

# RESTITUTION IN THE JUVENILE JUSTICE SYSTEM

(Paper given by Mr. D. A. C. Smith, Principal Child Care Officer (Residential Care Services), Department of Children's Services, Queensland at Queensland Branch Seminar on Juvenile Crime and Restitution, 17th May, 1978.)

Restitution is a very old concept. Throughout history its form has varied and its working and effectiveness have interacted with and been changed by developments in modern justice systems.

The subject of restitution has not, outside of this Seminar, been discussed very much in this State and in the juvenile justice system the main debate has been in relation to the lack of effective enforcement mechanisms. I will return to that aspect later.

When one looks into the subject it is extremely topical throughout the world and there is much current debate on restitution, reparation and compensation. I don't propose even attempting here to review the literature on the subject, merely to refer to a few aspects, raise some problems and then share some observations and thoughts.

Diversion is a concept being given a great deal of attention in relation to juvenile justice. This is a very useful concept and one to which we should give more attention as there is ample evidence that labelling someone through streaming him into the system does much to confirm criminal behaviour and identity, making change less likely. And the earlier in one's life this occurs, the less likely are rehabilitation efforts to be successful. This concept is so important I thought it should be mentioned. However, I don't wish to pursue it too far off our current topic.

My main purpose in raising the concept of diversion was that often it is linked conditionally to the making of restitution. So the police or the prosecutor may decide not to proceed if any offender agrees to make restitution. This system is inclined to be discriminatory in that it more acceptable in relation to a first offender, or where a child or his parents has adequate and ready financial resources or where a child has very interested and concerned parents.

At a further stage into the system a Magistrate or Judge may discuss a case where an offender agrees to make restitution, or he may initially adjourn a case to give opportunity for a promise to make restitution to be fulfilled. In our present system I think these procedures are useful for some cases.

Another focus that is having an impact on thinking in relation to restitution and compensation, is the area of victimology. Adequate compensation to a victim, either through restitution by the offender or payment by the State is one area of consideration. Another is the bringing of victim and offender together in a restitutive relationship. Some claim this to be therapeutic for both victim and offender.

I very much favour exploration of the relevant parts of the concept of victimology in relation to some juvenile offenders. However, there are many issues this leads us to face, and to mention just a few —

- are there some situations where a direct victim-offender interface is courting danger?
- who should initiate and supervise direct victim-offender restitution?
- what about when a victim needs very speedy recompense?
- how does this relate to insurance payments?
- what about offences one writer has referred to as "victim-induced, victim-invited and victim-precipitated criminality" (Fooner in Drapkin and Viano (eds), 1974 p. 231)?

Restitution in relation to minor property offences (petty stealing, vandalism) is possible even for juveniles in a direct relationship to loss or damage. However, there are offences where, especially for juveniles, total restitution is impossible. This includes major property offences where damage or loss is severe (e.g. some arson) and the offences other than property offences (e.g. Assault, Rape, Homicide).

There needs therefore to be a distinction made between — full restitution token (or partial) restitution and symbolic restitution (referred to by Dr. Seymour in his paper as Reparation).

We have had some limited experience with symbolic restitution as part of a community work programme for juvenile offenders. This was not the primary purpose of the programme, but for some, it became a very real aspect and motivation for their participation.

The primary purposes were related to my concept of the value of restitution for juvenile offenders. Many of them are alienated from society and have few or no acceptable points of contact or communication with any group recognizable as their community. The programme was firstly a community involvement, one designed to be a bridge across this alienation through providing some points of positive contact and participation in the community.

The main programme was for two groups. One group was an offender group; the other mixed offenders and non offenders as equal participants in all phases of the programme, including project planning.

Some of the offender participants saw what they were doing as repayment for what they had done. Some certainly for the first time, experienced approval, acceptance and equality in relationships and status with people in authority.

Recently I received a call from a Probation Officer interstate who was preparing a pre-sentence report on a young man. He wanted from me some details of our earlier contact with him to complete the report. As part of the information I gave, I mentioned his participation in the community work programme. Immediately the Probation Officer commented that out of all the life and social history he had gone through with this young man, his participation in the community programme was "the one highlight of his life". The point this conveyed to me was that perhaps we had given this young man a real point of contact with and entry into the community. If that was the highlight of his life, to have been involved and received such comment was a humbling experience and also says something of the grave responsibility and opportunity some of us have.

