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Study Guide

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Restitution and Community Service

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Restitution's Ancient Roots

Court orders to pay restitution or perform community service as a penalty for crimes are being touted as new and innovative sentencing options, but these practices are rooted in practices that are far from new. Requiring offenders to compensate victims for their losses was customary in both ancient civilizations and in the less developed societies we often call "primitive." Victims, or their kin, typically took the lead in organizing the communal reaction to lawbreaking, and the desire for compensation was probably at least as common as the urge to retaliate.

Victim restitution fell into disuse when victims lost their central role in the penal process, a development that occurred when formally organized governments emerged and asserted their authority. Kings and their ministers defined a crime against an individual as a crime against the state, and the machinery of the state assumed the responsibility

for administering criminal penalties. Victims desiring compensation were referred to the civil courts. Although judges here and there may have continued to order restitution payments as an adjunct to a criminal sanction, it is fair to say that restitution had effectively vanished from criminal law and procedure in Western societies by the 19th century.

Contemporary Restitution and Community Service

The idea resurfaced in the mid-1960's. Penal reformers advocated the use of two different types of restitution-oriented sanctions: direct compensation of the victim by the offender, usually with money although sometimes with services ("victim restitution"), and unpaid service given not to the victim but to the larger community ("community service").

Community service sentences were formalized in the United States when judges in California's Alameda County Court devised, in 1966, a community service sentencing program to punish indigent women who violated traffic and parking laws. Too poor to pay a fine, these women were likely to be sentenced to jail. But putting them behind bars imposed a hardship on their families. By imposing community service orders, the courts broadened their store of available penalties, extracted punishment from the offenders, lightened the suffering visited upon their innocent families, avoided the cost to the public of imprisonment, and produced valuable services to the community at large. As Alameda County's judges gained experience with the new sentencing option, they broadened the program to include male offenders, juveniles, and persons convicted of crimes more serious than traffic or parking violations.

Community service sentences were given a big boost when the British Government instituted a nationwide program in 1973. Within a few years, tens of thousands of offenders throughout the United Kingdom were placed on probation to work off community service obligations. The program

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Punishment for crimes has traditionally been thought of as "paying a debt to society," but in the case of restitution and community service, this is more than a figure of speech. Restitution demands a payment by the offender to the victim, and community service demands that the offender perform a specific number of hours of work on community projects.

demonstrated the feasibility of using the sentence on a large scale, and similar programs sprang up in the United States and other countries, including Australia, New Zealand, and Canada.

Victim restitution programs soon came onto the U.S. scene. In 1972, the Minnesota Restitution Program—probably the first such effort—gave prisoners convicted of property offenses the opportunity to shorten their jail stay, or avoid it altogether, if they went to work and turned over part of their pay as restitution to their victims. Courts throughout the country adopted the idea, modifying it in various ways, and began to incorporate restitution agreements into their sentencing orders.

Today, the most common practice is for the courts to determine the nature and extent of the restitution to be ordered and to impose it as a condition of probation. In perhaps a third of the programs, the scenario resembles that shown in the Crime File program. Prior to sentencing, judges refer willing offenders and victims to court-appointed mediators to negotiate agreements specifying how offenders will compensate victims for their losses or injuries. These agreements are imposed as a condition of the sentence.

In many jurisdictions, victim restitution and community service result from an understanding among all parties—judge, prosecutor, offender, and victim—that criminal charges will be dropped once restitution is made or community service is performed. This practice is consequently not a sentencing alternative at all but a procedure for diverting the defendant from further prosecution.

Many critics are troubled by these pretrial diversion practices because courts or prosecutors sometimes obtain what amounts to a sentence from persons who, in many instances, might not have been found guilty had they exercised their right to full-blown adjudication. The preferred procedure, in the eyes of these critics, is to limit restitution or community service obligations to sentences imposed after guilt has been formally established.

Supporters, however, argue that diversion is beneficial precisely because persons not yet wedded to a life outside the law can avoid the stigma associated with a conviction and, consequently, may more readily become law abiding once again. Ultimately, whether one values or disapproves these diversion procedures depends in large part on how they are used and for what types of defendants.

Since the end of the 1970's, the number of community service and restitution programs has increased dramatically. To cope with a growing victims movement, toughened sentiments toward drunk drivers, and jail and prison crowding, State and local governments across the country are rapidly expanding the availability of both types of programs.

