



Northwestern Law

Creative Restitution. A Broader Meaning for an Old Term

Author(s): Albert Eglash

Source: *The Journal of Criminal Law, Criminology, and Police Science*, Vol. 48, No. 6 (Mar. - Apr., 1958), pp. 619-622

Published by: [Northwestern University](#)

Stable URL: <http://www.jstor.org/stable/1140258>

Accessed: 21/07/2013 08:35

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at

<http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



Northwestern University is collaborating with JSTOR to digitize, preserve and extend access to *The Journal of Criminal Law, Criminology, and Police Science*.

<http://www.jstor.org>

CREATIVE RESTITUTION

A BROADER MEANING FOR AN OLD TERM

ALBERT EGLASH

The author is a member of the teaching staff in the Department of Psychology at the State College, La Crosse, Wisconsin. From August, 1954 to September, 1956 he was a member of the Detroit Commission on Children and Youth. In that connection he was the founder of Youth Anonymous, a mutual help program for juvenile delinquents and youthful offenders.

Professor Eglash acknowledges his indebtedness to Gordon Boring and Milton Huber of the Boys' Republic in Detroit, Joseph Landeau of the Detroit Commission on Children and Youth, Robert Scott, of the Michigan Department of Corrections, and Walter Thoresen of the Wisconsin State College at La Crosse for encouragement and guidance in preparation of this paper.—EDITOR.

Restitution is a synonym for reparations or indemnity¹:

1. It is a financial obligation.
2. Its extent is limited.
3. It is court-determined.
4. It is an individual act.

In this paper I want to describe a meaning of restitution which distinguishes it from reparations or indemnity:

1. It is any constructive act.
2. It is creative and unlimited.
3. It is guided, self-determined behavior.
4. It can have a group basis.

While this broad meaning of the term is not in the literature, the process itself is now being used in our courts, prisons, and corrections departments. It contains the best features of punishment (deterrence; justice) and of clinical treatment (recognition of psychological bases of behavior; returning good for evil). Four characteristics of restitution which distinguish it from punishment will be illustrated with actual instances of its practice.

RESTITUTION IS ANY CONSTRUCTIVE ACT

While punishment must be painful or uncomfortable, it need not be a constructive contribution. The essence of restitution, on the other hand, is a constructive effort, an offender giving something of himself. As currently used, the term can refer only to money. In theory, it may have a broader meaning, and in current practice this broad meaning may be found.

¹ BARNES, H. E. AND TEETERS, N. K., *NEW HORIZONS IN CRIMINOLOGY*. 1955. pp. 822-823; RECKLESS, W. C., *THE CRIME PROBLEM*. 1955. p. 559; SUTHERLAND, E. H. AND CRESSEY, DONALD R., *PRINCIPLES OF CRIMINOLOGY*. pp. 277-279.

Instance. In Michigan and in Wisconsin, the State Department of Corrections has a forestry camp program, where convicts have an opportunity under conditions of minimum security to contribute to the conservation of the states' natural resources.

These camps are also conserving human resources. Even though they operate with a punitive framework, they are a big step away from "serving time" and towards a program of restitution.

RESTITUTION IS DAMAGE-RELATED AND UNLIMITED

In punishment, an offense is solely against society. Society is concerned about an insult to its autonomy, and an offender is told he must pay his debt to society. Thus, if a man steals a car and damages it, he may be sentenced to prison. Society is usually not concerned about the damage to the car or the loss to the car-owner.²

In restitution, as in reparations, concern about the damage and about the victim is a first concern. A constructive, redeeming act is directed first towards the victim. If a youth steals a car, drives it around till it's out of gas and leaves it, this is an offense against the car and its owner. The youth is encouraged to take constructive steps in that direction, to give where he has taken.

First, he may return the car undamaged, or repair any damage, and reimburse for gas used. This is a simple return; reparation. It is the first mile. "And whosoever shall compel thee to go a mile, go with him twain." The first mile is under compulsion—from authority of the court, from the expectations of friends and family, from con

² SUTHERLAND AND CRESSEY, *loc. cit.* pp. 277-279.

science. The first mile is punishment, or reparations or indemnity, or atonement. But the offender has not yet squared or redeemed the situation, making it good.

