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The Need for Compensating Victims of Violent Crime

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THE NEED FOR COMPENSATING
VICTIMS OF VIOLENT CRIME

by

Alan Roger Phelps

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Faculty of The Graduate College
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requirements for the
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THE NEED FOR COMPENSATING VICTIMS OF VIOLENT CRIME

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Western Michigan University, 1983

This paper identifies how the victim of violent crime in the United States receives little attention from his or her government. A review of the historical developments which highlight how civilized society has taken the right to punish, negotiate, and receive direct compensation away from the victim is presented. The strengths and weaknesses of the methods of compensating crime victims are examined. Finally, this paper demonstrates how, by utilizing victim compensation programs, the criminal justice system will be improved and the amount of crime and number of victimizations in our society will be reduced.
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CHAPTER I

INTRODUCTION

The victim of violent crime in the United States often receives little attention from the government or the criminal justice system. If he or she is considered at all, it is usually as the witness to a crime having a civic duty to participate in the criminal justice proceedings. With rare exception, the costs of victimization, both emotional and financial, are borne by the victim alone.

With the ever increasing degrees of anonymity, urban living, juvenile precocity, social change, and other crime related factors in American society, authorities concede an inability to ameliorate to any great degree the threat of violent crime through usage of the present day criminal justice system. Personal injuries from crimes such as assault, robbery, and rape result in substantial economic losses to the victims for time lost from work, medical bills and other incidental expenses. The economic impact must also be measured in terms of the ultimate cost to society. Criminal acts causing injury to persons not only result in serious losses to the victims or their families, but also in the withdrawal of wealth or productive capacity from the economy as a whole. Thus, not only are the chances of victimization increasing; the costs borne by victims and society are rising as well.

In the 1960's, state and federal legislators began showing an interest in compensating the needy crime victim. To meet what is
felt to be a societal need, states responded by passing legislation that provides for compensation to victims of violent crime. To date, 29 states and over a dozen other countries have enacted some form of compensation legislation. These programs represent an attempt to placate a public opinion that is often unnerved and resentful by the rising tide of aggressive criminal activity.

Increasingly, interest has grown in the concept of compensating crime victims. The principle that society has a responsibility to compensate victims of crime is not new. It is not a radical departure from the social legislative policies and programs now in existence. The concept has gained support not only from considerations of personal damages and loss of equity but from the belief that compensation will result in more rigorous crime prevention and law enforcement.

The purpose of this paper is: (1) to review the historical developments which highlight how civilized society has taken the right to punish, negotiate, and receive direct compensation away from the victim; (2) to present the methods available to victims of violent crime for obtaining compensation; and (3) how by utilizing compensation it will improve the criminal justice system and lead to reducing the amount of crime and number of victimizations in our society.
CHAPTER II

HISTORICAL DEVELOPMENT

In a complex structure such as the system of criminal justice, there are few visible signs of consideration for the party who suffers most from violent criminal activity, the victim. Yet, historically, this was not always the situation. The usurpation by the state of the victim's status, the decreased importance of offender restitution to the victims of crime, and the increased use of monetary fines paid to the growing authority of a central government, present an interesting series of historical developments in the administration of criminal justice.

Generally, the history of compensating victims of violent crime can be viewed as developing in several broad stages. In the first stage, each person acted individually in defining the law and determining the form of punishment. With increasing social organization in the form of kin groups, tribes, and villages, the idea of collective social responsibility began to emerge. The blood feud developed between kinship groups as a way to resolve their grievances. This personal revenge, satisfaction, or blood feud is what Stephen Schafer labels aggressive retaliation and considers it the earliest form of compensation to the victim.  

Through this bond of kinship, vengeance developed into a system. With the formulation of groups of kinships in a society came man's struggle for survival in a violent environment. Two characteristics
of this stage of development were: (1) that redress is obtained through retaliation; and (2) that owing to the solidarity of the family the sufferer will find support in obtaining the redress that he seeks. "The individual man, woman or child no longer stands by himself or herself, but can count with considerable certainty on the protection of his relatives, who are bound to avenge a wrong done to him, or to stand by him in exacting vengeance, by every tie of honour and religion."  

