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Cover Page Footnote
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The Role of Restitution in Juvenile Justice Systems

Anne Larason Schneider and Jean Shumway Warner*

One of the most dramatic changes in juvenile justice systems in the United States over the past two decades has been the increased use of restitution as a sanction for juvenile offenders. Restitution refers to actual repayment to the victim by the offender, or symbolic repayment in the form of community service work. In many communities, this change has been accompanied by a shift away from both treatment and punishment as guiding principles of the courts, and toward an emphasis on holding juveniles accountable to the victims of their crimes.

Restitution, as it has come to be practiced in the juvenile courts of the United States, reflects a trend toward increased adherence to a "justice" philosophy yet retains the traditional emphasis on rehabilitation. Many advocates of restitution believe that holding juveniles accountable is more effective than either treatment or punishment in promoting rehabilitation and reducing recidivism. These beliefs have been supported by carefully controlled field research.2

In spite of the initial promise of restitution, there are reasons to be concerned about its future role in juvenile justice and its continued effectiveness. This article will examine those reasons and con-

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1. The senior author has been conducting research on restitution and observing the restitution movement in the United States since 1976. Much of the historical account described here is from her personal experiences as: Co-Principal Investigator of the National Juvenile Restitution Evaluation, 1976-1982; Co-Director of the first National Juvenile Restitution Training Program, and Coordinator of the written materials and training curriculum for the RESTTA program (Restitution Education, Specialized Training, and Technical Assistance), sponsored by the Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, 1983-87.

2. For a review of these studies, see Schneider, Restitution and Recidivism Rates of Juvenile Offenders: Results from Four Experimental Studies, 24 Criminology 533 (1986).
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consider the factors necessary for the continued growth and success of restitution programs nationwide.

Political scientists have identified many reasons for the failure of public policies and programs. Three of the most important are: (1) reliance on a theory that proves to be incorrect; (2) poor implementation of ideas; and (3) inadequate resources. Research demonstrates that the theory underlying restitution is not the problem; there is something about the process of making restitution that reduces the probability of recidivism. The reasons might include the positive effects of employment, being held accountable, becoming aware of the consequences of crime, regaining self-respect and a positive self-image, being forgiven by the victim, or the close supervision that accompanies the restitution process. More importantly, research indicates that restitution programs work better than probation or short-term incarceration.

Why then the concern? Because “good ideas” may not be implemented well, and because the ever-decreasing budgets for juvenile justice may endanger the restitution programs, which are newer and less entrenched than other strategies. New restitution programs may not be started and some programs that are already in existence may be cut. There are reasons to be concerned that juvenile courts will not understand the basic principles and philosophy of restitution, and that they will implement what we have called “ad hoc” or “insurance” restitution programs, neither of which has any known positive effects on juvenile offenders. Ad hoc restitution has no formal structure and no orienting philosophy, rationale, or message to the juvenile; insurance programs simply take the dollars from the juveniles or their families and transfer them to the victims—essentially an accounting operation. Poor implementation or lack of resources could endanger the entire restitution movement in the United States, not simply by slowing its spread among juvenile courts, but also by calling into question the effectiveness of the concept itself.

Thus we consider it important to set forth the basic principles of restitution, to show how it differs from traditional juvenile justice treatment strategies, and to summarize the findings from field research. The major thesis of our article is that restitution represents a shift in the fundamental orienting principle of juvenile justice—

3. See generally Why Policies Succeed or Fail (H. Ingram & D. Mann eds. 1980).
4. See Schneider, supra note 2, at 545-51.
5. Id.
from a "medical" approach to an "accountability" approach. As such, restitution offers an alternative both to punishment and to treatment programs that may have become overly solicitous of, and ineffective for, juvenile delinquents of the late twentieth century. We also wish to emphasize that restitution involves much more than a simple order of repayment. Restitution carries with it a message to the juvenile, a set of specific tangible activities that the youth is expected to carry out, and a positive challenge to the juvenile to "do something good" for the victim.

