completely: some evening classes, for instance, might die under the influence of prisoners' time becoming more precious to them. The wish for new activities, advanced skills, adult information, might well emerge from the circumstance of prisoners becoming wage-earning, bill-paying people.

The re-arrangement of routine and its expansion to provide a fuller life for prisoners would require some change in the training of staff and the work required of them. Certain officers would hold the position of foremen or inspectors in the workshops, remaining on duty during the prisoners' working hours. Others would cover leisure time, conducting visits, arranging interviews, supervising sports, hobbies, classes, and the prison shop, and staffing the Rest Prison used for prisoners' vacations.

The busy normal-as-possible life would require that fewer hours be spent locked in cells. The evening locking-up time would be deferred as soon as possible to 10 P.M. At present, at the commencement of a sentence it is 4:30 P.M. in many prisons, raised to 7 P.M. or 8 P.M. after some weeks.

Despite the extra hours of activity the self-determinate sentence would afford to prisoners, it would not necessarily need a larger staff to implement it than does the existing routine, for it would economise on staff in two ways: firstly, organizing prisoners' work in large groups in factories, whereas now it is not uncommon for an officer to be in charge of only one or two prisoners in a working party, and frequently to be in charge of half-a-dozen or fewer; secondly, by banning the interruption of work by the coming and going of prisoners to and from interviews, which is now part of the staff-consuming regime.

As prisoners' lives became more adult, so would punishments for their misconduct in prison. These would be self-determinate, like the sentence, and would take the form of fines to be paid out of earnings. This would have the effect of reducing pocket-money in the case of

minor offences, and of delaying release and/or eligibility for vacations in the case of more serious offences.

Refusal to work or idleness would result in the offender being dismissed from work and confined to his cell for the day of his offence, and not permitted to resume work until the following day, which would have the effect of postponing his release and/or vacation by the loss of earning time he had brought upon himself. It is difficult to imagine a prisoner condemning himself to prolonged solitary confinement by persistently refusing to work, but anyone who wished would be free to do so. His liabilities would accrue during his absence from labour, to await him when he chose to resume responsible activities. Prolonged refusal to cooperate might indicate an abnormal mental state, and would always be accompanied by strict observation of the inmate's mental condition, which might lead, in some cases, to the certification of the prisoner as mentally unfit and his removal to a psychiatric hospital, where he would no longer be subject to the self-determinate sentence.

The introduction of the self-determinate sentence into the penal system would need to be gradual. Ideally, it would be pioneered in a prison equipped to employ about 1,000 prisoners, but beginning with a group of about 300, so that settling-in adjustments could be made easily as the population expanded. There would be two methods of selecting the pioneer group of prisoners: firstly, long-term prisoners - those with sentences of 4 years and upwards, including life sentences - would be allowed to appeal to be re-sentenced under the conditions of the self-determinate sentence. From boredom and curiosity; from a genuine desire to work and save money; from the hope of parole; from the attraction of a vacation; and because of the possibility of ending up with a shorter sentence, hundreds of offenders would take this opportunity. Many, however, would not: because of the brief time of their sentence remaining; because of their institutionalization; because of their dislike for work and the thought of paying restitution.

It would be made clear to prisoners that the proportion of their original sentence which had already been served would be taken into consideration when re-sentencing them, so that only partial compensation and fines would be levied against them.

The remainder of the prisoners pioneering the self-determinate sentence would not be volunteers. They would be those generally considered most difficult: those sentenced for crimes of violence. After a given date the Courts would sentence all these offenders to the self-determinate sentence. They would be chosen as the first to be compulsorily sentenced to the new system because, unlike the volunteer group of prisoners, they would be likely to provide a difficult test for it and also because the machinery for assessing restitution for crimes of violence already exists in the Criminal Compensation Board. Thereafter, as more prisons were industrialized, dates would be set from which the Courts would apply the self-determinate sentence to all categories of offence. It would be last applied to offences which involve no victim. In five years the changeover to the

new system would be complete.

An important side-effect of the system would be that sentences would fit offences more predictably and intelligibly and the disparity of sentences now being passed by different Courts for similar crimes, which causes so much indignation and misunderstanding about justice, would be minimized; and where it seemed apparent could more readily be challenged.

Here, I would like to make clear that although throughout this paper I have referred to the effect of the self-determinate sentence on prisons, it would apply not only to establishments devoted to adult offenders, but to custodial institutions for the treatment of young offenders - known in Britain as borstals and detention centers. While these offer their inmates a far busier life than most prisons, their attitude to offenders is imbued with the familiar refusal to allow them to be as responsible as they can be. Their treatment could not fail to be improved by practice in the facts of honest civilian life - that one works to pay for what one has and does.

Despite the benefits of the self-determinate sentence, it does raise some objections which would have to be dealt with before it became accepted. One of the strongest of these is that during periods of high unemployment it would decrease the number of jobs available to civilians. This is a problem which needs to be viewed in perspective: in Britain, for example, there are about 40,000 prisoners and, even at this time of depression, some 24 million people in work; which means that if every working prisoner relinquished one hour's employment in order to increase the work available to civilians, this would add about ten seconds to the average working week outside. If the argument against prisoners working were taken to its logical conclusion so that they did no work at all, this would add less than seven minutes to the civilian working week. The benefit of that, compared with the benefits of prisoners working full-time and compensating their victims is so negligible that it would not appeal to most citizens as the better solution. The fundamental bases of good employment figures are sound political measures, not the idleness of prisoners.

There is also the objection that if prisoners worked under trade union conditions they would assume the power to strike. So they might, but in striking they would succeed in lengthening their time in custody, so that it would be unlikely to be a popular practice.

An objection which offenders might make to the self-determinate sentence would be the possibility of it encouraging their victims to overstate the damage or loss sustained in order to increase the compensation awarded. Such overstatement would, of course, be an offence in itself.

Another objection is that the self-determinate sentence would only provide compensation for victims of convicted offenders where victims of offenders not apprehended would still not receive restitution. This must necessarily remain the underlying principle of the self-determinate sentence, not only because its primary aim is to make offenders themselves

responsible for paying reparation, but also because Courts could not cope administratively and national exchequers would be reluctant to cope financially with ordering and paying compensation for crimes for which no one had been found responsible.

