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# JAIL BULLETIN

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NUMBER 40

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The Jail Bulletin is a monthly feature of the Crime Commission Update. The Bulletin may be used as a supplement to your jail in-service training program if officers study the material and complete the attached "open book" quiz. The Bulletin and quiz may be reproduced for use by your staff. We welcome any jail training materials you would like to contribute to the Bulletin.

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## RESTITUTION AND COMMUNITY SERVICE - PART I

By Douglas C. McDonald  
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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 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 reformative. 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.

## QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in-service training each year. The Jail Bulletin may be used to supplement in-service training if an officer studies the Bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspection.

SUBJECT: RESTITUTION AND COMMUNITY  
SERVICE - PART I

NAME \_\_\_\_\_

NUMBER: 40

DATE \_\_\_\_\_

1. Requiring offenders to compensate victims for their losses was very popular in 19th century Western societies.

\_\_\_\_\_ TRUE                      \_\_\_\_\_ FALSE

2. List the two types of restitution oriented sanctions that penal reformers advocated in the mid-1960's.

\_\_\_\_\_  
\_\_\_\_\_

3. What state started the first victim restitution program in the U.S.?

\_\_\_\_\_

4. Victim restitution may encourage the development of greater social responsibility and \_\_\_\_\_

5. Community service sentences were first used in Alameda County, California with this type of offender. (Circle the correct answer.)

- A. Juvenile drug abusers
- B. Adult armed robbers
- C. Indigent women with traffic violations
- D. Crazy axe murderers and misdemeanor chicken thieves.

CREDIT: 1/2 HOUR CREDIT FOR JAIL IN-SERVICE TRAINING REQUIREMENT.

ANSWER SHEET SHOULD BE RETAINED BY JAIL ADMINISTRATOR.

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DIRECT COMPENSATION OF THE VICTIM BY THE OFFENDER (OR VICTIM RESTITUTION)

UNPAID SERVICE TO THE COMMUNITY (OR COMMUNITY SERVICE)

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MINNESOTA

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