I. The Development of the Traditional Juvenile Justice System

A. Origins of Juvenile Courts: The Doctrine of Parens Patriae

The first juvenile court was established by the Illinois legislature in 1899 as a means of diverting young offenders from the harsh and inhumane processes believed to be inherent in the adult criminal justice system of that era. Prior to that time, children who committed crimes were treated in the same manner as adults. Early statements of purpose emphasized that these new juvenile courts—which were defined primarily in terms of their jurisdiction and sentencing options—were to provide for care, custody, and discipline of delinquent and dependent children that would approximate the attention and supervision that should have been given by their parents. Inherent in this doctrine of "parens patriae" (literally "parent of the country") was the notion that children who commit crimes or engage in other kinds of misbehavior were the product of inept parents or a deprived social environment. The juvenile court, therefore, had the right and duty to intervene in the life of such a child and his or her family to rehabilitate the youth.

In 1909, Judge Julian Mack, a staunch proponent of a separate system of justice for juveniles, expressed the philosophy well:

8. See sources cited supra note 7.
9. The state, as parens patriae, has the responsibility of ensuring the welfare of minors. This doctrine is based on the presumption that minors lack sufficient capacity to understand and consent to the consequences of certain actions. In most instances, the state allows the parents of the minor the freedom to exercise control over the care and raising of the child. Should the parents fail to meet their legal responsibilities, control reverts back to the state. See, e.g., Prince v. Massachusetts, 321 U.S. 158 (1944) (state can prohibit children from distributing religious literature on the street with their parent or guardian).
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The result of . . . [the adult system] was that instead of the state's training its bad boys so as to make of them decent citizens, it permitted them to become the outlaws and outcasts of society; it criminalized them by the very methods that it used in dealing with them . . . Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities.\[10]\n
In effect, the state was to become the parent of the wayward child.

B. The Medical Model

As juvenile courts evolved during the twentieth century, their focus shifted dramatically from the role of the "wise and merciful father" envisioned by early reformers toward what has become known as a "medical" model of justice.\[11]\n
Increased reliance on probation and social and psychological counseling as the primary forms of treatment characterized this change. From the perspective of the medical model, delinquency is a temporary affliction that can be cured through counseling or other services. In our experience, the assumptions of this model in practice can be summarized as follows:

1. Delinquency is a temporary behavioral phenomenon produced by psychological problems or by social (family or community) factors beyond the control of the child that have denied him or her adequate guidance, support, and opportunities.

2. Like a disease, delinquency will become worse and lead to adult criminality unless treated properly.

3. Through the identification of the psychological and social needs of the youth, an appropriate treatment plan can be devised.

4. Through the provision of appropriate psychological and social treatment, such as counseling and support services, delinquency can be eliminated.

The medical model has long been the accepted approach for dealing with youthful offenders. In most parts of the United States, it remains dominant in the theory and practice of juvenile justice. In practice, first offenders and those chronic offenders whose crimes are not viewed as particularly serious are often diverted from the formal court system by the police. Current estimates indicate that about one-half of all juveniles contacted by the police are not re-


\[11\] For a careful articulation of the medical model, see MacNamara, The Medical Model in Corrections, 14 Criminology 439 (1977).
ferred to the courts at all but are handled on a “warn and release” basis by the law enforcement unit.12

In many states, police refer cases to specially designated intake units. These intake units, usually staffed by probation officers, screen referrals from the police and determine which cases need to go through a formal fact-finding procedure and which ones can be handled on an informal basis. Intake officers in many states are authorized and encouraged to divert as many cases as possible. Diverted juveniles often are warned and released; occasionally, they may be placed under “informal” supervision or referred to a local counseling service on a voluntary basis. It is estimated that more than one-half of the juveniles referred to intake units are dealt with on an informal basis.13

Juveniles who have committed more serious crimes or who have engaged in chronic criminal activity are less likely to be diverted. In these instances, the state authorities may initiate formal proceedings. If the facts are judged to be sufficient, juveniles are declared to be “delinquent.” Dispositions available to the juvenile court are defined by state statutes; they usually include probation, incarceration in secure state “training schools,” and—more recently—restitution, fines, and short-term local confinement.

Secure confinement usually involves placement in a training school where the juvenile is kept until ready for release into the community, or until reaching the age of 18. Juveniles placed on probation are assigned to a probation officer who is responsible for implementing the requirements of probation. The probation requirements typically include attending school, not associating with delinquent peers, complying with an early curfew, not engaging in delinquent behavior, and reporting once a month (or perhaps more frequently) for a short interview with the probation officer. Formal counseling may be provided by the probation officer or by other trained counselors.

In most states, each of these sanctions is viewed as treatment rather than punishment by most participants in the system, including probation officers, judges, correction officials, and legislators.

