

## Restitution

### A Different Kind of Economic Sanction?

**Alison C. Cares**

*Assumption College*

**Stacy H. Haynes**

*Mississippi State University*

Economic sanctions, also known as legal financial obligations (Harris, 2016), monetary sanctions (Beckett and Harris, 2011), and criminal penalties (Piquero and Jennings, 2017), are one aspect of sentencing that has been largely overlooked. In the United States, however, the use of economic sanctions is widespread and the amount of economic sanctions imposed is high. Research findings have revealed that economic sanctions are imposed in 21% to 100% of cases (Harris, Evans, and Beckett, 2011; U.S. Sentencing Commission, 2018) and that median amounts imposed per case range from \$486 to \$1,398 (Greenburg, Meredith, and Morse, 2016; Harris et al., 2011; Ruback and Clark, 2011; Weisburd, Einat, and Kowalski, 2008). These findings may be why, particularly during the last 10 years, economic sanctions have received greater research attention.

Economic sanctions have also been the focus of considerable policy change, such as the ordinance eliminating county costs and fees in San Francisco (Thandani, 2018), the court decision limiting the imposition of some fines and fees in New Orleans (Sledge, 2018), and the state supreme court cases banning a special surcharge (NBC Montana, 2018). These types of policy changes are the result of widespread concerns about imposing high amounts of economic sanctions on mostly poor offenders (Hitt, 2015; Human Rights Watch, 2014) and about subsequently incarcerating those who are unable to pay, an act signaling a return to the use of debtors' prisons (ACLU of Ohio, 2013; Sobol, 2016; U.S. Department of Justice, 2015). A related concern is that high amounts of economic sanctions and payment enforcement practices may amplify recidivism (Harris, 2016), in part, by encouraging offenders to engage in illegal activities to pay their amounts owed. Given these findings and

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Direct correspondence to Alison C. Cares, Department of Sociology & Criminology, Assumption College, 500 Salisbury Street, Worcester, MA 01609 (e-mail: a.cares@assumption.edu).

concerns about the use and effect of economic sanctions, the paucity of research on this topic is notable.

Economic sanctions include costs and fees (designed to recoup the costs of administering justice; Ruback and Bergstrom, 2006), fines (which are punitive in nature; Ruback and Bergstrom, 2006), and surcharges (which are charges added to initially ordered economic sanctions, such as interest, collection agencies' charges, and fees for nonpayment; Harris, 2016), as well as restitution (monies offenders are ordered to pay to reimburse victims for their losses related to the offense). Restitution is often overlooked, however, in general discussions about economic sanctions. Restitution is meant to be a restorative sanction, that is, one that restores victims to their previctimization financial state and allows offenders, upon repayment of their debt, to restore their standing in the community. Restitution is also theorized to have a rehabilitative element as paying back the victim each month forces offenders to think about their actions, thereby lowering recidivism. Compared with other economic sanctions, then, restitution holds the potential of positive outcomes for offenders, victims, and the community. The "specialness" of restitution has been recognized in that many researchers have tried to isolate information about restitution in their analyses as Barry Ruback, Lauren Knoth, Andrew Gladfelter, and Brendan Lantz did (2018: 789–813; see also Haynes, Cares, and Ruback, 2014; Iratzoqui and Metcalfe, 2017). Furthermore, calls to limit or eliminate the use of economic sanctions have been explicit that this does not apply to restitution (Beckett and Harris, 2011).