Only a second mile is restitution in its broad meaning of a complete restoration of good will and harmony. Creative restitution requires that a situation be left better than before an offense was committed. This goes beyond what any law or court requires, beyond what friends and family expect, beyond what a victim asks, beyond what conscience or super-ego demands.

An auto thief can offer to wash the victim's car each Saturday for a month, or to Simonize it, or repair some mechanical difficulty. He can help the owner understand the precautions he can take to prevent a recurrence of the theft by others. He may aid in the rehabilitation of other actual or potential offenders. Restitution has no limit. Reconciliation with the victim of an offense creates a healthy, giving relationship.

Note that the restitutorial act has a poetic justice about it. True, an auto thief could offer to mow his victim's lawn each week for a month, but car-washing is directly related to the destructive act. I have a hunch that this relatedness has an important theoretical implication. By being in kind, restitution provides a substitute outlet for the same conscious needs and unconscious emotional conflicts which motivated the offense.

Instance. In Detroit, three boys stole a railway locomotive and drove it up and down the tracks. Judge Nathan Kaufman sentenced the boys to visit the tracks daily for three weeks. They were to observe railway procedures, the dangers of their own act, and were to write up their observations.

Like the forestry camps, this instance, even though it contains some aspects of punishment (being mandatory), is a big step towards a restitutorial process. If the locomotive, as a vehicle or as a symbol of masculinity and power, satisfies some need, then that need may also be satisfied in a more constructive manner as the boys perform their restitutorial act. Restitution may appropriately be part of a clinical treatment program, and replace the distorted restitution which occurs spontaneously in ego disorders.

What about homicide? Restitution can hardly be made to the victim, although it might be made in some way to his name, or in this name, some sort of memorial, including a living memorial.

However, restitution in the sense of financial responsibility may be made to his widow and children.

Instance. In Detroit, a 20-year old youth ran a red light while speeding and crashed into another car, fatally injuring its driver. The widow pleaded with Judge Watts: "He is a nice boy, and his family has been kind to me. I know he didn't mean to kill my husband. It was an accident. He has voluntarily run errands for me. He does so many things to make life easier for us. He has paid \$700 of a \$2130 bill at the rate of \$16 a week," Maximum sentence is five years in prison and a \$5000 fine. The Judge fined the youth \$500, instructed him to pay hospital and funeral expenses, and placed him on five years probation.

The Swedish Parliament enacted a law in 1926 requiring a murderer to pay reparations to his victim's dependents³.

Restitution is more clearly distinguished from reparations when we realize that life can be given as well as taken.

Instance. In Ohio, penitentiary inmates are serving as volunteers in cancer and polio experiments.

These are men, some probably classified as "hardened criminals," already paying their debt to society by imprisonment, who have elected to offer a constructive restitutorial act.

HOW IS THE RESTITUTORIAL ACT DETERMINED?

In punishment, a judge makes a decision and this decision is imposed on an offender. In reparations, the same court-determined process occurs. If the same technique is used in restitution, then restitution is no longer a creative act. Some of its growth value is lost, and it may even backfire:

Instance. In Wisconsin, a sheriff saw a beer can thrown out of a car. He stopped the car and found five teen-agers and two empty 6-pack beer cartons. He ordered the youths to retrace their route, to pick up the 12 empty beer cans, and to return them to him. An hour later they arrived with the cans and explained the delay: "We only found 11 cans. We had to go into town and get another can."

In restitution an offender himself participates in determining what is an appropriate step for him to take, in terms of his talent, his abilities and

³ SUTHERLAND AND CRESSEY, *loc. cit.* pp. 277-279.

limitations, and the situation. Restitution is a creative, not a mathematical, process.

Instance. In Evansville, Ind., teenagers saw a newspaper ad requesting public backing for pay raises, and picketed City Hall, demanding better pay for the police. They explained that "Some of us have been giving the police trouble. We saw the ad and thought we'd switch sides."

In Seattle, Wash., a teen-age boy stopped to change a flat tire for a woman, and declined pay. "He said he wants to combat the bad publicity teen-agers get."