12. The Uniform Crime Reports published annually by the Federal Bureau of Investigation contain data on juvenile arrests and the proportion of cases referred to juvenile courts. This referral rate has averaged between 45 and 50 percent during the 1970s and 1980s. U.S. Dep't of Justice, Uniform Crime Reports (1970-85).

13. Reports from local courts, projected to get national estimates, suggest that more than one-half of the cases referred to juvenile court intake units are handled without a petition. See, e.g., H. Snyder, T. Finnega & J. Hutzler, Delinquency, 1984 (1985) (author's source, available from the National Center for Juvenile Justice, Pittsburgh, PA).
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The decisions about how much treatment should be required, whether it should be provided in the community or in a secure treatment facility, and when it should end are determined by the needs of the youth and the prediction of future behavior, rather than by the severity of the crime that was committed.14

II. The Reform Movement and the Development of Restitution

Criticisms of the juvenile justice system have come from all sides.15 Some critics contend that it is too lenient, others that it is too harsh. Many believe that it is ineffective at reducing delinquency or rehabilitating those who come within its purview. Some scholars characterize its decision-making systems as involving excessive discretion that produces widely disparate sanctions, punishment disproportionate to the severity of the offense, and, in some instances, racial or sexual bias. Finally, critics maintain that the juvenile justice system does not provide due process rights to juveniles who subsequently are incarcerated involuntarily in the name of “treatment.”

Due process concerns sparked the beginning of the reform of juvenile justice.16 In 1966, the Supreme Court signaled a change in its thinking when it stated in Kent v. United States that in the juvenile justice system “the child receives the worse of both worlds: . . . he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”17 A year later, the Court ruled in the Gault case that the proceedings used to

14. For reviews of juvenile justice statutes, see J. Hutzler, Juvenile Court Jurisdiction Over Children’s Conduct (1981) (available from the National Center for Juvenile Justice); and J. King, A Comparative Analysis of Juvenile Codes (July 1980) (Community Research Forum, University of Illinois at Urbana-Champaign).
16. See generally McKeiver v. Pennsylvania, 403 U.S. 528 (1971) (due process does not include right to a jury trial in juvenile court’s adjudicative stage); In re Winship, 397 U.S. 358 (1970) (proof beyond a reasonable doubt constitutionally required in juvenile court adjudicatory stage); In re Gault, 387 U.S. 1 (1967) (juveniles must be afforded full constitutional due process rights during adjudicatory phase of juvenile court proceedings). Before 1967, three states (Illinois, California, and New York) had undertaken some changes in their juvenile codes, but most did not begin to revise or amend them until after 1967.
incarcerate a 15-year-old charged with making obscene phone calls violated fourteenth amendment safeguards.\textsuperscript{18} As a result of a verbal complaint by a neighbor, Gerald Gault was arrested and held in detention. His parents were not notified of his arrest, nor were they told of the charges prior to the trial. The petition did not contain a listing of charges, the complainant never appeared in court, no transcripts were kept, and the youth was not represented by counsel. Other problems were cited by the Court, including the fact that the maximum penalty for an adult was far less than that which Gault actually received.

Many of these issues were raised that same year in a presidential task force's report on juvenile justice and delinquency prevention.\textsuperscript{19} The combination of recommendations from the national task force and the Supreme Court rulings launched a reform movement in juvenile justice that continues at this writing.

Since this beginning, standards for juvenile justice and model juvenile codes have been developed by several different national commissions.\textsuperscript{20} Congress took the first steps toward a federal role in juvenile justice with passage of the 1974 Juvenile Justice and Delinquency Prevention Act, which mandated that status offenders—i.e. runaways, truants, and others whose behavior would not be a crime if they were adults—could not be held in secure confinement. The Act also directed states and communities to develop more effective means for dealing with serious juvenile offenders.\textsuperscript{21} In response to this national reform movement and to local pressure for change, virtually every state in the country has rewritten its juvenile code or substantially altered its practices to meet the real or perceived deficiencies in juvenile justice.\textsuperscript{22}

Public attention has focused on reforms that increase the harshness of the juvenile system, such as changes that facilitate the transfer of juveniles to adult court or those that permit longer periods of imprisonment or the use of the death penalty for persons under 18. Almost unnoticed in the popular press, however, has been a shift toward the use of restitution in juvenile justice and a concomitant emphasis on accountability.

\begin{thebibliography}{9}
\bibitem{18} In re Gault, 387 U.S. 1 (1967).
\bibitem{22} See sources cited supra note 14.
\end{thebibliography}
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A. The Emergence of Restitution