Ruback et al. (2018) addressed the important issue raised earlier: Does payment of restitution lead to less recidivism? They also investigated, based in part on a prior experimental design, whether there were low-cost, effective ways to increase payment and, in turn, decrease recidivism. Indeed, Ruback et al. did find that those who had recidivated (as measured by new arrest) had paid a smaller proportion of the restitution they owed, were less likely to have paid anything toward the restitution they owed, were less likely to have paid their restitution in full, and had made fewer payments toward restitution. Recidivists had also paid a smaller proportion of their total economic sanctions. Finally, Ruback et al. suggested that the low-cost intervention of sending a monthly informational letter detailing how much the offender still owed increased payments, leading to lower recidivism. This study adds to the limited knowledge we already have as very few past studies have been aimed at examining payment and recidivism. Most directly, Outlaw and Ruback (1999) and Ruback, Shaffer, and Logue (2004) analyzed Pennsylvania data and found that those who paid a larger proportion of restitution had lower recidivism (as measured by new arrest). Given these are only two studies, both of the same state, more research looking at the relationship between restitution payment and recidivism is warranted.

Although Ruback et al.'s (2018) findings are promising, what do they really tell us about restitution? Are their results the product of restitution payment specifically or economic sanctions payment more generally? If it is even partly about payment of economic sanctions in general, and not about restitution in particular, can something be done so that restitution

means more, thereby enhancing the power of restitution to lower recidivism? In terms of being able to address these questions and investigate the effects of restitution on recidivism, one of the most significant observations we can make from Ruback et al.'s (2018) study and other research on the use and effect of restitution is that it is common practice in many states to combine the imposition and payment of restitution with other economic sanctions. Given that practice, it is difficult for researchers to disentangle the effects of the various types of economic sanctions, which may, for example, have differing effects on recidivism. Those conducting quantitative research with economic sanctions data from the U.S. criminal and juvenile justice systems should examine the effects of each type of economic sanction separately, in addition to investigating their aggregated impact.

When offenders are sentenced to pay economic sanctions, they are typically informed of that amount via statements that break down amounts owed and paid by type of economic sanction. It is unclear, however, whether offenders distinguish among restitution and other types of economic sanctions as they make their payments. The results of research with offenders indicate that they have a limited understanding of economic sanctions in general, with a significant minority being unaware of the specifics of economic sanctions in their own cases (Ruback, Hoskins, Cares, and Feldmeyer, 2006). Given this reality, it is possible that offenders are simply making payments to comply with what they have been ordered to do as a part of their sentence, rather than giving thought to the different types of economic sanctions and their purposes, including restitution. Ruback et al. (2018), however, suggested that offenders may be making some distinctions as a higher payment of restitution was related to lower recidivism, but those with higher fees imposed had higher rates of recidivism. As they noted, this finding may be attributable to the financial burden of high levels of economic sanctions and to offenders' beliefs that the amount of fees imposed were unfair. Qualitative and quantitative research is needed to understand better offenders' knowledge of economic sanctions and how they think about them in their own case or cases.

Although offenders indicate substantial support for the fairness of economic sanctions (Harris, 2016), particularly restitution (Ruback, Hoskins, et al., 2006), that is not the same as knowing whether offenders make a conscious choice to pay restitution because they know it helps the victims in their cases. Do they even know how the payments they make are applied? Pennsylvania law requires that at least 50% of any payment made by an offender be applied to outstanding restitution orders (counties can elect to apply more than 50% to restitution). Pennsylvania is not alone; at least 12 states have laws, in some form, requiring that restitution be paid first (Haynes, Cares, and Ruback, 2015). Without more information from offenders about their knowledge of the economic sanctions they were ordered to pay and their attitudes about payment, it is difficult for researchers to disentangle how much of the relationship between payment of restitution and recidivism is a result of restitution specifically or economic sanctions in general. Findings about restitution may be, in part, resulting from payment priority policies rather than from offenders making a conscious choice to pay restitution.