When communities became structured and its leadership more centralized, codes of law were enacted to serve as guidelines for acceptable behavior. These codes encouraged settlement or composition between the parties for harmful acts as serious as homicide, personal injury less than homicide, rape, adultery, and theft. These first laws of primitive societies contained monetary evaluations for most offenses as compensation to the victim, not as punishment of the criminal. Also as the material culture reached a higher level of development and a richer inventory of economic goods, these goods could be equated with physical and mental hurt. 

Graduated scales of compensation to victims of crime can be found among codes of a number of early societies, including the Torah, the Code of Hammurabi, and the early English codes. The Hammurabi code (1728 - 1686 B.C.) in Babylonia, provided for an early but limited form of victim compensation; if a person was robbed on the highway and the robber escaped, the victim could expect the city in which the robbery occurred to reimburse him for his losses and, if
the victim was killed, the city was required to pay a limited monetary award to the kinsfolk. The severity of an offender's punishment and the amount of compensation he had to pay did depend on the victim's status. But every victim was avenged and compensated.

There are similarities between the Code of Hammurabi and the Old Testament in the Bible. Restitution and vengeance recur throughout the Bible, an "eye for an eye, tooth for an tooth, hand for an hand," and so forth. The Old Testament indicates also that a compensation system existed among the early Hebrews. If a victim was injured, the perpetrator of the offense was to reimburse him for the time lost from his tasks and to be responsible for seeing to it that the victim had the resources to be thoroughly healed, if possible. The Law of Moses also provided for reparation and/or restitution, such as fourfold for stolen sheep and fivefold for the more useful ox. Other instances set up to 30 times the value of the damage claimed.

Literature also provides an example of compensation which can be found in Homer in the Ninth Book of the Iliad where Agamemnon reminded Achilles that the offer of reparation for even a brother's death may be appeased by a pecuniary fine and that the murderer having paid the fine may remain at home free among his own people.

Ancient Greece and Rome gradually eliminated the right of the victim to conduct a personal vendetta against the criminal and replaced it with a system where the state fined and punished the criminal. In 621 B.C., the existing oral Greek laws were changed into the Draconian code. This code began to shift the responsibility
for punishment from the victim to the state. Twenty-five years later this code was revised because of its undue harshness. Under this new code called Solon, any citizen, not just victims or their closest kin, could bring an indictment against a criminal for any offense except homicide. In homicide cases, the right to prosecution and punishment was still vested in the relatives. This was another step in transferring control over retribution and restitution from the victim to the state.

The Romans also endorsed the governmental function of punishment and compensation. As in Greece, any citizen had the right to bring criminal charges against another. The codification of these Roman oral laws was written in 451 B.C. and were known as the Code of the Twelve Tables. Under the code a thief had to pay four times the value of what he stole if he used violence or a threat of violence.

The Germanic tribes that overran Rome modified the rights that victims had enjoyed. By the ninth century, A.D., the blood feud was invoked only if the victim's request for monetary compensation was denied. But payment was still made entirely to the victim or his family. As in the Hammurabi Code, each crime had a price dependent upon the type of crime committed as well as the victim's status, age and sex. Tacitus reports that among ancient Germans, "even homicide is atoned by a certain fine in cattle and sheep; and the whole family accepts the satisfaction to the advantage of the public weal, since quarrels are most dangerous in a free state."
By the twelfth century, the victim and his family began to be displaced by the sovereign in criminal matters. The state in the person of the king came to be defined as the offended party in matters of criminal law and as a result, the state's right to punish and collect damages superseded the individual's right to recover damages. As Silving writes, "The state thus assumes the role of both the representative of and successor to the victim."\(^8\)

The Anglo-Saxons adopted the Germanic system of splitting fines between the victim and ruler. But whenever a crime was termed a "breach of the king's peace," the king received the entire amount. Originally for a crime to breach the king's peace it had to affect the king's household and property directly but soon most private wrongs were included. Fines were remitted to the royal treasury and punishment administered by the king's officers. The victim was stripped of financial compensation and of the psychological satisfaction of avenging the crime.