The most powerful objection to the self-determinate sentence would come from the criminal underworld: from those who make their living organizing the receiving, threats, alibis, "protection" that are the requisites of a professional criminal's life. These people have no need at present to fear prison or police enquiries. Many are known to the police, who find it impossible to proceed against them because of the refusal of everyone to give evidence against them. The self-determinate sentence would make evidence more readily available. The code of silence about confederates would be broken if silence entailed having to work in prison until the confederate's share of a crime was paid for as well as one's own. Any who shared in crime would go in fear of being named by an apprehended colleague. The security of the underworld would be disrupted. To prevent this, the opposition of the underworld to the self-determinate sentence would be fierce, organized, subtle and backed by its wealth of money and influence. This is one of the best recommendations for the self-determinate sentence.

Anyone inclined to have sentimental objections about major offenders having to work for years to repair their crimes, might care to consider the following points:

The chances of a criminal going scot-free are at present better than sporting.

The self-determinate sentence offers the offender the opportunity of a reduced sentence if goods illegally obtained are voluntarily restored.

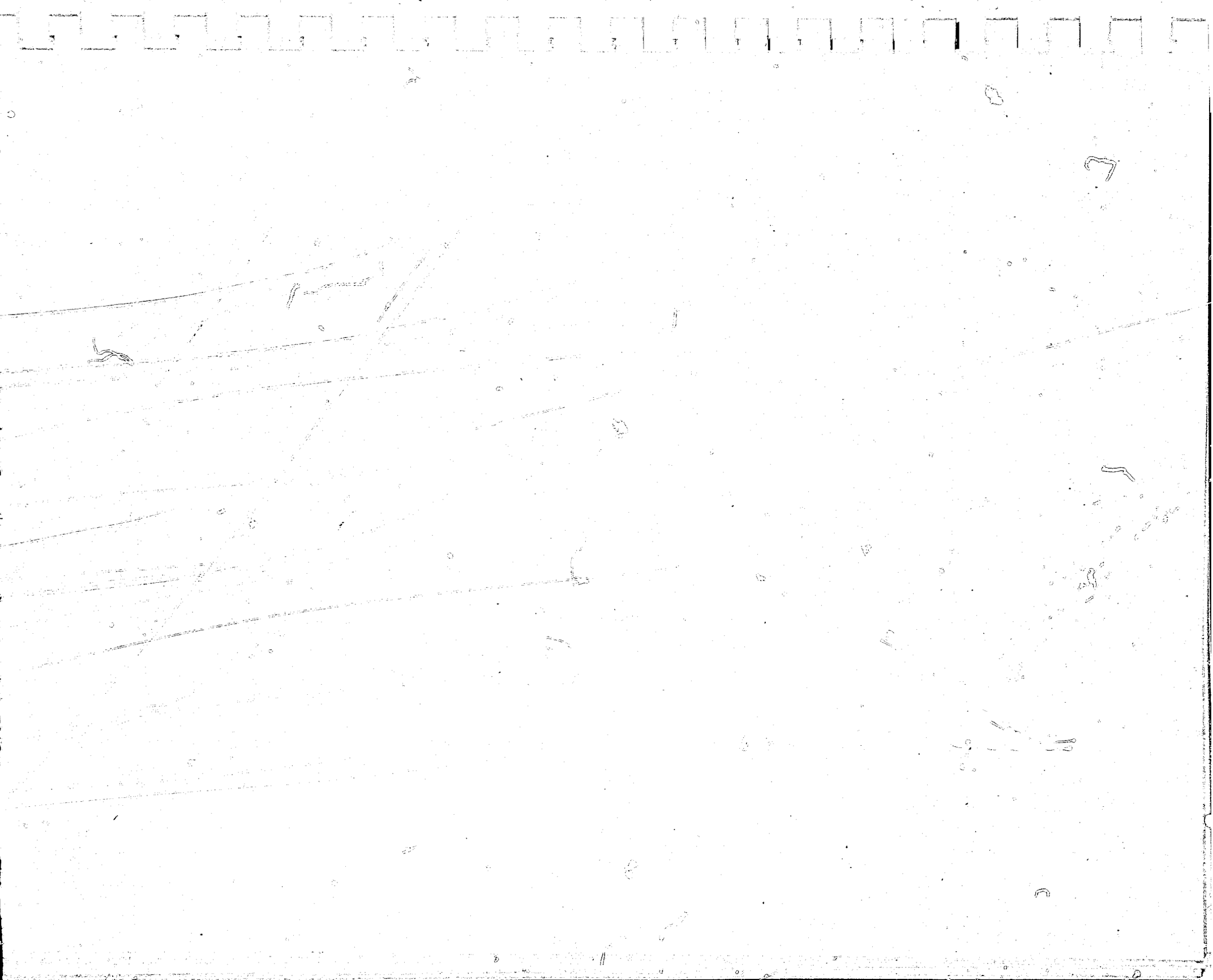
Major crimes are non-essential crimes. It is possible for people to steal a few pounds because of difficulty in making ends meet, or because, for psychological reasons, they need help: prisons are staffed to provide the help needed by these offenders; the self-determinate sentence would demand of them only what their offence amounted to - a few pounds' worth of effort - while supplying the personal help needed. But major crimes are not crimes of need: they are acts of greed committed for gain by depriving other people. The only fair way to deal with them is to see that the gains are restored to those who have been deprived.

Those guilty of an offence who were found not responsible for their act would not be required to make compensation, but would be treated in a mental hospital; and restitution by youths might be mitigated.

The remedy for any part of the self-determinate sentence to which an offender objected would be in his own hands: the simple expedient of avoiding crime.

To summarize the benefits of the self-determinate sentence, it

would: impose upon prisoners work and responsibilities customary in civilian life; provide better justice for victims of crime; deter offenders by reducing crime from a paying proposition to one that has to be paid for; disrupt the solidarity of the underworld by adding to the mistrust of accomplices; increase the chances of offenders being apprehended because their confederates would be encouraged to name them; reduce the cost of maintaining prisoners; increase national productivity; render the work of the police and judiciary, prison staff and welfare workers more successful and satisfying; remove a large degree of injustice and degradation from the penal system; enable compensation to be ordered successfully in conjunction with all types of treatment for offenders, by ensuring that if an offender failed to make restitution as a civilain he would be obliged to do so as a prisoner.