Formal restitution programs initially emerged as grassroots movements occurring independently in several widely separated regions of the United States. A 1977 survey identified 15 formal restitution programs, including programs in Seattle, Washington; Las Vegas, Nevada; Santa Fe, New Mexico; Denver, Colorado; Rapid City, South Dakota; Tulsa and Oklahoma County, Oklahoma; Cincinnati, Ohio; and Quincy and Dorchester, Massachusetts. All of these programs were locally funded. Only two of the programs were clearly "accountability" oriented: the Seattle Community Accountability Program and the Oklahoma County restitution program. The others, such as the Quincy program, emphasized the importance of having the juveniles "do something" tangible to make up for their crime. Some of these initiatives were spinoffs from federally funded victim-witness programs, but most were local innovations sparked by juvenile court judges searching for an alternative to the medical model that was more than simply a punishment system.

The search for a nonpunitive alternative to the medical model was also evidenced by passage of the Reform Juvenile Code in the state of Washington in 1977.24 This code embraced the principles of a justice model for the juvenile court in a manner still unmatched by any other juvenile or adult system in the United States. Its statement of legislative intent asserted that the system should be accountable for what it did to juvenile offenders and that "youth, in turn, [should] be held accountable for their offenses."25 This code not only established guidelines for intake and sentencing decisions to promote uniformity and proportionality in sanctions, but also mandated financial restitution or community service in all cases involving loss to victims or communities.

On a nationwide basis, the single most important determinant in the development of formal restitution programs was the National Juvenile Restitution Program sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the Department of

25. Id.
Justice. The restitution initiative was originally planned as a small research and development project involving monetary restitution and community service for only six to eight jurisdictions throughout the United States. This program was announced late in 1976, but a change in the agency administrator delayed implementation of the program for more than a year. The newly appointed director, Ira Schwartz, transformed the fledgling program into a nationwide effort that eventually would involve 85 different juvenile court jurisdictions in 36 states and territories, with an expenditure of over $20 million. This program, which was accompanied by a national evaluation of its impact and effectiveness, has been followed by almost continuous annual training and technical assistance designed to encourage the spread of formal restitution programs. Under the Reagan Administration, the program has continued under the name RESTTA: Restitution Education, Specialized Training, and Technical Assistance.

Although there is great diversity in restitution programs, most formal programs involve far more than simply transferring money from juveniles to victims. Most formal programs have responsibilities both before and after disposition. The process, which is described in greater detail below, is made up of several distinct phases. During the pre-disposition phase, contact is made with the victims and their losses are documented; next, a written recommendation involving either monetary or community service restitution is developed; then, the plan is presented to the court as part of the presentence investigation. If the court orders restitution, program personnel are responsible for implementing the restitution order by developing a plan for carrying out the requirements. The plan is usually a contract worked out with the juvenile. The program may provide seminars or training for the juvenile in job-seeking skills. Many programs employ caseworkers who locate community service

27. Id.
28. The RESTTA program is a consortium of three organizations. The National Coordinator is Peter R. Schneider, Pacific Institute for Research and Evaluation. The National Center for State Courts in Williamsburg and the Policy Sciences Group at Oklahoma State University are the other members of the consortium. RESTTA is funded by the Office of Juvenile Justice and Delinquency Prevention.
29. For a comprehensive description of the policies and practices of restitution programs in the United States, see U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Prevention, Guide to Juvenile Restitution (A. Schneider ed. 1985) [hereinafter The Guide].
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and business placements in agencies and companies willing to accept restitution program participants, provide advice and training to work supervisors, monitor the progress of the youth in making payments, and close the case when the restitution requirements have been met.

B. Accountability: A New Orienting Principle for Juvenile Justice

As court systems have gained experience with restitution, increasing emphasis has been placed on promoting accountability and responsibility among juvenile offenders. Although the guidelines for participation in the 1977 federally sponsored restitution programs specified one of the goals as “holding juveniles responsible and accountable to victims,” accountability was not originally recognized or accepted as a different orienting principle for juvenile justice, even in the programs sponsored by the federal initiative. As courts and communities became more familiar with the actual processes of restitution, however, the value of an accountability orientation became more evident.