The rationale for this new approach could lie in the fact that the fines underwrote expenses incurred by the authorities in apprehending and processing the offenders. However, a simpler and more accurate explanation would seem to be that medieval governments were traditionally starved for monies and equally uninhibited by ideas about the justice involved in the methods by which they obtained such funds. Through this violent greed of kings and their medieval ecclesiastical powers, the rights of the injured party were infringed upon. Kings exacted
a double vengeance upon the offender. First by forfeiting the offender's property to themselves instead of to the victim, and second, by punishing the offender through the use of the dungeon, torture, the stake or the gibbet. The original victim of the wrong was practically ignored.

"With the development of the notion that crime was a wrong against the state not the individual, private vengeance was replaced by government prosecution. The king's duty and interest was to maintain public order and to treat crime not as an offense against the individual, but as a menace to public tranquility, a breach of the "peace." This peace was a protection afforded in the first instance to certain places and times, but it gradually extended, largely it would seem, through the king's protection of the roads, to all places and all times. The criminal, in fact, was now at the king's mercy: any penalty short of death with forfeiture of all goods would be an indulgence, and hence the royal courts could fix a scale of punishment at their pleasure. "With the growth of public justice the function of the courts is changed: they have no longer to supervise the feuds of hostile families, but are to maintain public order, to detect and punish crime, and to uphold innocent people in their rights."9

Prior to these developments, the community or tribe set the amount of compensation owed the victim by his offender. The aim of the primitive legal process was primarily to make the victim whole and secondarily to minimize private revenge. There was no
"criminal" or "civil" law, and any penalty for the miscreant was merely incidental to the proceedings and took the form of a monetary loss. When the king began to split the victim's compensation, however, the focus of the proceeding shifted from the victim to the criminal. The next step was for the king to destroy the process of community composition and raise punishment to the level of satisfaction. Thus the system of fines paid to the Crown gave impetus to the separate growth of a criminal law for acts involving harm to individuals because it involved the state in the dispositionary stage of a legal proceeding in its own behalf.

In the past the community in mediating a dispute between criminal and victim, acted as a controlling force and the interests of both the victim and criminal were taken into consideration in settling their dispute. In contrast, the payment of a fine to the king was intended to punish the criminal and increase the wealth of the state. It was not aimed at restoring the victim to his original position. Later legal philosophers attempted to justify the need for a separate criminal law because of its deterrent capabilities and its ability to remove dangerous persons from society.

There exists a further abnormality that evolved from the English system of fines. The essential purpose of the present system of criminal law is the protection of society by a theory of deterrence, incapacitation, and rehabilitation. To carry out this theory, the state administers a system of criminal justice composed of policemen,
prosecutors, judges, and custodians, whose major concern is the prevention of harm to society and not, as one might expect, with harm to individual members of that society. Civilized society, then, has taken the right to punish, to negotiate directly, and to receive compensation from the (private) victim and transferred it to the (public) state. A philosophical basis for this transferral could possibly be explained with the thought and idea that the belief that life, liberty, and property would be better guarded by a collective force that the right to personal revenge was given up.

Historians purport several reasons for the divergence of the common law into today's civil and criminal components. Most historians recognize that there was no distinction between public and private wrongs for acts involving personal injury until the end of the Anglo-Saxon period in English history. The introduction of feudalism strengthened the authority of the king and enabled him to create a structured court system where certain harmful acts were considered offenses against the king's peace. Other historians maintain that the growth in the strength of the Church and the reintroduction of Roman law into England around the twelfth century, together laid the foundation for the acceptability of punishment as an aim of the law. Still other historians contend that the kings taking a share of the victim's compensation as a fine in certain cases involving harm led to the creation and justification for a specifically criminal law. All these approaches are mutually compatible because without
the rise of kingship, a structured court system, and the acceptability of punishment as an aim of the law, a system of fines payable to a centralized authority might never have been instituted.

Even though the concept of compensating the victim of violent crime has become an insignificant part in the administration of criminal law, several writers over the last few hundred years have argued for increased use of it. In the sixteenth century, Sir Thomas Moore suggested that the offender should be required to work on public works projects and make restitution to the victim instead of to the king. Bonneville de Marsangy proposed a compensation plan in 1847 that combined elements of restitution and compensation:

Now if it is true that there is no real social security without reparation, the conclusion is that this reparation must take place, cost what it will, and as one of the sine qua non conditions of the social contract; and that, in consequence, society must rigorously impose it on the culprit, at the same time and under the same justification that it imposes punishment on him; however, by the same token, we must conclude that if there is no known culprit, society itself must assume the responsibility for reparation . . . It would be easy to show, with arguments of an irresistible logic, that, when the authors of a crime are unknown or when the condemned persons are insolvent, the State should repair the harm done to the victim.

