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CRIME VICTIMS AND PUBLIC SOCIAL POLICY

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ABSTRACT

The administration of criminal law has traditionally ignored the role of the victim and focused on the criminal offender. Increasingly, however, social policy and programs are beginning to take into consideration the situation of the crime victim. Programs designed to focus on offender restitution to crime victims are being developed and implemented at various stages of the criminal justice system. At the same time, programs of state compensation to crime victims are being implemented in an increasing number of jurisdictions.

Introduction

Over the course of the last one thousand years in Western cultures, the interests of the criminal offender have received growing attention and concern in the administration of justice while the situation of the victim has been largely ignored. Reflecting this concern has been the increased attention of the courts to the legal rights of the accused and confined and the social policy emphasis given to the rehabilitation of the offender as the stated goal of corrections systems. Such significant court rulings as Gideon, Escobedo, and Miranda have reflected a growing concern with safeguarding the due process of rights of the accused so that increasingly the attention of the criminal law has become one of fairness and restraint. With the emphasis on the legal rights of the accused and convicted and the increased acceptance of the goal of rehabilitating the offender, the victim has been overlooked as having at least as much right to be fairly treated by the state. Just as the offender has a right to a fair trial and suitable defense, so society has the obligation of ensuring through public social policy that victims of crime are fairly compensated and receive remedy for damages done.

The concepts of restitution and compensation are increasingly suggested as remedies to be made available through public social policy for crime victims to obtain reparation. While the terms, "restitution" and "compensation" are often used interchangeably, restitution will be defined here to refer to payments made by the offender to the victims of crime. Quite clearly, the use of restitution within the criminal justice system is contingent on the apprehension and, in most cases, the conviction of the offender. Restitution payments may be made by the offender in the form of either monetary payments or services, but in either case are aimed at restoring the victim and aiding in the rehabilitation of the offender. Making

restitution becomes, in effect, both a part of the criminal penalty and a goal of the rehabilitative process.

As distinct from restitution, the term compensation refers to payments by the state to victims of crime. Compensation payments are civil in character and reflect a societal responsibility for compensating injuries resulting from criminal acts. While a major focus of restitution proposals is placed on the potentially positive effect upon the offender, compensation schemes are clearly directed at the victim and are seen as a means of spreading the losses resulting from victimization. Consequently, the occurrence of a particular type of victimization is usually sufficient for drawing upon a compensation scheme, whereas the use of restitution usually requires the apprehension or conviction of the offender.

The Implementation of Restitution

The restitution sanction can be applied at any stage of the criminal justice system. Upon the apprehension of the accused, for example, opportunities exist for the use of restitution on a pre-trial basis. Prosecuting authorities may agree not to prosecute offenders who make restitution to their crime victims. Operation De Novo, a pre-trial diversion project in Minneapolis, has been using restitution for the past several years with property offenders that the agency has been diverting from both the felony and misdemeanor courts subsequent to their arrest but prior to trial. (Hudson, et al., 1975) Similarly, the State of Iowa has formalized a procedure to permit courts the option of allowing offenders to withhold entering a plea and remain under court supervision for a specific period of time; after satisfactorily completing this period of supervision and the completion of the restitution requirement, the charges against the offender are dismissed. (State of Iowa, 1973)

Following conviction, restitution can be used as a part of the sanction imposed upon the convicted offender. The second edition of the National Council on Crime and Delinquency; Model Sentencing Act explicitly provides for the use of restitution either as the sole penalty or in conjunction with other penalties. (Council of Judges, 1972) Most commonly, restitution has been used following trial as a condition of probation. (Cohen, 1944; Eglash, 1958) Particularly in juvenile cases, the courts have occasionally required the performance of symbolic restitution in the form of community service as a probation condition. England, for example, has recently implemented a community volunteer service program in which convicted offenders are provided the opportunity to engage in voluntary community service as a form of symbolic restitution. (Kaufman, 1973) Because of the closed nature of the facility and very low prison wage systems, restitution either in the form of community services or direct monetary payments to the victim by incarcerated offenders appears limited. In principle, however, it is quite conceivable to expect that social policies could be formulated requiring incarcerated offenders to be paid at prevailing union wages with a portion of wages made as restitution to crime victims. (Smith, 1965)

