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## Creative Restitution--A Broader Meaning for an Old Term

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### III. FINDINGS OF PRESENT STUDY

Although the data accumulated by Kvaraceus were obtained for the most part from the New England section, the data for this report are more inclusive and cover a wider geographic area. The data for this report were obtained from the states of Indiana, Michigan, Ohio and Pennsylvania. The age group in this study ranges from age twelve through age seventeen.

It must be noted that in all three comparable categories, the Kvaraceus sample is considerably smaller than the samples obtained for this study. The Kvaraceus data show 98 delinquent boys, 156 public school boys and 16 "high-morale" boys; in comparison, this report shows 182, 750 and 453 boys for each of the respective categories. Again the age-old argument of the small sample versus the large sample for research purposes comes up for consideration. Smith states that "The larger the groups are, the smaller will be the probable distortion by the chance factors, and the greater the likelihood that the findings will apply generally to similar groups." And "It should now be apparent that, if the results of psychological experimentation are to have general applicability, we shall ordinarily have to deal with large numbers of test scores or other measures. This applies to educational experimentation as well."<sup>19</sup>

Although there is some overlapping among all of the three criterion groups there is a strong tendency for delinquent boys in the Kvaraceus study to score considerably higher on the Scale than "high-morale" boys and somewhat slightly higher than public school boys. According to Kvaraceus, "Extremely high positive scores can be said to characterize these children who have manifested delinquent behavior; extremely low negative scores tend to indicate freedom from delinquency—like response or a high degree of immunity to the disease of delinquency."<sup>20</sup>

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concerned for the welfare of others, and who also showed a high degree of personal adjustment in their everyday living."

<sup>19</sup> SMITH, A SIMPLIFIED GUIDE TO STATISTICS, p. 7.

<sup>20</sup> KVARACEUS, KD PRONENESS SCALE, p. 4. The writer of this report is of the opinion that the following glossary might be in order to elaborate further on positive and negative scores; high positive score, extremely delinquent prone; positive score, delinquent prone, low positive score, delinquent prone, but approaching non-delinquent proneness; negative score, non-delinquent prone; low negative score, non-delinquent prone but approaching delinquent proneness; and high negative score, extremely non-delinquent

By making comparisons for the various ages in the three categories; namely, public school group, delinquent group, and "high-morale" groups, the reader can be shown more refined figures relative to the categories studied. Again one can observe that the present study shows the Kvaraceus scale to be discriminating; however, this discrimination is most evident in the "high-morale" group and the public school group. Although there is some tendency on the part of the delinquent group to make positive scores on the Kvaraceus scale, these figures do not appear statistically important. In this study, however, when comparing the delinquent group to the public school and "high-morale" groups, the factor of statistical discrimination becomes much more evident. However, in the three group comparisons of all ages of this study, without exception, the delinquent group does show a higher degree of proneness.

### IV. CONCLUSIONS

In this type of study many difficult problems are posed. Unfortunately, many of the difficulties involved are not resolved. The matter of sampling, bias and prejudice, research techniques employed and countless other variables too difficult to comprehend, create serious impedimenta for the researcher. This study is no exception.

Two major criticisms can be made against the Kvaraceus Scale. One involves the use of the small sample technique. As has been previously noted, the small sample technique has too many statistical shortcomings which tend considerably to invalidate or color certain findings and conclusions. It may be stated that when a researcher is involved in a problem of such great magnitude because of the many variables that are posed, the more wholesome approach seems to dictate a course of action leaning towards a larger statistical universe. To arrive at predictive factors as revealed in the administering of the Kvaraceus Scale is somewhat foolhardy, since the universe that was sampled, is, in the opinion of this writer, statistically insignificant—much too small to warrant accurate predictions. Of course, one can never be too sure that a predictive tool for delinquency proneness will ever be found. At best, any research tool is

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prone. This explanation will help to clarify more satisfactorily the many negative and positive scores that are included in this study.

merely an approximation since human behavior can never hope to lend itself to absolutism.

The other major criticism is concerned with the sampling technique. A strong effort was made in this report to sample a wide geographic area wherein many representative proportions of countless variables could be obtained. The areas sampled may be characterized by heavy industry, urbanity, rural conditions or characteristics, residential areas of a high calibre, low income as well as high-socio-economic groups, and diverse religious elements. The areas are further characterized by their heterogeneity. However, only white males were sampled since the inclusion of other races would have greatly magnified the importance of many hidden variables.

This report seems to indicate further that in the public school group as age or grade increases, proneness to delinquency decreases. Furthermore, according to the statistical evidence presented in this study, it appears that the addition of the age variable does not aid in distinguishing the degree of

proneness in the total population more so than grade. In fact, the opposite is true. The grade variable appears to be more closely associated with delinquency proneness than the age variable. This observation is somewhat antithetical to a study made by Balogh in which he states that "Over 71 percent of the total delinquent boys were in the fourteen, fifteen and sixteen year brackets."<sup>21</sup>

Generally, the overall results of this report tend to corroborate the Kvaraceus study, however, with some refined statistical exceptions. Admittedly, the Kvaraceus KD Proneness Scale is definitely a valuable contribution to this vast field of human behavior. It is strongly urged that additional studies be made so that more accurate statistical refinements can be made toward a final statistical validation of the Kvaraceus KD Proneness Scale.

<sup>21</sup> JOSEPH K. BALOGH, *A Survey of Juvenile Delinquency in Hillsdale County, Michigan, for the Years 1935-1950; A Comparative Study*. Bowling Green State University, Bowling Green, Ohio, 1952, p. 81.

# CREATIVE RESTITUTION

## A BROADER MEANING FOR AN OLD TERM

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Restitution is a synonym for reparations or indemnity<sup>1</sup>:

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.

<sup>1</sup> 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.<sup>2</sup>

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

<sup>2</sup> 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 dependents<sup>3</sup>.

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

<sup>3</sup> SUTHERLAND AND CRESSEY, *loc. cit.* pp. 277-279.