A recent survey estimates that there are at least 500 to 800 programs of different sizes for juvenile offenders in this country. No surveys have been done of adult programs in the past decade, but it is probably safe to guess that

250 to 500 programs serve the criminal courts. With increasing frequency, judges in jurisdictions lacking formally organized programs are also fashioning restitution and community service sentences of their own.

Even though community service and restitution have become more popular in recent years, it is important to recognize that they have still established little more than a beachhead in the American courts. Only a small minority of the courts in this country order either of these sentences with any regularity, and the proportion of offenders receiving them is even smaller. Most judges continue to rely primarily on the few sentencing options that have long been available—imprisonment, fines, probation, and in some States, suspended sentences or their equivalent.

Why Use the Sentences?

One barrier to broader acceptance of victim restitution and community service as criminal sentences has been the lack of agreement as to why the courts should impose them in the first place. What penal objectives should judges try to achieve with them? Should the courts punish offenders, rehabilitate them, or restrain them from committing more crimes? Should a sentence be imposed to serve primarily as a deterrent, a message aimed at would-be lawbreakers? Should victim restitution be supported because it has a beneficial effect on offenders or because it serves victims' needs? Or should the courts embrace these sentences as substitutes for imprisonment in the hope that they are more constructive and less costly to the taxpayer?

The answers to the preceding questions affect the choice of offender to be given the sentence, the nasty or rewarding nature of the work to be demanded, the burdensomeness of the financial restitution demands, and the strictness with which these sentences are enforced.

Many argue that these sentences can be all things to all people and thereby serve several penal purposes simultaneously. The missions of many programs are formulated in vague, abstract, and often idealistic terms. State laws usually provide little guidance because they are typically written to authorize use of the sentences for broad categories of offenses (for example, "all misdemeanors") without indicating *why* they are to be imposed. This results in considerable diversity of practice from one courthouse to another, and not infrequently, confusion within a single courthouse regarding the proper and acceptable place of these sentences.

However, this multiplicity and imprecision of goals is often a great advantage when the sentences are introduced into courts, because different judges may impose them for different reasons. Whether this will lead to the permanent establishment of these sentences is an open question.

One impulse animating restitution and community service sentencing has been the hope and belief that both may contribute to the rehabilitation of offenders. Disciplined work has long been considered reformatory. In addition, offenders performing community service may acquire some employable skills, improved work habits, and a record of quasi-employment that may be longer than any job they've held before. Victim restitution, when it brings offenders and victims face to face, also forces offenders to see firsthand the consequences of their deeds and thus may encourage the development of greater social responsibility and maturity. Some theorists have also argued that offenders' psychic balance and self-esteem are restored when they compensate their victims directly or serve the community more generally.

This program brought to you by the National Institute of Justice, James K. Stewart, Director. The series produced through a grant to the Police Foundation.

But Do They Rehabilitate?

Unfortunately, very few studies have been done on the effect of restitution and community service on offenders. One study evaluated experiments in four different American juvenile courts. Youths were given at random either traditional sanctions or restitution orders, some of which included a community service obligation. In two of the four courts studied, juvenile offenders who were ordered to pay financial restitution or to perform community service had lower recidivism rates than those given other types of sentences. In the third court, the number of cases was too small to draw strong conclusions, but the findings suggested a similar effect. In the fourth court, there was no difference in subsequent criminality.

The effects of ordering adult offenders to make financial restitution have not been examined with any rigor, but the few existing studies of community service show less promising results than did the juvenile court study described above. British offenders ordered to perform community service were reconvicted at a relatively high rate (35 to 45 percent, depending on the study) within a year of sentence, a rate that was found to be roughly the same for comparable offenders who received either prison sentences or other nonincarcerative sentences.

Similarly, offenders ordered to perform community service in New York City were rearrested no less often (and no more) than offenders of similar backgrounds who were sent instead to jail and subsequently released. One study of community service in Tasmania claims to have found more positive effects, but weaknesses in that study's research design make it hard to accept this conclusion with confidence.

Given the paucity of systematic attention to the effects of restitution and community service sentences, it is difficult to draw any strong conclusions about their effects except to say that we have no evidence that using them makes much difference in the subsequent criminality of adult offenders. For juveniles, the sentences may have some positive effect, for reasons not understood. We do not know much about whether serving these sentences has positive effects on other aspects of offenders' lives, such as their employment.

Substitutes for Imprisonment?