This is the kind of possibility which Bergman is talking about in writing on Community Service in England when he says —

"this device, probably more than any other, provides a way by which the offender and the community may become reciprocally involved and reconciled . . . (i.e.) satisfies the rehabilitation aspect more so than fines, probation or custodial sentences, as there is real reparation for the wrongs that have been committed." (Gallaway, et al (eds).)

Some further comments of Bergman in relation to the attitudes of offenders are —

"Many felt that it helped to develop a close personal relationship with others (such as Community Service volunteers) as well as significantly "giving" something back to society rather than taking from it. The fact that an offender can help another who may be disadvantaged or handicapped gave many of them the satisfaction that they were not entirely helpless. The enthusiasm with which many of the offenders went about their tasks showed that they were tremendously committed and many of them stated they would want to carry on with the voluntary work even after fulfilling the court order."

While this writer is commenting on court-ordered community service, as an alternative to imprisonment and our experience was voluntary participation during a custodial sentence, many of his comments do describe our experience.

For example —

- (a) it did give opportunity for close personal relationships to develop with project supervisors, "fellow workers", and the handicapped at the work locations;
- (b) they felt they were giving something back, to quote from one report "It makes you realise a lot of things. It is a good experience because you are giving something instead of receiving all the time";
- (c) there was a great deal of empathy and spontaneity between participants and handicapped persons they came into contact with;
- (d) participation was certainly very enthusiastic and they worked very hard;
- (e) commitment to projects was strong, some carried out further work voluntarily after projects concluded and some still call regularly to see if there is another programme on, offering to participate or help with organisation of it.

There was a valuable experience which should be properly evaluated, built upon, and used as a regular option within the treatment or programme plan for selected juvenile offenders.

Mostly our experience with restitution is court-ordered restitution. Before sharing some thoughts on this, perhaps I could mention some principles noted by two other writers.

One (Jacob, referring to Egash, in Drapkin and Viano (eds) 1974, P. 218) states that restitution —

- requires effort by the offender
- as a constructive activity may contribute to self esteem
- alleviates the guilt and anxiety which often precipitates further offences

He also makes the point that the offender should decide himself if it is to have rehabilitative value.

And, complementary to these views, another writer (Williams and Fish in Drapkin and Viano Vol. 11 (eds), 1974 P.P. 157/8) claims restitution to have an educational and therapeutic impact on an offender through

- making him vividly aware of what he has done, and

- allowing him to maintain a sense of responsibility for his actions.

Perhaps now we should look at the local situation, beginning with the provisions relating to restitution for juveniles.

Section 62(i)(c) of the Children's Services Act, 1965-1974 provides, as part of the code for dealing with juveniles in this State who are guilty of offences, that the court —

"May order the child or his parent or guardian (other than the Director), or any two or more of them, to pay compensation or make restitution in respect of damage or loss occasioned by the offence, or order the child to reinstate property damaged or defaced in the course of the offence."

This provision obviously is offender oriented (with little implied victim orientation) and relates to such objectives as teaching the offender a lesson or that the offender must pay for his misdeeds.

Other than this, restitution has been seen as a civil matter and such an action against a child is probably not very beneficial to either party.

Restitution is often ordered in courts, but there are many problems in practice. These include —

1. Large restitution orders against school-age children (such are unable to be paid unless parents can pay them — and this violates the underlying principle of responsibility for actions; or a child sees the impossibility of his situation and gives in, losing respect for the court, and authority and adopting a couldn't-care-less attitude.)
2. The method of calculation of amounts, (usually the court is advised by the Police who have received verbal advice from the victim. The first knowledge is when it is mentioned in court at the end of the case and after the child has pleaded guilty. The child is in no position to challenge amounts, sometimes there is a feeling of unjustice or that the amount is inflated; there is also the question of diversion of responsibility between conjoint offenders.)
3. The dilemma of enforcement. (Section 62(2) is difficult to understand, but it provides that the Clerk of the Court files a copy of the order in the Magistrates Court as the first step towards enforcement. It seems to me that there is little that can be done then in relation to a child, unless the child is employed and has an independent source of income.)

To continue on the issue of enforcement, this is obviously ineffective, as there are many restitution orders outstanding, with little hope of their being fulfilled. Enforcement of restitution for juveniles it seems to me, should be a non-issue. For restitution to be effective it

must be voluntary and the child must have or be given access to the ability to pay (or work if work is involved). Enforcement by the threat of incarceration is irrelevant and undesirable. It would be against the spirit of the legislation and could in no way be entertained today as part of any reasonable juvenile justice system.