At the International Prison Congress in Stockholm in 1878, Sir George Arney, Chief Justice of New Zealand, and William Tallack, Secretary of the Howard Association in England, proposed a general return to the ancient practice of making reparation to the injured. Raffaelo Carofalo raised the question at the International Prison Congress held in Rome in 1885 and wrote that reparation to the victim:
is "a matter of justice and social security." The problem was also discussed at the International Prison Congress in St. Petersburg in 1890 and at the International Penal Association Congress held in Christiania in 1891. At this Congress the following conclusions were adopted:

1. Modern law does not sufficiently consider the reparation due to injured parties.
2. In the case of petty offenses, time should be given for indemnification.
3. Prisoner's earnings in prison might be utilized for this end.

The subject of victim compensation received considerable attention and at the International Prison Congress held in Paris in 1895, the following resolution was adopted:

The Congress believes that there is a reason to take into serious consideration the propositions which have been submitted to it with regard to allowing the injured party a portion of the earnings realized by the work of the prisoner in the course of his detention, or with regard to constituting a special fund derived from fines from which aid should be granted to the victims of penal offenses; but thinking it does not possess at present the elements which are necessary for the solution of these questions, the Congress decides to refer them to the more profound study of the next International Penal Congress.

At the Sixth International Penitentiary Congress in 1900, thirteen papers, which covered 147 pages of the Congress's Proceedings, dealt with victim compensation. Only the mildest of responses followed the discussion, however, with the delegates taking the following position:

The Congress adopts again the resolution of the Congress of Paris to facilitate by reforms in procedure the legal position of the party seeking relief by civil action.
The conclusion, unadorned and unenthusiastic, effectively buried the subject of victim compensation for at least half a century, with the exception of comments on the matter by three noted Italian criminologists: Cesare Lombroso, Raffaelo Carofalo, and Enrico Ferri. Ferri wrote:

The State cannot prevent crime, cannot repress it, except in a small number of cases, and consequently fails in its duty for the accomplishment of which it receives taxes from its citizens, and then, after all that, it accepts a reward; and over and above this, it condemns every ten years some 3,230,000 individuals, the greater part of whom it imprisons, putting the expense of their maintenance on the back of the honest citizen whom it has neither protected from nor indemnified for the harm done by the crime; and all this in the name of the eternal principles of absolute and retributive justice. It is evident that this manner of administering justice must undergo a radical change.

Belgian criminologist Adolphi Prins wrote in the late nineteenth century about the inequitable treatment accorded the offender and his victim:

The guilty man lodged, fed, clothed, warmed, lighted, entertained, at the expense of the State in a model cell, issued from it with a sum of money lawfully earned, has paid his debt to society. He can think that by taxes he pays to the treasury, he has contributed towards the paternal care which has guarded the criminal during his stay in prison.

Aside from these ideas and the penological Congress discussions, concern for victims of violent crime continued to be advanced, but without success until the mid-twentieth century. This will be discussed in more detail in Chapter IV.
In preliterate societies, compensation provisions would seem to indicate that they were closely tied to social structures built upon intricate kinship systems and detailed patterns of reciprocal rights and obligations. The community leaders acted primarily as arbiters of conflicts mainly because they were powerless to settle them. Anthropologists believe that in these early societies the payment of monies or goods by the family of an offender to the family of a victim was in the interest of maintaining a harmonious social life and preventing a state of social unrest marked by unremitting vendettas.