SECTION V

RESTITUTION BY CRIMINAL OFFENDERS: A SUMMARY AND OVERVIEW

Gilbert Geis

A criminal law exists; someone is convicted of breaking that law. What is to be done to (or with) that person?

This is the question that has faced participants in our symposium. Their focus has been on one particular answer: that the offender be made to pay in some "meaningful" way for what he has done. It has been stressed that the payment by the law-violator should either go directly to the crime victim or to the victim's heirs, or that it should take the form of community service, thereby contributing to the general social well-being.

Such restitution or reparation by the offender for his criminal behavior has been viewed as offering a number of advantages over present methods. For one thing, reparative payments to the victim could help to defray costs such as medical bills and wage losses which were incurred as a result of the victimization. For another, the process of restitution might create within the offender a sense of the true extent of the harm he had inflicted on another human being. Fiscal atonement could produce in the offender a feeling of having been cleansed, a kind of redemptive purging process, which might inhibit subsequent wrongdoing. The closer attachment of the penalty to the offense, and the criminal to the victim, have also been said to represent a method for bringing about justice superior to the present procedure in which the offender may pay a fine which goes to the state or may serve time in prison, where he will work for minimal or no wages or idle away his time.

The advantages of restitution seem so obvious that commentators find it barely believable at times that programs have not long since been set into motion. Note, for instance, the 1974 report of the Law Reform Commission of Canada:

> Doesn't it seem to be a rejection of common sense that a convicted offender is rarely made to pay for the damage he has done? Isn't it surprising that the victim generally gets nothing for his loss? Restitution - making the offender pay or work to restore the damage - or, where this is not possible, compensation - payment from public funds to the victim for his loss - would seem to be a natural thing for sentencing policy and practice. Yet, under present law they are, more frequently than not, ignored.

Nonetheless, as the Symposium papers make clear, the matter is far from simple. Indeed, the Canadian Law Reform Commission's views themselves were subject to some intensive and not overly-friendly criticism by research workers at the University of Toronot's Centre of Criminology who noted, among many other things, that the fact that restitution has not been employed in Anglo-Saxon countries for so long, despite its seeming simplicity and logic, ought to give rise to some suspicion that the matter is not quite as uncomplicated as it appears to be at first glance (Stenning and Ciano, 1975).

Certainly, a considerable portion of the appeal of restitution programs for dealing with criminal offenders lies in what is now generally

regarded as the almost-total bankruptcy of current correctional approaches. Imprisonment, in particular, has come to be seen as a counterproductive process, unable in general to deter subsequent criminal acts either in regard to the offender himself or those for whom he might serve as an object-lesson (American Friends Service Committee, 1971). Treatment regimens for criminal offenders, most of them based upon counseling modalities, have also come under severe attack, much of it founded upon evaluations of their impact on criminal recidivism (Martinson, 1974).

In the fact of what now is regarded as correctional failure, the way lies open for inauguration of different approaches to dealing with criminal offenders. Besides programs of restitution, ideas that have been put forward include the abolition of insanity pleas, swifter and surer sentencing, elimination of plea bargaining, reintroduction of capital punishment, decriminalization of so-called "victimless crimes", diversion of offenders from incarceration into community treatment programs, and the ending of the indeterminate sentence. Advocates of each of these positions see them as contributing to an alleviation of what is commonly regarded in the United States as an epidemic condition of criminal behavior.

Restitution may be seen, in this context, as one of a series of competing proposals for dealing with criminal activity, each maintaining that it will produce a more satisfactory result than present methods. The different proposed schemes are not necessarily contradictory or even mutually exclusive. It is possible that varying methods may be used to deal with different kinds of offenses and different kinds of offenders. At the same time, it should be recognized that tampering with any aspect of the criminal justice system is apt to have considerable impact on other phases. A widespread restitution program will bear upon police, court, and correctional procedures, and bring about consequences that no degree of pre-science can now discern.

What must be done, to carry the argument for restitution, is to enunciate carefully and systematically the content and the rationale for such programs. Arguments can then be mounted which attempt to portray the consequences of the programs. In this regard, the stricture of the Swiss historian Jakob Burckhardt needs to be kept in the foreground when setting forth claims. "The worse form of tyranny," Burckhardt observed, "is the denial of complexity." Strenuous attempts will have to be made to measure accurately the alleged outcomes of restitutive approaches. At the same time, it will have to be appreciated that such evaluations are as much or more personal and political tasks than social scientific ones. How, for example, does one compare a two percent decrease in the burglary rate with an extra expense of $4,000 for each case assigned to the restitution program? How are we to judge a restitution program which provides monetary aid for five percent of the jurisdiction's mugging victims, but in order to achieve this result imposes an average additional period of four month's state supervision on the muggers who committed the crimes for which restitution was ordered? No formulas exist which will allow scientific calculation of the verdict that should be reached on the basis of such facts.

Indeed, the facts themselves convey but one very small part of the total story of what a restitution program might mean.

At any rate, intellectual humility would seem to be notably in order in regard to any alterations of correctional affairs, including the inauguration of restitution programs. A reading of the historical archives quickly produces sufficient material to cool off the most perfervid of reformers: panegyrics abound in regard to correctional approaches which now are being harshly criticized as wicked and self-defeating. One early penal reformer noted, for instance, that "in the universal adoption of the indeterminate sentence with all that it logically involves, rests the strongest hope for final victory in the contest, which has heretofore been a losing contest, for the suppression of crime" (Smith, 1905). Similarly, the juvenile court, now criticized as undermining basic constitutional rights, was at its outset proclaimed in the following grandiloquent terms: "In this new court we tear down primitive prejudice, hatred, and hostility toward the lawbreaker in that most hide-bound of all human institutions, the court of law, and we will attempt, as far as possible to administer justice in the name of truth, love and understanding" (Lou, 1927:2). And who now would not snicker at the pious pronouncements of the progenitors of Pennsylvania's system of solitary confinement at labor for criminal offenders:

> Shut out from a tumultous world, and separated from those equally guilty with himself, he can indulge his remorse unseen, and find ample opportunity for reflection and reformation. His daily intercourse is with good men, who in administering to his necessities, animate his crushed hopes, and pour into his ear the oil of joy and consolation (quoted in Barnes and Teeters, 1943:513).