Another observation on court-ordered restitution is that it is most effective (and probably quite useful) for once only offenders who are employed, (e.g. the young man who gets drunk at a party and smashes a window or the telephone box on the way home). And in these cases, restitution is usually paid. Other more regular offenders or more serious offenders do not have the access to resources to honour an order for restitution as they lack the supports necessary, often come from situations of poverty and disadvantage and have been streamed into the system at a young age. They are particularly today, unemployable and find themselves in institutions or homeless in the community, flat out even being able to retain eligibility for the dole. For them, court-ordered restitution is meaningless and further alienates them.

Children will, especially in court, readily agree to restitution as they hope this will keep them out of an institution.

"The Government will pay." "I don't steal from poor people only from the rich, they can afford it." Such comments I am sure we have all heard. These and the other comments I have just made lead me to believe that except for the once-only group I have referred to, court-ordered restitution, particularly without full pre-sentence reports, is ineffective and doomed to leave a lot of outstanding debts.

I support the concept of restitution, but I feel it should be handled within the casework context both at pre-sentence and post-court phases. I believe it should be handled through agreements and specific contracts being negotiated within this context and with sufficient flexibility to account for slow growth in self responsibility, unemployment, etc.

There is plenty of room for experimentation in this area, both as an alternative to a custodial sentence and as part of such a sentence. David Biles in the book Crime and Justice in Australia which he edited, has anticipated such developments in Australia as service contracts and a more active participation by victims in court hearings.

One example that appears in the literature is the Minnesota Restitution Centre — for adult male property offenders, eligible after serving four months of their sentence. The restitution obligation includes development of a restitution contract, implementing it and maintaining direct contact with the victim. Group work, community resources and a gradual phasing towards living in the community and a lessening of contact with the centre are programme components.

Hudson and Gallaway (1974) have studied this Centre and their summary comments include —

"Sooner or later the vast majority of inmates come out to live in society, and too frequently the major effect of the prison experience has been to reinforce the individual's original difficulty in living responsibly with others. A clear hypothesis of the community-based Minnesota Restitution Centre is that, for many offenders, estrangement from society can best be handled by supervising the offender within the community itself and by actively involving the community. As planned and implemented, the centre's programme diverts offenders from the expensive and often dehumanizing atmosphere of the prison.

"Restitution is the focus and a major strategy of the centre's programme. It is used systematically to reconcile offenders with the victims of their offences."

As a further reference point for discussion and endeavouring to relate all this to our local situation I would like to refer to a survey by Schneider and others (1977) of the restitution practices in American Juvenile Courts. The conclusions of the survey were:

- restitution was in more general use than was thought
- there was strong support for restitution and belief in its effectiveness
- the problem of enforcement was not as critical as believed (mainly through restitution being a condition of probation)
- belief in effectiveness of restitution for reducing attitudes of recidivism and improving victim attitudes is high, especially where variety such as work restitution and community service is available
- the estimated extent of compliance with restitution requirements does not differ with socio-economic characteristics of the area, proportion of cases where restitution is used or type of programme. Compliance is high whether restitution was used frequently or seldom and is similar in situations where parents are prohibited from paying as compared with court which require the parents to pay if the youth is unable to.

This survey looks at attitudes of courts and officials. It lacks hard data on results of orders, but it provides some useful discussion points.

To endeavour to summarise, I think we are grateful to the Queensland Branch of the Australian Crime Prevention Council for the opportunity of having this topic debated. I have said we should give some attention to the practice area of victimology. I have also hinted at the need for legislative review so far as restitution for juveniles is concerned.

I think there are many limitations on the present single system of court-ordered restitution, and I feel it would be more effective if cases were remanded for pre-sentence investigation including the area of restitution, allowing sufficient time for work with the offender in this area. Further into the future, I feel restitution is best handled by a panel system rather than a court and recent comment I have heard on the South Australian system is encouraging in this area.

There is plenty of room for experimentation and the release of funds for this would be a major contribution. For example, I would like to see a juvenile restoration programme set up in this State incorporating the principles already discussed in this paper and including provision for —

- money restitution payments, and
- symbolic restitution projects based on knowledge gained from our earlier programme.

The chief aim of such a programme would be the rejoining or joining of young alienated offenders with their community.

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Delegates attending Queensland Branch Juvenile Crime and Restitution Seminar — Brisbane, 17 May, 1978.

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