In the traditional medical approach to juvenile sentencing, the choice of the sanction usually hinged on its value to the juvenile. In restitution programs, on the other hand, the sanctions are increasingly justified on the grounds that the juvenile should be held accountable. An offense is viewed as a mistake with consequences for the victim as well as for the juvenile. Hence, reparations should be made because the offender owes something to his or her victim. In accountability-oriented restitution programs, responsibility for the offense is placed on the juvenile rather than on the juvenile’s family, neighborhood, or environment.

By 1983, the primacy of accountability as the key orienting principal for juvenile restitution programs was unquestionable. Restitution program directors, surveyed in 1983, rated accountability as the most important among several goals of restitution, giving it an average score of 9.7 on a 10 point scale.30 Other aims, such as treatment of juveniles or services to victims, were viewed as significant, with scores of about 7 on the scale. Punishment was not considered to be one of the goals or purposes of restitution, according to survey respondents.

The emergence of accountability as a distinct philosophical principle of juvenile justice owes a great deal not only to the restitution

30. Id. at 8.
movement but also to the reform juvenile code adopted by the state of Washington in 1977. By establishing presumptive sentencing and intake guidelines, the code attempts to increase the uniformity and proportionality of sanctions and to insure that all juvenile offenders are held accountable for what they do. The Washington code requires diversion (rather than formal prosecution) for property offenders up to their fourth misdemeanor offense. Restitution is required in every case, and community service often is combined with restitution in an effort to repay the community for the losses it suffers from juvenile crime.

Most juvenile courts have not gone nearly as far as those in Washington state in their emphasis on uniformity or proportionality in sanctions, but restitution sanctions, by their very nature, are more uniform and proportionate than traditional sanctions. Financial restitution payments are usually determined by the amount of the victim's loss (unless the loss is exceptionally high). Community service hours often are determined by a matrix that includes the seriousness of the offense, the age of the youth, and prior record. It is this uniformity and proportionality that underscores juveniles' accountability for the crimes they actually commit.

III. Restitution in Practice

Periodic surveys of juvenile courts during the past 10 years indicate that about 90% order some juvenile offenders to participate in restitution programs. Most of these programs are administered on an ad hoc basis, since formal restitution programs are less common and a more recent phenomenon. Our recently completed research identifies more than 300 formal restitution programs, of which only two trace their origins to the 1960s. More than one-half were initiated in the 1980s.

34. See U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Prevention, Directory of Juvenile Restitution Programs, p.6 (J. Warner & V. Burke eds. 1987) [hereinafter Directory].
35. The sample for this survey included all cities with a population of 100,000 or more and a 1/17th sample of cities with populations between 10,000 and 100,000. There were 510 cities in the initial sample, of which 297 returned the survey, a response rate of 58%.
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A. Program Characteristics

The restitution process usually involves seven distinct steps: (1) determining eligibility; (2) documenting loss; (3) determining the amount of restitution; (4) implementing the restitution requirements; (5) monitoring the youth's progress; (6) enforcing the requirements; and (7) closing the case. However, not all programs implement these seven steps, and some include other features as well. Seventy percent of the programs have the capacity to implement both financial restitution and community service orders. About one-third offer victim-offender mediation or other kinds of victim services.

The programs also are organized and administered in many different ways. About one-third are located within the probation department, about one-fourth report directly to the court, and one-fifth are operated by nonprofit organizations.

1. Formal Restitution Programs. A formal restitution program is defined here as one that offers either financial or community service restitution, has at least one full time staff person responsible for coordinating the program, and has developed either a restitution manual or a set of policy guidelines. Our recent survey of juvenile courts indicates that approximately 20% of the cities with populations of 10,000 to 100,000 have formal restitution programs, and 45% of the cities with more than 100,000 inhabitants operate formal programs.

In a formal program, the court has caseworkers—often probation officers—who are responsible for determining whether a juvenile is eligible for the restitution program, contacting the victim, providing assistance in documenting the loss, and integrating this information into a pre-disposition report to the judge.

Eligibility varies among courts but is not limited to first time, non-serious offenders. For example, results from the national evaluation of the 85 federally funded restitution programs showed that almost one-third of the juveniles referred to these programs had been convicted of burglary and that 10% had been convicted of aggravated assault, armed robbery, or rape. More than one-half had at least one prior conviction.

36. For descriptions and examples of restitution programs, see The Guide, supra note 29, at 21-67 (describing financial and community service restitution, victim-offender mediation, and victim financial restitution).