The aim of the foregoing commentary is not to foment cynicism, but rather to put into perspective any zealous advocacy lacking elements of self-doubt. Restitution may, indeed, be a magnificent step forward in correctional arrangements, but it appears desirable to take that step, if it is to be taken at all, with a certain self-aware tentativeness.

The papers presented during the meetings at the first International Symposium on Restitution have been varied in content, ranging over a considerable number of substantive and programmatic issues. It would be redundant, and would also be a disservice to the richness of the papers, to attempt to summarize in a rote manner what they say. Instead, the focus of this paper will be the three particular topics which seem to be of general importance. The matters that will be discussed are: (1) the historical record regarding restitution, including comments on the relationship between restitution and compensation to crime victims from public funds; (2) programmatic issues; and (3) concerns in evaluative studies of restitution.

I. Historical Issues

Some writers who favor the extension of restitution procedures to a much broader spectrum of correctional matters than they now cover adopt

the rather romantic posture that restitution represents a criminal justice tradition of ancient times which was inopportunely abandoned. It is suggested that it is now more than proper to return to our fundamental, time-tested heritage.

It is true, of course, that historical experience ought not be ignored, but the halo that surrounds the history of restitution probably needs dismemberment. In a large measure, it appears, the movement of the state into the criminal justice arena, and its arrogation to itself of fines and confiscated goods, represented not primarily a matter of royal greed (though there was some of this too), but rather a reaction to popular distress at the awfulness of existing criminal justice arrangements.

Note, for instance, the ancient practice of "trial by ordeal," a matter which was, as Frederick Wines notes (1923: 45-46), "nothing more or less than an appeal to the Almighty to perform a miracle in vindication of the innocence of the accused." One form involved submersion of the bound body of a suspected offender into a lake. If the accused body sank and drowned, this was regarded as a sign that God was satisfied with the person's innocence, since God was willing to bring the accused into divine domains. If the body floated, this was interpreted as divine rejection and a certain sign of guilt. The accused was, for this reason, promptly put to death. Disemboweling, macabre tortures and mutilations - these usages of medieval times ought to alert us that the criminal justice practices of our ancestors, of which restitution was a key element, were not apt to be notably benign (cf., Scott, 1940).

The practice of restitution was particularly suited for the wealthy, since they readily could make amends for any infringement on the rights of others by drawing upon their own funds, a matter which has contemporary relevance to consideration of guidelines for restitutive efforts. Or, if they were strong enough, the guilty parties could merely ignore the plight of their victims. Only if they collectivity came together behind the victim was there hope of reparation in such instances, and our ancestors were not that different from us: they backed the strong and ignored the weak. In point of fact, private programs of restitution, like much else in ancient times, served the purposes of the very powerful, and their elimination was one of the significant steps forward on the long and still largely untraveled path toward equal justice for all. Pollock and Maitland (1968), the leading scholars of the criminal law of olden times, note, for instance, that restitution as practiced during the twelfth century was a vicious enterprise. In particular, it served as a vehicle by means of which the lower classes could be pushed into slavery by those to whom they came to owe a restitutive obligation:

> A wite [fine] of 5 pounds was of frequent occurrence and to the ordinary tiller of the soil must have meant ruin. Indeed there is good reason to believe that for a long time past the system of bot [indemnity] and wite had been delusive, if not hypocritical. It outwardly reconciled the stern facts of a rough justice with a Christian reluctance to shed blood; it demanded money instead of life, but so much money that few were likely to pay it. Those who could not pay were outlawed or sold as slaves. From the very

> first it was an aristocratic system; not only did it make a distinction between those "dearly born" and those who were cheaply born, but it widened the gulf by impoverishing the poor folk. One unluckly blow resulting in the death of a thegn [noble] may have been enough to reduce a whole family of ceorls [serfs] to economic dependence or even to legal slavery. When we reckon up the causes which made the bulk of the nation into tillers of the lands of the lords, bot and wite should not be forgotten... (Vol. II, pp. 460-462).

Contemporary revival of the idea of restitution as a keystone of penal policy is clearly traceable to the work of Margery Fry. In Arms of the Law, Ms. Fry (1951) proposed that offenders be made to pay victims in order to alleviate a portion of the harm they had inflicted. "Compensation cannot undo the wrong," Ms. Fry wrote, but "it will often assauge the injury, and it has real educative value for the offender, whether adult or child. Repayment is the best first step toward reformation that a dishonest person can make. It is often the ideal solution" (p. 16).

The falling away of Ms. Fry from advocacy of restitution is worth note. By 1957, she had switched her support to a program of state compensation for crime victims, and she was citing the case of a court restitution award of 11,500 pounds to a man blinded in an assault. The amount was to be paid at the rate of five shillings a week, and would require 442 years for its total recovery. Behind Ms. Fry's endorsement of compensation to crime victims from public funds was the view that the state would have to assume the obligation of ameliorating deprivation suffered by its members as part of enlightened social policy. "The principle of clubbing together is venerable in British social life," Ms. Fry (1957:192-193) noted, and she drew a direct analogy to the industrial insurance program in concluding that "the logical way of providing for criminally inflicted injuries would be to tax every adult citizen...to cover a risk to which each is exposed."

It is apparent that restitution schemes will have to be blended in some manner with the victim compensation programs that now are appearing throughout the country (Edelhertz and Geis, 1974). Otherwise, the victims who will be helped by restitutive processes will represent an idiosyncratic and highly selective group. As LeRoy Schultz (1965:243) has observed, restitution as a condition of probation or parole is:

> ineffectual in meeting the compensation needs of the great majority of victims because probationers and parolees are insolvent or, if employed, do not earn enough to exceed basic needs. In addition, not all offenders are apprehended; many may be juveniles; some will be incapable of responsibility due to mental illness; others may be acquitted due to technical or legal reasons; and many will not be granted probation or parole.