Although restitution is a voluntary act, an offender needs guidance. His initial thinking is in terms of avoiding or of enduring punishment, and of vengeance. His understanding of what is involved in restitution will not grow overnight. Like reparations, restitution is appropriately used in connection with probation. Only a skillful guide can encourage a man to go a second mile. I suspect that the best guide is a man who has himself gone through it

A man who, as a result of guidance, finds the zestful satisfaction which comes from creative restitution will continue this process. On the other hand, sometimes an offender who is told that by suffering punishment or paying reparations he pays his debt to society and to his victim, feels that the score is now even, so that he is free to commit further offenses. Restitution, unlike punishment and reparations, is for life. It may erase stigma.

Instance. Tip paid his debt to society with 10 years in prison. During his last year, he discovered Alcoholics Anonymous and religion. While on parole, and with the writer's help, Tip founded Youth Anonymous, a self-help program for juvenile delinquents and youthful offenders. Working a 40-hour week as a truck-driver, he devoted evenings and week-ends to this youth work, paying expenses from his own pocket. The Detroit Commission on Children and Youth has nominated Tip for a Marshall Field Award.

In La Crosse, Wisconsin, Adults Anonymous, with leadership similar to that of Youth Anonymous, meets weekly in the county jail.

Because restitution is a voluntary, creative, life-long task, it is a growth process. In terms of psychological principles of learning, a life-long program of restitutive behavior may be a counter-habit to impulsivity.

RESTITUTION CAN BE A GROUP PROCESS

In punishment, a man stands alone. But restitution is a creative act, and the way is open for group discussion, which is more creative than one man's ingenuity. If several youth have committed similar offenses, they can discuss among themselves, possibly with the victims of their offenses, appropriate restitutive measures for each of them to take.

This doesn't mean all would make the same restitution. The group does not impose any particular restitutive step upon any individual in the group, any more than authority can impose restitutive steps upon an individual. The group can only stimulate, suggest, support, and guide.

Because restitution can be a group process, time demands on leadership, e.g., on probation officers, can be reduced. Group probation seems especially appropriate when probation is seen as an opportunity for guided restitution. Probationary guidance may be easier with a group than with an individual. In committing an offense, what a youth would not do alone he tackles when supported by his group. In making restitution, what a youth could not do alone he may tackle with the support of his group.

A form of restitution always available, whether one has committed an offense, or has inflicted accidental damage, or has himself suffered a wrong either from others or from fate, is to seek out and to help others in the same boat. Out of this seeking and sharing, fellowship develops.

Instance. Alcoholics Anonymous, as part of its 12-step program of continuing personal growth, includes a willingness to seek out those persons whom the alcoholic has hurt, and to make amends to them. Another aspect of restitution in the AA program is the alcoholic's willingness, day or night, to inconvenience himself in order to bring this program to another alcoholic.

SEMANTICS

Friendly critics have suggested that, in place of borrowing an old term like restitution for a new process—pouring new wine into old bottles?—, it might be better to find another term. One term suggested is restoration. Another is redeeming or redemption. I can see the semantic problem, but I have no satisfactory solution to offer. My own preference is to use restitution in this broader sense, and to use reparations or indemnity for the narrower term of a mandatory financial settlement.

CONCLUSION

Restitution is a form of psychological exercise, building the muscles of the self, developing a healthy ego. One man's opinion!

In the behavior disorders (alcoholism, delinquency, addiction, perversion, etc.), the goal of any rehabilitation program is to strengthen the ego, to build self-control and judgment, and to help an impulse neurotic to find constructive channels of self-expression. Skillful guidance towards restitutional behavior may accomplish this goal. Similar guidance has proven effective in breaking "fixated" behavior in laboratory animals subjected to stress (Maier). While punishment can increase fear-

motivation, guidance and restitution increase the capacity for choice and thus may bring release to an impulse-ridden individual.

REFERENCES

1. DOCKAR-DRYSDALE, BARBARA. *Some aspects of damage and restitution*. BRIT. J. DELINQUENCY, 1953, 4, 4-13.
2. EGLASH, ALBERT. *Youth Anonymous*. FED. PROB. (in press for 1958)
3. KEVE, PAUL & EGLASH, ALBERT. *Payments on a "debt to society"*. N.P.P.A. NEWSLETTER, 1957, 36(4), 1-2.
4. MAIER, N. R. F. *FRUSTRATION*. McGraw-Hill, New York, 1949.
5. POREMBA, CHESTER D. *Group Probation: An Experiment*. FED. PROB. 19, 3, 22-25.