Community based programs which serve as a diversion or alternative to imprisonment offer a further opportunity for implementing restitution within the criminal justice system. The State of Georgia, for example, recently implemented four

community based restitution projects - these programs will house convicted offenders who will work in the community and make restitution to their victims. (Georgia, 1974) In addition to these residential programs, some of the offenders in Georgia will be residing in the community under intensive supervision and making restitution to their crime victims. The Minnesota Restitution Center program offers a further example of utilizing restitution within a community based, residential corrections center. (Hudson and Galaway, 1974) In this program, offenders are diverted from the State Prison four months after admission in order to enter the residential center. Prior to entering the program, offenders complete a restitution contract with their victims as this involves a specification of the amount, form, and schedule of restitution payments to be made. Upon release to the center, offenders are provided with assistance in finding jobs and begin the process of making their restitution in accordance with the written agreement completed prior to their release from prison.

Potential Benefits

The following benefits are suggested as central to a restitution program: (Galaway and Hudson, 1975)

1) The restitution sanction is rationally and logically related to the damages done. This is clearly not the case when the offender is housed in a cage and the victim ignored by the criminal justice system.

2) The restitution sanction is clear and explicit with the offender knowing at all times where he stands in relation to completing goals. Again, this is not the case when offenders are placed in a penal setting and the goal of "rehabilitation" is at best vague, and at worst, misleading.

3) The restitution sanction requires the active participation of the offender who is not placed in the position of being the passive recipient of either "therapeutic" or "punitive" approaches to changing his behavior. In turn, the offender's active involvement in undoing the wrong done should increase his self-esteem and self-image as a responsible and contributing member of society.

4) The restitution sanction provides a concrete way in which the offender can make amends for his wrong-doing and should provide a constructive and socially useful method for him to deal with any guilt that may have been generated from his wrong-doing.

5) The restitution sanction should result in a more positive response from members of the community toward the offender. The offender should be perceived as a person who has committed illegal acts and is attempting to un-do his wrong and not be viewed as either "sick", "sinful", or "irretrievably immoral".

Victim Compensation

While the rehabilitation of the offender is the primary social objective of restitution programs, programs of victim compensation are clearly directed toward

the restoration of economic loss sustained by victims of violent crimes. The perpetrators of crimes are seldom involved in victim compensation programs and, with the exception of only isolated instances, the conviction of an offender is not a pre-requisite for receiving compensation benefits. Compensation programs parallel other forms of social insurance and are publicly administered programs to spread the risk of criminal victimization over the entire population.

Two primary rationales have been stated for victim compensation programs - the obligation of the state rationale and the social welfare rationale.

The obligation of the state position argues essentially that along with the monopolization by the state of the policing authority and the absorption of the interests of the victim in the criminal justice proceedings, the state incurs a responsibility to protect its citizens from crime. When this responsibility is not fulfilled, the state then has the obligation to compensate citizens who are victimized. (Wolfgang, 1965) In contrast to this position, the social welfare rationale argues that the conditions of modern living involve certain grave risks, the economic costs of which should be shared among the population and not left to be borne entirely by the victims. Just as the cost of old age, disability, unemployment and industrial accidents are distributed widely and not left to be borne entirely by the victims of these conditions, so it is argued, should the cost of criminal victimization be widely shared. From this argument, victim compensation programs are seen as resting upon the social welfare interests of the state in providing a degree of protection to citizens through the use of the taxing authority to share the economic costs of criminal victimization. (Schultz, 1965)

Despite the logic of the obligation of the state argument, it has not been operationalized or accepted as the underlying rationale for any victim compensation program. All present victim compensation schemes rest upon the social welfare principle and, with a few minor exceptions, are limited to compensating victims of violent crime. No modern nation developed a victim compensation program until the social welfare functions of the state were firmly established in other areas of public social policy.