Indeed, the pressure upon criminals may be to run the risk of victimizing a dozen poor persons rather than one rich individual. If the offender is caught, then, and accused of a single offense (as is usually the case), the restitution to the poor person, in terms of the amount involved either as loot or as loss of wages by the victim, would likely be less, and therefore the restitutive conditions could be more readily met.

A patricularly interesting aspect of restitution debates, one that has not emerged fully during the Symposium discussions, relates to its operation in regard to criminals who possess some wealth of their own. The annals of criminal law are replete with instances of well-to-do defendants who voluntarily offer restitution and thereby obtain mitigation of their sentence. Several states by law allow or have allowed for the "compromise" of misdemeanors through restitution; that is, the party aggrieved may appear in court and acknowledge that he has received satisfaction for his injury, whereupon the court may, in its discretion, discharge the defendant (see Laster, 1970: 87, fn. 103 for a listing of the statutes).

Cases involving such statutes are instructive in pinpointing some of the issues that will undoubtedly arise in more far-reaching programs of restitution. In New York, for instance, before its repeal, three appeals arose from the misdemeanor compromise law (N.Y. Code Crim. Proc. 88663-666). In People V. Bombace (1957), miscreants had damaged a New York City hotel room. The hotel owners estimated the cost to them at $245; during its hearing of the motion to dismiss, the court decided that a fairer price was $153. In another case (Hallstrom V. Erkas, 1953), a woman had turned over half of her property to a man who had, she claimed, promised to marry her.When he failed to follow through on the alleged offer of marriage, she filed a suit demanding the property's return on the grounds of breach of promise. This plea failed, since the court declared it to be contrary to public policy to have the property returned for such a reason. Then, the man assaulted the woman, and on this occasion she "accepted" the return of her property as a compromise of the simple assault misdemeanor. On appeal, however, the court again ruled that the property should remain with the man. The judge argued that it was his role to determine the suitability of the terms of compromised cases; in this instance, if the between-the-lines message is read correctly, the court seemed to have picked up the odor of a bit of blackmail.

The third appellate case under the New York statute (People V. Trapp, 1965) involved a man who failed to make contributions over a 15-month period to the Welfare and Pensions Fund as required by law. He subsequently paid up what he owed, and asked that the criminal case against him be closed. The court rules against him, noting that compromises had to be negotiated with its participation. At best, the decision said, the restitution might be taken into account at the time of sentencing.

The California statute offers an appellate court decision (People V. O'Rear, 1963) in which a person accused of hit-and-run driving attempted to repay the victim for his expenses and thereby to have the case dismissed. The appellate court ruled, however, that the offense did not involve a civil injury of the victim, but rather an offense against the public, and therefore it could not be compromised under the terms of the statute.

These cases offer the following lessons, among others. (1) That victims may inflate their claims against offenders, just as they do against insurance companies; and (2) that since restitution is likely to be regarded as a less harsh than normal penalty, public and official resistance is apt to develop to its use when it is seen as defeating what is regarded as a fundamental sense of justice - or of vengeance.

Victims, prosecutors, judges, and juries are known to be lenient at times with offenders who offer to make what is regarded as appropriate restitution, particularly in the case of property losses. Indded, the "perfect crime" is sometimes blueprinted as one in which an offender embezzles a large sum, spends it, and then, about to be caught, embezzles a similarly large amount from the same victim. He then offers to return the second amount if he will not be prosecuted. It seems likely that few victims, otherwise faced with the loss of the total sum, would not accede to this offer, at least if there were not bonding arrangements and if government authorities were not likely to be aroused. In fact, the victim might be especially moved to write the embezzler a highly laudatory letter of recommendation so that he could secure a responsible job with competitors.

Other issues raised by participants in the Symposium which deserve emphasis at this point include the following:

(1) In terms of the historical record, there is a need to establish a contextual background which would indicate what conditions gave rise to restitutive schemes and what ends such schemes serve. In particular, cross-cultural studies of people who to this day employ restitution rather than incarceration should yield valuable insights into the dynamics and cultural roots of the process.

(2) It was noted that the desire of states to support restitution programs may be a consequence of the fact that rather than gaining funds from criminal prosecutions, as in earlier times, these matters have become inordinately expensive. If financial aims solely undergird restitution advocacy, are these of sufficient persuasiveness to promote support of the programs? In particular, when the matter concerns - to use the words of one speaker - "trading dollars for liberty" there seems to be a particular need for careful and critical examination of proposals.

(3) Satisfactory procedures for assessing damages subject to restitutive processes will have to be established. Many European countries use an "adhesive" procedure (Schafer, 1960) in which both civil and criminal liability is established as part of the same judicial hearing. All parties require careful protection of their rights if new restitutive approaches are to be inaugurated.

(4) There will be a need to alter the traditional rules of prison labor and those applying to the sale of prison-manufactured goals, if inmates are to be expected to earn sums sufficient to allow them to pay for the damages they inflicted through criminal acts. One difficulty involves competition between free-world labor and prison labor. Particularly in periods of unemployment, the idea of training adjudicated criminals in skilled crafts and marketing their products - and particularly the idea of offering them employment when their restitutive obligation has been met - may smack a bit of overrewarding the "bad" at the expense of the "good."

A number of other items also were of particular interest during the discussions. One speaker, for instance, observed that restitution programs may appear promising because they "haven't yet clearly failed,"

though the same participant put aside this mild cynicism for a moment to say that, despite the "litany of problems" that he saw associated with restitution he was "genuinely optimistic" about it, largely because he saw possibilities for greater fairness than currently prevails in the administration of criminal justice. Another speaker was skeptical (though not critical) about restitution because she found both the left and the right wing of the political spectrum supporting the matter. So widely endorsed a proposal might merely be bland and inoffensive, she thought, or, perhaps it appealed to all but those unrepresented in the discussions, though most deeply involved in the proposals - the offenders.

The issue of "class" justice arose in the form of the question of whether restitutive sums ought to be pegged to the damage done or to the wherewithal of the offender. Someone wanted to know whether the white-collar worker would be allowed to sit behind a desk to earn the sum required by his restitutive contract, while the unskilled labor would do harder tasks and whether this was fair. Another person suspected that restitution would be assessed in instances in which the offender might more reasonably have been allowed to have another chance without any penalty except perhaps a period of supervision within the community. This "overpunishment" could induce bitterness and feelings of injustice in the offender.