38. See Two-Year Report, supra note 26, at 33.
Probation or restitution screening officers or the court intake unit make eligibility determinations using broad guidelines established by the court. In some programs, such as that in Washington, D.C., the guidelines require that the juveniles be serious offenders. The Washington program accepts only juveniles with one prior felony conviction. Other programs are limited to first-time or chronic property offenders. Some will not accept juveniles who have drug or alcohol problems, whereas others will accept such juveniles only after they have enrolled in a substance abuse program.

After disposition, the caseworker is responsible for assisting the youth in developing a restitution plan that includes a place of employment and a payment schedule. The amount of restitution to be paid is usually determined by the judge at disposition, but the details of the payment schedule and the work to be done are not finalized until later. For personal offenses in which the seriousness of the crime far exceeds the monetary loss, the amount may be determined through victim-offender mediation sessions. In a mediation session, victims and offenders are brought together, along with a specially trained mediator, to reach an agreement on the amount and type of restitution. In other instances where it is difficult to determine a "fair" amount of restitution, the judge may exercise discretion.

Some courts have special units or individuals responsible for community liaison work, such as locating jobs in private businesses or, for community service cases, placements in public offices or non-profits. In others, the probation officer or caseworker is responsible for identifying employment opportunities for his or her own caseload. Many programs also have established job skills seminars to assist juveniles in writing resumes, locating employment, developing interviewing skills, and meeting the expectations of their employers once they are hired.

In cases where the juvenile offender cannot obtain employment, community service work offers an alternative. In community service jobs, the juveniles are expected to perform as well as other volunteers. For the truly hard-to-place juveniles, some courts operate a work crew that performs community service work under the direct supervision of a probation officer.

Jurisdictions in which restitution has been integrated with probation have seen the role and the nature of the work of probation officers change considerably. The probation officers' work has shifted from counseling, social services, or once-a-month visits to imple-
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menting and monitoring restitution requirements. Once the juvenile has been placed, the probation officers commonly stay in touch with the youth and the worksite supervisor.

Noncompliance with restitution requirements is handled in much the same way as failure to obey other requirements of probation. The youth may be reprimanded or returned to court, and additional community service hours may be added to the disposition. In some jurisdictions, one day in the detention center is assigned for each eight hours of uncompleted work, or its unpaid monetary equivalent.

Case closure sometimes involves more than simply a formal end to the court custody. Programs may make a point of having the youth make the final payment to the victim and may provide for some kind of final reconciliation between victim and offender to signify that the debt has been repaid. Unfortunately, victims are seldom interested in this further involvement with the juvenile.

2. Ad Hoc and Insurance Programs. Not all courts have comprehensive, formal restitution programs of the type described above. Other models of restitution include ad hoc programs and insurance programs.

Ad hoc programs are characterized by the use of restitution or community service orders in sentencing without any formal means of developing restitution recommendations or implementing the orders. Many of the formal programs began as ad hoc approaches and gradually evolved into more comprehensive and systematic uses of restitution.

In the insurance model of restitution, the “program” consists of collecting money from juveniles or their parents and returning it to the victims. Reparations are simply a sanction, no different in nature than a curfew. They are not viewed as having any substantive role in the rehabilitation of juvenile offenders. The only aspect of insurance programs that distinguishes them at all from traditional sanctions is that they provide for repayment of victims.

B. The Effectiveness of Restitution

The effectiveness of restitution can be assessed from several different perspectives; particularly illuminating are the rate of successful completion and the impact on recidivism. The national evaluation of juvenile restitution programs, undertaken in conjunction with the federal restitution initiative discussed above, produced information on more than 17,000 cases from throughout the United

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On the average, juvenile offenders repaid 75% of the dollar amount ordered by the juvenile court, and more than 85% of the juveniles complied in full with their restitution requirements. Ninety percent of the restitution paid came from the youths themselves, with only 8% from parents and 2% from other sources.

The ability to complete restitution successfully was fairly well distributed across different social, racial, and economic groups. Successful completion rates were not related to age, race, sex, or the parents' education level. There was a small income bias, however, in that juveniles from families with incomes over $20,000 had completion rates of 92% compared with completion rates of 81% for children from families with earnings under $6,000.

The data from the national evaluation also revealed that youths with prior offenses were slightly less likely to complete the restitution requirements, but even these youths had relatively high completion rates. Referrals with no prior offenses averaged 90% completion rates, whereas 77% of referrals with six or more prior offenses completed their program successfully.