Despite these limitations, we do know a lot, and our knowledge is significantly enhanced by the findings of Ruback et al. (2018). Although only one study, Ruback et al.'s findings—that an informational letter a month for 6 months (about economic sanctions owed and paid) could increase payments and lower recidivism—are encouraging. Given that there do not seem to be any unanticipated negative consequences of the intervention, piloting this approach in a more widespread fashion (preferably with the assistance of a research partner capable of conducting an evaluation) seems warranted. Even though this was an initial study that needs to be replicated in other states and jurisdictions (as highlighted by the authors), piloting other approaches may also be beneficial. Given the proliferation of mobile phones, it may be worth investigating related technologies. One option is to investigate whether texting a shortened version of the same information regarding amounts owed and paid, either in conjunction with sending letters or in isolation, has similar effects. Another option is to use a mobile app that can issue updates, as well as allow offenders to check their balance and make online payments (via credit card or automated payment from a bank account) at any time. It may be possible to modify already existing mobile apps developed for probationers for these purposes. Given the amount of electronic messages many people receive, there is the danger that these reminders may not stand out to offenders as much as a paper letter. Given that this is a low-cost option, however, it is worthy of investigation. Any alternative approaches should be subject to a cost–benefit analysis paralleling that performed by Ruback et al.

How are we to realize the promise of restitution in terms of lowering recidivism? We have argued that one main issue is conflating restitution with other economic sanctions. Despite calls and some action to reduce or eliminate economic sanctions (Beckett and Harris, 2011; Reitz, 2015; Sarnoff, 2014; Sobol, 2016), it seems likely they will continue, at least for several years to come. How can the findings of Ruback et al. (2018), then, be used to help us realize the full potential of restitution? One possibility is to follow the precedent some researchers have set and treat restitution as special. This may mean collecting restitution separately from other economic sanctions, a strategy some jurisdictions are already practicing in various ways. For example, one juvenile probation office in Pennsylvania handled restitution separately from other economic sanctions by having the local Victim Offender Reconciliation Office handle restitution (payments on other economic sanctions were handled by the country treasurer's office; Ruback, Cares, and Hoskins, 2006). Payment of restitution was tracked externally, however, and those data were not available to researchers. As a result, it is unknown whether having the external agency handle restitution resulted in larger proportions of payment of restitution or lower recidivism. Embedding payment of restitution in a larger restorative process may increase payment (Umbreit and Coates, 1993) and should increase the opportunity for offenders to take responsibility for their actions and make amends, thereby lowering recidivism and increasing victim satisfaction (Latimer, Dowden, and Muise, 2005). It will also increase costs, however. In Vermont, courts are responsible for collecting costs and fees, but a state restitution unit separately

collects restitution from offenders (NCVC, 2011). Nevertheless, collection rates remain low (24%). Of note is that the study of these efforts did not go one step further in defining success to include reduced offender recidivism, so that the link was not investigated. In light of Ruback et al.'s findings, future efforts to increase payment should include an evaluation of recidivism. It is also noteworthy that these efforts may not compare well, in terms of a cost–benefit analysis, to using reminder letters. Evaluations will need to be designed to estimate the amount of money saved from reductions in recidivism, as well as the cost of restitution-related interventions, to complete the cost–benefit analysis policy makers need to inform their decisions, which is similar to what Ruback et al. did in their article.

Recent changes in the imposition of costs and fees in some jurisdictions present the opportunity for a natural experiment. Such jurisdictions may be able to find a way to isolate the effects of restitution payment on offenders perhaps by looking at offender outcomes both before and after the policy change. For these evaluations, determining what “works” will require more than just monitoring increases in restitution payment, which is how efforts are traditionally evaluated. It also means tracking offender outcomes, including recidivism and offender understanding of and attitudes toward restitution. For example, do offenders view restitution differently depending on the type of victim? Are offenders more supportive of restitution being paid to an individual or small business compared with a large company, and does more support translate to more payment and less recidivism? Are offenders less supportive of restitution being paid to a state victim compensation fund, thereby undermining payment and any positive impact on recidivism? Recidivism can also be expanded to include additional measures, such as probation and parole violations and revocations and extensions of probation (e.g., Haynes et al., 2014; Iratzoqui and Metcalfe, 2017). In addition to receipt of payment, it is also important to look at other victim outcomes, such as victim satisfaction with the process and future willingness to engage with the criminal justice system (e.g., Ruback, Cares, and Hoskins, 2008). Investigation of these additional victim outcomes is important as rates of collection are historically low (NCVC, 2011; Outlaw and Ruback, 1999; Ruback, Cares, et al., 2006) and unlikely ever to come close to full payment, particularly in a timely manner. One reason for this is that offenders as a group are overwhelmingly poor, have limited employment prospects, and often have other court-ordered financial obligations (e.g., child support).