The foregoing matters of discrimination among offenders and too-ready recourse to restitution (in lieu of milder responses) are both illustrated in a newspaper article which is characteristic of a considerable number of similar items which have been appearing in the nation's press. Indeed, the publicity that a judge will receive from imposing a restitution sentence today must be regarded as one of the particular attractions of such sentences. The story ran on the Associated Press wire out of Miami, Florida:

> A judge has ordered a motorist convicted of running a red light and killing a man to help pay for the college education of the victim's two children.
>
> In an order made public Tuesday, Circuit Court Judge Sidney Weaver ordered Richard Urso to pay $1,500 a year for the next five years so Gregory Pough, 2, and his sister, Sabrina, 6, can go to college. The sentence is an alternative to five years in prison.
>
> Urso pleaded no contest to manslaughter charges May 8 in the death of Raymond Pough October 25 and was placed on probation.
>
> Urso, 35, is the father of two small children and works as acting supervisor of a post office annex. He earns about $11,500, said his wife.

A telephone call I made last week to the defense attorney in the Urso case elicited the information that the disposition was initiated by the judge. A year after the sentence all parties are said to be relatively pleased with the way the case was handled. But a question still must exist as to whether it is desirable to have a father of two small children pay $150 a month out of a salary of $11,500 to educate the offspring of a man killed when the offender ran a red light.

Many of the foregoing matters were well summarized in a review of the place of restitution in the criminal law which was written more than 35 years ago:

> A thoughtful consideration of the place of restitution in the criminal law calls for more than speculation about the elusive boundary between "criminal" and "civil" wrongs or deduction from traditional concepts concerning the "state's interest" in crimes. What is required is an evaluation in terms of the deterrent and reformative potentialities of the requirement of restitution; the extent to which these potentialities are enhanced or diminished when restitution is exacted by private parties; and the comparative social values inherent in permitting individuals to compromise crimes, insisting that they be settled only under official supervision, or forbidding their settlement. Needless to say, there may be room for different results depending upon the nature of the crime, the character of the offender, and other relevant factors... (Note, 1939:1205).

II. Programmatic Issues

The last three lines of the preceeding quotation set the stage for discussion of programmatic issues in restitution. The combinations and permutations of potential program approaches renders the issues rather complex. Speakers at the Symposium described quite different blueprints which were used in Iowa, Georgia, Minnesota, and in England. But none could offer more than barebone and non-comparable assessments of the possible impacts of these different kinds of arrangements.

The matter of program form might best be reduced to a common theme by examining categories of issues associated with various components of the efforts. A ready formula for such analysis lies in the common journalistic question: Who does what to whom with what intent and with what results?

Who? Administration of restitution programs can be located at virtually any point along the criminal justice continuum. Police, courts, probation and/or parole offices, and prisons may serve to operate or to coordinate a restitution endeavor. The comparative advantage of one or another arrangement is at best a matter of speculation.

A restitution effort might also be separated from traditional criminal justice auspices and administered by an existing or a newly-established public or private agency. Certainly, the punitive connotation associated with currently-operating criminal justice organizations probably puts them at some disadvantage in attempting to transmit a sense of concern for equity and for the welfare of both offender and victim. Social service agencies also might be better equipped, at least for dealing with the requirements of victims, if not those of offenders. A study of Sylvia Fogelman (1971), for instance, of 49 persons who had collected crime victim compensation money in California found them to constitute "a truly needy population left on its own to secure help, left unattended and rejected by the very government which it had looked to for protection and consideration" (p. 47). The subjects reported a host of emotional and social needs attendant upon their

victimization. Thirty-five of the 49 respondents indicated that they wanted "just someone to talk to," or someone "to help them sort out their problems and help them get back on their feet" following their victimization. Eleven of the group reported losing friends because of the crime. Thirty of the 49 indicated that they had suffered some form of permanent physical injury as a result of the victimization. In short, and importantly, these crime victims sought not only restitution, but also kindness and emotional sustenance. It seems arguable that they will be apt to obtain these things very effectively in a program of restitution operated under the auspices of criminal justice agencies.

Does What? This matter forms the core of the restitutive approach. Various kinds of proposals for the nature of the effort that would make up the restitution program were put forward during the Symposium. In England, it was noted, restitutive efforts take the form of convicted persons performing public services which stand to benefit the community. In particular, they help persons such as the elderly and the handicapped, thereby not only providing aid but also deriving a sense of self-satisfaction. Note, for example, the response to one offender assigned to assisting elderly and disabled persons by providing bus trips and shopping expenditions:

> I have been asked by the passengers of the community bus to write to you on their behalf to thank you for Colin and the wonderful work he is doing. He is not only an artist at driving. He has that reassuring personality so essential when taking invalids who have not ventured out of their homes for some time. His skill and indefinable something has made these people ask to be included in trip after trip. Many passengers expressed their affection for him in tangible ways by inviting him and his family to tea, etc.

Despite such glowing endorsement, it remains arguable whether many or few of the offenders who might be assigned to such duties would do them gracefully or efficiently, or whether they would perform in sullen and deceitful ways, regarding the chores as vengeful impositions or stupidly-indulgent kinds of leniency.

One of the speakers, a pioneer writer in the field of restitution, maintained that "creative restitution," as he labelled his plan, would forcefully tend to induce a sense of almost religious catharsis in the offender. Under his scheme, the offender would be able to volunteer to make amends for his behavior. The offender's "active, effortful" behavior, it was argued, would replace the passive, destructive kinds of sentences that now follow criminal conviction. Perhaps so - perhaps not. Child support orders in the marital arena provides an intriguing analog. Such support may reasonably be regarded as the decent contribution of (most always) the father to the nurture of his children. But many divorced men do not grant the reasonableness of the fiscal obligation that courts impose on them. They often perceive such payments as a matter of unjust enrichment on the part of their former mates, or as an unconscionable burden upon their own existence. Given this considerable resistance to paying out money for the support of one's own children, it appears likely that a sizeable number of persons caught up in restitutive schemes are going to harbor feelings of some anger about the monies they contribute from the fruits of the labor they perform.