The effect of restitution on recidivism rates has been reported in several studies conducted during the 1970s and 1980s. In all of these studies, restitution groups have done as well as or better than the groups against which they were compared. The Office of Juvenile Justice sponsored the most comprehensive and carefully controlled studies of the effects on recidivism as part of the national evaluation of the juvenile restitution initiative.

In this research, experimental designs with random assignments to either restitution or other probation/control conditions were established in four juvenile courts: Washington, D.C.; Oklahoma County, Oklahoma; Boise, Idaho; and Clayton County, Georgia. In Washington, D.C., serious juvenile offenders were randomly assigned to either a restitution program featuring victim-offender mediation or a traditional probation program. In Oklahoma County, juveniles were randomly placed in sole sanction restitution (i.e., a program with no probation requirements), restitution as part of the probation program, or...

40. See Two-Year Report, supra note 26, at 33.
41. Id. at 33.
42. Id. at 84-85.
43. Id. at 86-88.
44. Id. at 85.
45. See Schneider, supra note 2, at 536.
47. Id. at 140-42.
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classical probation. The Boise program identified a group of juveniles eligible for short-term (weekend) local detention and then randomly selected juveniles from this group to participate in a restitution program. Finally, in Clayton County, a group of eligible juveniles were randomly divided into three groups: restitution, probation, and a combination of restitution and counseling.

In all of the programs except Oklahoma County, juveniles randomly assigned to the restitution programs had lower recidivism rates during the three-year follow up period than did juveniles in the control condition. The differences were statistically significant, at .05 in two of the courts and .27 in the Boise program.

In three of these jurisdictions, the annual offense rates of the youths declined after their participation in the restitution programs. In Washington, D.C., for example, the juvenile restitution program reduced the offense rate by seven crimes per year for every 100 juveniles in the program. Juveniles in the control condition (probation) committed an additional four crimes per year for every 100 juveniles in the program. These figures were calculated using pre- and post-restitution annual offense rates for both groups. The results were even more dramatic in Clayton County. The restitution program there produced a reduction in recidivism of approximately 20 crimes per year per 100 juveniles. Again, these findings are particularly impressive because the random assignment of cases into the experimental (restitution) and control (probation) conditions ensures that the results were not contingent on selection biases or "creaming." In the fourth experiment, Oklahoma County, no differences were found between any of the groups, and none of the programs reduced recidivism.

In contrast to the strong results of the formal restitution programs, the results of the informal programs have been strikingly unimpressive. Research comparing formal restitution programs with ad hoc use of restitution suggests that completion rates are much lower in the latter situation. As noted previously, some courts simply order restitution without assigning any staff or establishing any procedures or distinct program to implement the orders. A study in Dane County, Wisconsin, found that successful completion

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48. Although it is not customary to attribute much importance to a finding with an observed significance level of .27, it should be noted that the magnitude of the effect in Boise was approximately the same as that of the other two programs. Due to the smaller number of cases, the probability of a chance occurrence (i.e., the significance level) was higher than in the other sites.

49. Schneider & Bazemore, supra note 46, at 140-42.
rates for the ad hoc approach were 45% compared with 91% for cases handled through a formal program. This same study demonstrated the importance of successful completion in reducing recidivism rates. Those who successfully completed the program committed approximately 30 fewer crimes per year per 100 juveniles than those who did not complete the program. Thus, it is unlikely that informal uses of restitution will have the kind of dramatic impact on recidivism that seems possible from the more formal programs.

Any one of several factors might produce the positive effects on recidivism. For example, the work required to make enough money to meet the restitution payments occupies much of the juvenile’s time. It breaks relationships with delinquent peers, alters old behavior patterns, exposes the juvenile to nondelinquent adults, and provides an opportunity for success in the world of work. In short, the work may serve as a form of intensive probation, but one that also offers opportunity for the youth to make reparations to the victim.

In addition, restitution may be less stigmatizing than most other sanctions. It may enhance the juvenile’s understanding of the true consequences of crime and break down rationalizations (e.g., “the victim deserved it”). Restitution might even have a deterrent effect because it is perceived as a more severe penalty than probation.

Alternatively, the power of restitution may be in its message—the message of accountability, fairness, and justice. By reconfirming the moral basis of the law and by emphasizing that those who commit crimes will be held accountable to their victims because it is “right” to do so, restitution may increase commitment to the moral order. In turn, this increased commitment may have an impact on recidivism. If so, then it is important for the juvenile courts to emphasize the justice-based philosophy of restitution and make clear that the fundamental rationale of this disposition is to enhance accountability and responsibility.