These suggested next steps in practice and accompanying research introduce a host of challenges. The study of restitution, particularly as it relates to recidivism, is best done using official criminal justice system data and data from offenders themselves, which is a challenge, as shown by the work in this research article and others (e.g., Ruback, Hoskins, et al., 2006). Response rates of surveys with offenders tend to be low. It can also be a challenge to include victim voices. Participation rates for research with victim samples tend to be low (e.g., Finn, 2013; Ruback et al., 2008). The needed research requires gathering data across multiple stages of the criminal justice system (or multiple agencies) as Ruback et al. (2018) have successfully done by getting data from probation and the state police.

Ideally, data from law enforcement and probation agencies need to be integrated with data on bail (where it still exists and is imposed) and other court-ordered financial obligations (e.g., child support) to get a more complete picture of the experiences of offenders.

We also need a fuller picture of how the practices of restitution, from imposition to payment, vary across states and jurisdictions (for a comparison of laws across states, see Harris, 2016, and Haynes et al., 2015). These variations may have implications for recidivism, which needs to be explored. Current knowledge regarding the imposition and payment of economic sanctions in general is mostly limited to a few states or to a few jurisdictions within those states (e.g., Alabama—Meredith and Morse, 2017; New Jersey—Weisburd et al., 2008; Louisiana—Henrichson et al., 2017; Pennsylvania—Ruback and Clark, 2011; Washington—Harris et al., 2011). Research aimed at examining recidivism is even more limited (e.g., Florida—Iratzoqui and Metcalfe, 2017; Pennsylvania—Ruback et al., 2018; and for juveniles—Haynes et al., 2014, and Piquero and Jennings, 2017).

In closing, much of the research on economic sanctions does not include or is not aimed at separately considering restitution (Harris et al., 2011; Meredith and Morse, 2017), although at least some of those scholars, even those highly critical of the use of economic sanctions, are supportive of restitution (e.g., Harris, 2016). It is unclear, however, whether the exceptionalism of restitution is being communicated to and felt by offenders. Do they perceive any distinction between restitution and the other economic sanctions they are ordered to pay? The less offenders think about restitution in isolation, the less likely it is that the promise of restitution as a restorative sanction will be realized. The research by Ruback et al. (2018) is a strong step toward demonstrating what a low-level intervention may do to increase payment and have a related desirable impact on recidivism. In this essay, we urge the field to take the next step to disentangle whether there are or can be unique positive effects of payment of restitution on recidivism.

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**Alison C. Cares** is an associate professor of sociology and criminology at Assumption College in Worcester, MA, and a visiting scholar at Wellesley Centers for Women, as part of the Justice and Gender-Based Violence Research Initiative. Her research is focused on violence against women, particularly intimate partner violence and campus sexual assault, as well as on program and policy evaluation. She is currently a co-investigator on a National Institute of Justice–funded project on the investigation and adjudication of campus sexual

assault and is leading a project on trigger warnings in college courses. Her recent works have appeared in *Journal of Interpersonal Violence*, *Violence & Victims*, and *Violence Against Women*.

**Stacy H. Haynes** is an associate professor of sociology at Mississippi State University in Starkville, MS. Her research is focused on issues related to corrections, sentencing, victimization, and criminal justice policy. Her research has appeared in *Crime & Delinquency*, *Criminal Justice Review*, *Criminology & Public Policy*, and *Violence & Victims*.