For one of the proposed restitutive schemes, the blueprint involves "constructive" prison labor at market value wages, with the prison experience parenthetically conveying proper work attitudes and the self-discipline necessary to succeed in the outside world. Other approaches put forward are more conventional. In Iowa, the program involves regular work of the sort the offender was (or at least should have been) accustomed to, with a percentage of the wages going to the victim. Here, as elsewhere, the program is particularly careful to see that not so much is subtracted from the individual's income as to render his work without meaning except as it inoculates him against a worst fate, such as incarceration.

One aspect of the Minnesota program uniquely attempts to bring the offender and the victim together to work out the details of the restitutive program. The reestablishment of the dyad situation which constituted the form of the original criminal event has a moral and esthetic appeal, though it is highly debatable whether the consequences for the parties are meretricious or commendable; or, put another way, it is not yet known what happens to what persons and under what circumstances when this arrangement is used.

Little discussion centered upon other approaches, such as those which tend to be reported in the mass media, involving rather "cute" responses to criminal events. These are apt to take the biblical form of an "eye for an eye," that is, to duplicate in some seemingly approximate fashion the original criminal event. Thus, the vandals who put the classroom into disarray will be sentenced to reestablish it in its original condition. The drunk driver will be required to serve a certain number of days with the emergency ambulance crew that fetches back to the hospital the bodies of victims of driving mishaps. Again, it remains arguable whether these "symbolic" forms of restitution are effective in inducing the kinds of attitudes and behaviors they aspire to bring about. Perhaps all that needs to be said for them, though, is that some of them tend to restore conditions to their earlier, pre-crime form, a result which at least provides some surcease for the unfortunate victim of the depredation.

To Whom? Defining eligibility for participation in restitution programs constitutes one of the less troublesome program issues, since the nature of the participating population largely will be determined by the character of the program itself - its ethos, its aims, and its approach. If the program is to operate inside a secure prison unit, then there will be no need to screen out offenders. If it is to involve community work under loose or no supervision, then public concerns might dictate that individuals who represent threats of violence or who have records for fleeing a jurisdiction be excluded from the program.

Eligibility might also be governed in terms of the kinds of offenses which are deemed suitable for reparation response. This area is something of a quagmire. How, for instances, are personal offenses to be denominated in monetary terms? Is rape worth $5,000 or $10,000 to the victim? - or are we to concentrate only on actual out-of-pocket expenses, such as wage losses and medical bills rather than such amorphous items as pain and suffering? If so, is it fair that a student or a housewife cannot collect for loss of wages, though they are unable to resume their work for extended periods of time?

How about the matter of voluntary participation in restitutive efforts? May an offender opt to serve a suitable period of time in prison, taking his ease if he chooses, rather than participate in a restitutive scheme on the outside? How about Kathleen Smith's idea of a "self-determinate" sentence, under which an offender who does not pay his crime-induced debt will not be released from incarceration until/unless he does so with wages realized from productive labor? The "self-determinate" idea has little appeal for me, though Ms. Smith presented and defended it with considerable elan. One can envision a viciously rebellious institutinal population, defining itself (with some justice) as being further victimized by a class system which already had imposed considerable barriers against its achievement of a reasonable standard of living. And I see (in terms of how I imagine I would act) some likelihood of permanent harm being inflicted upon victims by offenders desperate to avoid being apprehended and thrust into a "self-determinate" program. In Ms. Smith's system her penal institution "would be the immediate home for major or persistent offenders and the ultimate destination for other offenders who were permitted, but failed, to pay restitution in non-custodial surroundings." This idea comes close to imprisonment for debt, a matter deemed unconstitutional in the United States. Note, for instance, the decision of the California Supreme Court in In re Trombley (1948):

> Although by its terms the constitutional prohibition is directed to imprisonment in civil actions, it has been held to apply in a criminal proceeding where it appears that the legislation under which the accused is charged constitutes an attempt to make the mere act of failing to pay a debt a crime. The courts will not permit the purposes of the constitutional provision forbidding imprisonment for debt to be circumvented by mere form...(p. 737).

With What Intent? Presumably, the ideal restitution program is one in which the offender repays the victim for the damage that has been caused. Fundamental questions need to be answered, however, whether the program seeks to aid the victim or the offender, when the interests of the two parties come in conflict, as they often will. For the offender, a major aim is to indoctrinate him with a work discipline and to transmit a sense of satisfaction with legal labor that persist beyond the point that his criminally-incurred debt has been paid off. For the victim, hopefully there will be a dissipation of the sense of fury and anguish that often accompanies his state (Geis, 1975a). He will gain confidence in the operation of the criminal justice system, develop some greater tolerance for the offender, and himself continue to function in what is defined as a satisfactory manner. The state could benefit by having to expend less money on penal arrangements and on victim rehabilitation (e.g., welfare costs). Ideally, too, the general public will come to apprehend that restitution programs promote justice in a more decent way than had been accomplished under previously-existing programs.

Each of these conditions, and many others, require painstaking scrutiny when seeking to determine the accomplishments of restitutive programs. Too often, evaluations concentrate almost exclusively on recidivism statistics, in which calculations are made of the number of arrests and convictions and technical violations of the persons involved in the program. Beyond the evaluative astigmatism of such a focus, I would argue that traditional recidivism measures often are

quite misleading. For one thing, recidivism represents the end product of an elaborate process that often does not bear any particularly exact relationship to the behavior involved. That is, there are apt to be considerably more criminal acts committed than there are to be apprehensions for such acts; and it is the acts that should interest us, not the varying competence and luck of the law enforcement agencies. Technical violations too often are closely related to the nature of an intervention program rather than to the character of the individual participants' behavior. I would argue that determination of the outcome of a restitution program ought to attempt to secure scrupulous reports from the participants about what they have done, and ought not to rely upon official data regarding what has been observed and acted against. And such measures must be fleshed out very thoroughly with a variety of indices of participant and public satisfaction with the operation of the program. In this way, it becomes possible for a policy maker to have at hand information addressing the efficacy of the program in meeting an entire spectrum of goals rather than only one or a very few truncated ones.