IV. The Future of Restitution

Although restitution has had an impressive beginning in the juvenile justice systems of the United States, there remain reasons to be concerned about the future of restitution dispositions in the juvenile

51. Id. at 541.
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courts. Of primary concern is the possibility that jurisdictions will use restitution in an ad hoc rather than a programmatic manner. Our research indicates that ad hoc programs will not have a substantial impact on the future behavior of juvenile offenders. There is no evidence that ad hoc programs or restitution programs based on insurance models have any effect at all on delinquency, and there is substantial reason to believe that failure rates will be high. The study in Wisconsin suggests that the ability to complete restitution requirements successfully is a very important factor in reducing delinquency.52

A different concern with regard to all restitution programs is the possibility that a race or class bias may be built into the very nature of this disposition. If eligibility for restitution is determined on the basis of the apparent ability of the youth to repay the victim, and if minorities and juveniles from poor families are viewed as less able to pay restitution, then this disposition may become the sanction of choice for white middle-class offenders. The extent to which this has become practice is not known. In the national juvenile restitution initiative, approximately 20% of the referrals were blacks; in communities with substantial minority populations, the proportions referred to the program reflected their proportion of court intakes.53

A final concern revolves around issues of legal liability and employment for juveniles under the age of 16. Several jurisdictions have foregone the use of restitution programs out of fear that they will be held liable for crimes committed by a youth at a worksite.

All of these concerns can be addressed by more careful design of restitution programs. Although there are many ways to organize and administer these programs, it is important to establish a formal structure and designate at least one individual who is responsible for coordinating the various aspects of the program. Probation officers can handle case work and supervision. Before doing so, however, they need to become aware of how restitution differs from traditional social and psychological counseling approaches and to under-

52. Id. at 541-45.
53. For example, in Washington, D.C., over 90% of juveniles involved in the court process were black, and 99% of the referrals to the juvenile restitution program were black; in Oklahoma County, about one-third of the juveniles in the restitution program were minorities, reflecting almost exactly the proportion of minority youths involved in the formal court process. Similar phenomena were observed in other communities with a substantial minority population. Thus there is no evidence, in the federally funded programs, that restitution is used as a sanction exclusively for white, middle-class youths.

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stand the philosophical basis of restitution. It is important that the persons responsible for carrying out the case-level work “buy into” the program and develop a sense of ownership and creativity in their own approach. Flexibility and change are crucial in restitution programming; the approach should continue to evolve as conditions change.

Potential race and class biases can be overcome in two ways. First, entry criteria should be very broad and based largely on the characteristics of the case rather than the characteristics of the juvenile. The ability to pay should not be a criterion, nor should the court take into consideration whether the juvenile will be able to complete restitution successfully except in screening out persons with severe mental or physical handicaps.

Rather than screen out offenders at a high risk for unsuccessful completion, the court should develop a program that can increase the probability of success for these juveniles. Many restitution programs develop community service components to ensure that juveniles who are unable to find employment and who do not have the personal resources to make restitution still will be able to participate in the program. Most of the federally funded programs, in fact, do not permit parents to pay unless the juvenile also is required to put in hours of community service.

Another strategy for making restitution programs more successful for high-risk groups is to subsidize the work of juveniles who otherwise would have trouble obtaining employment. These children can be placed in public or nonprofit organizations and part (or all) of their wages paid by the restitution program. Under this approach, the employing organizations still would be responsible for assigning work and supervising the youth. Data from the national evaluation showed that the probability of success increased by about 12% for all cases when subsidies were used and by as much as 28% for the highest-risk group: poor, nonwhite chronic offenders with large restitution orders.54

The liability issue continues to be troubling, but many programs have taken out liability insurance to protect themselves against possible losses from suits arising as a result of court-ordered restitution. Most programs emphasize careful supervision and careful placement to reduce the risks. Formal programs such as the one outlined above help to provide the supervision necessary to protect against liability.

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54. See Schneider & Bazemore, supra note 46, at 139.
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Restitution programs cannot cure all the ills of the juvenile justice system, but there are reasons to be optimistic that this reform may be more than a passing fad. Restitution, with its emphasis on accountability, responsibility, and justice, may offer an alternative for juvenile courts that will increase the effectiveness of juvenile justice and forestall a shift toward punishment.