Both sentences are often advocated as sensible alternatives to incarcerative sentences. It is commonly believed that jails and prisons are schools for crime and that the ability to live in the free community deteriorates as one adjusts to life in the abnormal society of prisoners. As noted above, however, we have no evidence that these nonincarcerative sentences do any better or worse than imprisonment for adults with respect to later criminality. However, the studies tell us if prison or other sentences have greater deterrent or incapacitative effects than community service or restitution; these issues are addressed briefly below.

Is there consequently not a case for preferring use of restitution or community service to imprisonment, if only because imprisonment costs anywhere from \$15,000 to \$40,000 per prisoner per year and because it can cost as much as \$80,000 to \$100,000 to build a single cell? Many State and local governments, laboring under the burden of rising prison and jail populations, have been persuaded by this argument and have for this reason created community service and restitution programs for the courts to use.

Encouraging judges to substitute one of these sanctions for jail or prison terms has produced mixed and often disappointing results. Reducing the use of imprisonment is one of the explicit goals of the British policy, but research suggests that British judges use the community service sentence more often than not in instances when another nonincarcerative penalty would have been imposed. Very few of the American programs have been studied systematically, but the preponderance of young persons, white-collar offenders, and first offenders in these programs suggests that the likelihood of a jail sentence would have been very small for many of them.

Judges are reluctant to impose restitution or community service—or any other relatively unconventional sanction—if they believe that doing so does not serve their particular sentencing goals. To the extent that judges sentence persons to jail to incapacitate them temporarily—to take them out of circulation for awhile—community service or restitution will probably not be seen as an acceptable alternative. If judges are primarily motivated to rehabilitate offenders, these sanctions may appear to be attractive options, even though their effectiveness is not well supported by extensive research. But judges, in many instances, do not send offenders to jail to rehabilitate them. More often than not, they seek some mix of sanctions for the sake of punishment (because offenders deserve it), for the sake of deterring offenders or others from future criminality (to scare them straight), and for incapacitation.

Having to pay restitution or to perform unpaid labor can be seen as punitive, and *is* punitive. Both sentences create obligations that require some effort and that need to be backed up by coercive authority. If judges are to substitute these sentences for prison terms, they want to know that the conditions are enforced strictly. They also want to be sure that somebody has clear responsibility for seeing that the orders are carried out and that noncompliance is reported to the court. And judges may want these sentences to send this message to offenders: "You are being punished for your deeds. You must take responsibility for your actions and you must not break the law again, upon pain of further punishment." One attempt to "market" a punitive community service sentencing alternative to the courts may be found in a project conducted by the Vera Institute of Justice in New York City. The project demonstrated that judges will accept a nonincarcerative sentence as a substitute for jail if work obligations are enforced and are in essence punitive.

Which Way the Future?

Community service and victim restitution are important additions to the American courts' list of sentencing options. But their future will depend in part on how—and whether—we resolve the larger debate about the way we should respond to criminals. Beliefs about our ability to control crime were shaken badly by rising lawlessness during the 1960's and 1970's. Legislatures, courts, and the public have lurched from one proposed solution to another. In this unstable world, it is impossible to predict if these new sentences will find an enduring place in the courts or will pass out of existence as yet another fad. If we want to increase the odds that these sentences will become "institutionalized," probably the surest course is to clarify why judges should impose them, under what conditions, and within what limits. Reaching agreement on these questions will not be easy.

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Discussion Questions

1. To what objectives (deterrence, incapacitation, rehabilitation, retribution) should criminal court judges give priority when determining the sentence to impose on adults convicted of property crimes? On property offenders with long records? On juvenile offenders charged with serious lawbreaking? For crimes involving threatened or actual violence against persons?

2. For what kinds of crimes and for what kinds of offenders should the courts order victim restitution? Community service?
3. What type of labor should offenders given community service perform and why? How many hours, days, or weeks should be required, and what rationale should be used in determining this?
4. Under what circumstances would victim restitution be preferable to a jail sentence? Why? And community service?

This study guide and the videotape, *Restitution and Community Service*, is one of 32 in the Crime File series of 28½-minute programs on critical criminal justice issues. They are available in VHS and Beta formats for \$17 and in ¾-inch format for \$23 (plus postage and handling). For information on how to obtain *Restitution and Community Service* and other Crime File videotapes, contact Crime File, National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850, or call 800-851-3420 or 301-251-5500.

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