With What Results? Many of the foregoing observations pertain to ascertainment of the outcome of the intervention as well as to its general aims. In addition, it seems desirable that very far-ranging inquiries be directed toward determination of the impact of the program upon eddying matters which might not at first glance appear to be related to it. It is possible, for instance, that a comprehensive program of restitution might undercut general deterrence, because it appears to represent wondrous leniency and therefore less threat to persons contemplating criminal activity. If so, then crime rates might rise in general while perhaps declining in the target population. It is very difficult, of course, to maintain that the intervention itself might have produced the general crime rise (except, perhaps, if the increase is found only in jurisdictions with restitution efforts and not at all in those without programs, and if there are a large number of both types scattered about). It is also worth determining whether a particular program merely serves to relocate criminal activity - just as higher penalties for prostitution in, say, New York City may merely induce the prostitutes to migrate to Newark or Philadelphia.

It might also be noted - since this matter arose in one of the Symposium discussions - that the fairest measure of criminal activity associated with a restitution program is that which concentrates on public danger, and not on a crime/time exposure ratio. That is, if a randomly-selected control group is kept in prison for eight months longer than an experimental group which is involved in a freeworld restitution program, and if the focus is on criminal activity, then the experimental group ought to be obligated to produce less crime during a specified period (say 24 months) than the control group produced during the 16 months its members were on the streets. Too many researchers compare the periods of freedom for both groups. From the public's viewpoint, being mugged by an offender in a restitution program who might otherwise have been incarcerated seems, to me, to constitute a clearcut failure that ought not be covered up by artifically regularizing the period of measurement.

A summary of the arrangements under which restitution might be conducted comes back to the fact that, given that we know very little about the value of any particular approach in contrast to another, the matter of the optimal and proper approach to restitution must be seen as an open question. Certainly, considerations such as efficiency, utility, humaneness, among very many others, can dictate preference for one approach rather than another. But as far as accurate appraisals of the actual consequences of differing regiments goes, we simply do not now have sufficient information to allow for an informed judgment.

III. Evaluation Issues

It is a cliche of intervention strategies that any proposed program requires careful, almost exquisite, evaluation if we are to learn truly about its consequences. Two themes might be stressed here: The first concerns experimental design and the second relates to the necessity for a considerable amount of descriptive material about restitution programs which are undergoing evaluation.

I do not go along with the common view that an experimental correctional program ought to introduce as little perturbation as possible into the system; that is, that everything ought to be kept exactly as before except for the element that is being evaluated. Given the bleak history of experimental endeavors in corrections, I much prefer that a new program be mounted with every conceivable asset that it can command. It ought to have the best workers, rich financing, low case loads, and any other kinds of assistance it can manage. If it then is proven to be a "success", at least it can be said that there is some amalgam that works. What the bare essentials of that successful endeavor are is what might next be determined.

The reason for my preference for this approach is that no matter how "clean" the experimental design, there really is no way of knowing with any precision whether it was the barebones intervention ethos or some other aspect of the new program which produced the measured outcome. Researchers who say that they have, for instance, evaluated the halfway house concept in corrections when they have, in truth, only enumerated the outcome of one particular halfway house endeavor are, to my mind, generalizing much too far beyond their data. The setting of the halfway house, the economic conditions in the society at the time, idiosyncratic events in the facility and a host of other circumstances - these all contribute in largely unknown and unknowable ways to the outcome of an intervention program, and it is quite impossible to take the results far beyond the particular situation, except in the most tentative manner. As Edward Suchman (1967, p. 77) noted: "Program testing has almost no generalizability, being applicable solely to the specific programs being evaluated."

It is for this reason that I believe that interventions, such as restitution efforts, require an inordinate amount of descriptive information to accompany any statistical measures. I have elaborated on this theme elsewhere (Geis, 1975b). Perhaps it is only worth noting further that the need to monitor interventions such as restitution programs

is of fundamental importance. Some years ago, the British command paper known as the Seerbohm Report (Great Britain, 1969, para. 455) well stated the essential need for such evaluation work: "It is both wasteful and irresponsible to set experiments in motion and omit to record and analyze what happens," the Report noted: "It makes no sense in terms of administrative efficiency, and, however little intended, it indicates a careless attitude toward human welfare."

IV. CONCLUSION

Restitution, it seems to me, is clearly an idea that merits a serious test in terms of its ability to alleviate some of the severe problems besetting efforts to deal with crime and criminals in the United States today. It may bring about better feelings in citizens about the quality of justice in their country; it may prove of value to victims, and it may help criminals to appreciate the nature of the harm they inflict on others. It may also serve to alleviate offender's alienation from a law-abiding existence. The conferees throughout the Symposium took pains to stress that they did not view restitution as a panacea, but rather saw it as a possible meliorative approach. They did not want to oversell the idea, and then have to deal with unfulfilled aspirations. Instead, they preferred to promise little, but to hope for much more - and to see what happens.

It is interesting that Minnesota, the site of the First International Symposium on Restitution, is the only state in the United States - and, indeed, the only jurisdiction in the Anglo-Saxon legal world - where in a criminal trial the defense has the last word to the jury (Minn. Stat. 631.07; cf. Kunkel and Geis, 1958). It seems appropriate, then, to conclude my observations on the preliminary hearing that restitution has undergone in Minnesota these last two days with a positive note in defense of the concept. That note would suggest that restitution appears to offer some hope that an element of empathy might be introduced into criminal justice business. It seems to me that the failure of the offender to identify his interests with those of the victim represents the worst horror of predatory criminal activity, and its worst threat to a decent way of life. In China, urban lawbreakers sometimes are sentenced to do time in the countryside so that they may absorb the spirit and the ethos of persons who are regarded as heroic by the state. This procedure related to the perceived need of a healthy society to close the distance between its peoples; to create feelings of relationship and common purpose, so that one group does not consider itself free to exploit another. It is undoubtedly easier to attempt to force empathy through the use of authoritarian tactics. Restitution may represent in a democratic state a step toward the same end, that of creating sympathetic bonds among people. It certainly deserves a chance to demonstrate if, in fact, it can fulfill this crucial purpose.

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APPENDIX

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