The genesis of modern crime victim compensation programs lies in the work of Margaret Fry, the British penal reformer, whose article published in the London Times on July 7, 1957 stimulated a parliamentary debate. (Fry, 1957) Influenced by the activity in England, New Zealand enacted legislation in 1963 and was followed by Great Britain whose program was established by White Paper in 1964. California in 1965 and New York State in 1966 enacted crime victim compensation programs. Subsequently, crime victim compensation programs have been enacted in twenty three common law jurisdictions including four Australian and eight Canadian provinces and eight states.¹

With a few minor exceptions, crime victim compensation programs are limited to losses sustained because of physical injury resulting from criminal victimization. The focus is on victims of violent crime rather than property victims. Economic losses are usually covered including costs of medical services, loss of wages, reduction in earning capacity, and miscellaneous out-of-pocket expenses.

Additionally, nine jurisdictions provide for awards because of pain and suffering; in the United States, however, only Hawaii provides for pain and suffering awards.² In jurisdictions which permit compensation for pain and suffering, the usual pattern is to place a clear limitation on these awards. Most jurisdictions provide a maximum payment ranging from \$1,000³ to \$175,000⁴; the usual maximum is \$10,000 or \$15,000. Eligibility is extended to actual crime victims as well as dependents especially if the victim is incapacitated or killed. Victims of intra-family crimes are usually not eligible for compensation and most compensation authorities have the power to deny or reduce an award if they determine that the victim was partially responsible for the victimization; the English scheme extends the concept of victim culpability to include character and way of life. Some jurisdictions require a means test to be eligible for victim compensation; the trend, however, is clearly away from use of a means test which is not found in later legislation in the United States. Victim compensation programs are usually administered by a board or tribunal which has been specifically established to administer the program; exceptions to this pattern are found in Massachusetts and North Ireland which vest decision making power with the first level of criminal trial courts.

Victim compensation programs provide a viable social mechanism for spreading economic losses sustained by victims of violent crime. Given the high proportion of violent crimes experienced by persons in lower social economic status, these programs are likely to serve those of greatest need. Crime victim compensation programs do not excessively duplicate other insurance benefits which are usually carried against property losses. Where collateral payments exist, most compensation schemes provide for deducting these payments from the compensation awards. Victim compensation schemes provide social security against the threat of criminal victimization - a threat which annually increases and disproportionately effects persons in the society least able to sustain the economic loss. Concern for the victim of crime is an appropriate stance for government and should increase the confidence of citizenry in the fairness of the criminal justice system. A further potential benefit lies in the view that as society provides more adequately for its crime victims, cries for vengeance directed towards offenders may be reduced, permitting a more humane and integrative approach to dealing with both crime offenders and crime victims.

Summary and Conclusion

The past ten years have witnessed the beginning development of social policies and programs designed to restore the victim as a significant participant in the administration of the criminal law. Programs of restitution hold potential for integrating the victim into the rehabilitation plan for the offender and crime victim compensation programs are directed toward sharing the losses sustained by violent crime. These trends will likely continue and, indeed, additional programs of service to crime victims are emerging. Special counseling centers are developing for victims of sex crimes and a number of demonstration projects are being funded to reduce the hardship experienced by both victims and witnesses as they fulfill their legally mandated requirements to cooperate with the criminal justice system in an effort to secure convictions. The crime victim is a proper object of social

policy and social programs; hopefully such programs can reduce the sense of alienation that may exist on the part of both victims and offenders and contribute to a more just society.

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- 1 England, New Zealand, North Ireland; The Australian provinces of New South Wales, Queensland, South Australia and Western Australia; The Canadian provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Ontario, Quebec, and Saskatchewan; and in the United States, Alaska, California, Hawaii, Maryland, Massachusetts, Minnesota, New Jersey, and New York.
- 2 Great Britain, Hawaii, New Brunswick, Newfoundland, New Zealand, North Ireland, Ontario, Saskatchewan, and British Columbia.
- 3 South Australia
- 4 Ontario; this limit applies to periodic payments. If a lump sum award is made, the maximum is \$15,000.

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