Early systems of law in Western civilization contained essentially similar compensation provisions as found in preliterate societies, often with exquisitely detailed scales of indemnification due to individuals with varying social standings and for various kinds of personal injuries. Gradually the king's compensation share increased as the victims diminished until the entire payment went to the state. The state logically then replaced the victim as the prosecuting party. As the system of fines narrowed the scope of community composition and left the victim out of proceedings deemed criminal, the focus of these proceedings shifted to the criminal and his act and away from harm to the individual. This shift in focus has resulted in monetary benefits for the state, but it also has reduced the economic lot of the victim. This also shifted the law away from any constructive policy of compensating the crime victim.
If one examines the legal systems of different countries one rarely finds an instance in which victims of violent crime can be certain to expect full compensation. While punishment of crime is regarded as the concern of the state, the injurious result of the crime, that is to say, the wrong or damage to the victim, is regarded almost as a private matter. There has been no improvement for the victims of violent crime to compare with other advances made in criminology and certainly no improvement to compare with the amelioration of the criminal's lot. Ever since the state took over from the victim the task of preserving law and order and keeping the peace, concern for its predecessor (that is, the victim) in administering criminal justice has been sorely lacking. Through these historical developments the state has undertaken the responsibility for protecting the public against crime. However, when it fails to do so the state offers no effective remedy to the individual victim.
CHAPTER I

FOOTNOTES


7 Ibid., p. 338.


9 Hobhouse, p. 83.


22. Ibid., p. 105.


CHAPTER III

METHODS FOR COMPENSATING THE CRIME VICTIM

In theory there are many systems of financial relief available to the victims of crime. These include: private insurance; civil remedies; third party litigation; public assistance; restitution; and public crime victim compensation. Each of these systems of financial relief includes serious drawbacks for the victim of violent crime. Below, the positive and negative characteristics of these systems will be examined. Each particular system has its shortcomings which limit their usefulness for the needy crime victim.

Private Insurance

In many cases, private insurance offers the best protection against serious financial loss as a result of crime. James Starr has little doubt about the necessity of state compensation programs. However, "undoubtedly, more can be done and would be if insurance companies assumed a greater share of the cost of crime."¹ Starr suggests that all compensation schemes have the drawback of keeping the level of payments so low that "full compensation for all damages must be a rarity under them."² In his view, "insurance provides the ideal setting for achieving payments more commensurate with the losses actually sustained by crime victims."³

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Certainly, private insurance programs offer the best protection against property loss, as victim compensation programs generally do not offer systematic reparation for lost property. However, reliance on private insurance as the sole means of victim reparation presents several problem issues. The first of these is, of course, equity. Should the person unable to afford comprehensive medical insurance, or the person temporarily without insurance be penalized? Should society allow the lower-income classes to bear the brunt of their victimization because they are unable to obtain insurance?

Victims who are injured in a violent robbery may or may not have enough health and hospital insurance to pay their medical expenses. According to a 1979 study of health care coverage, an estimated 11 to 18 million people were without health care coverage, representing some 5 to 8 percent of the total United States population. Many of these uninsured Americans are either the poverty-level or unemployed people whom the FBI identifies as the most likely victim of violent personal crime. Those persons, unless they live in a state that provides government crime compensation (for which they need to be eligible for benefits), have to rely upon unemployment insurance, welfare payments, food stamps, or loans from private or business sources. Also most medical insurance policies still are not designed to fulfill all of a crime victim's needs. Finally, private insurance companies themselves may pose significant barriers for certain classes of individuals. Health insurance may be difficult to obtain or be
extremely costly for the chronically ill, the elderly, or the poor. Even those individuals who maintain some form of health care insurance may find that their coverage is inadequate to cover the major expenses incurred during a violent criminal incident. It has been estimated that 15 percent of those covered may not have this type of protection through private insurance. In addition, there are likely to be substantial numbers of persons "with insufficient protection against out-of-pocket health expenditures that are high relative to income." Thus it seems that private insurance would provide an uneven and somewhat biased form of reparation for losses resulting from crime.

Civil Remedies

As discussed in Chapter II, under the Anglo-American system of law, the state gradually assumed many of the "functions" of the victim in legal proceedings. In criminal matters, this resulted in the "gradual elimination of the victim from the criminal law proceeding, while the state assumed responsibility for action against the offender and relegated the victim's interest to tort-law procedures." The state assumed the obligation to discover, apprehend, try, and punish the offender for the criminal offense. As a result, the victim yielded his right to seek additional satisfaction for the criminal offense but retained the right to sue the offender in civil court for any wrongs that he may have committed against the victim.

Civil court, ideally, would be one place for victims of crime to get proper compensation since almost every crime has a corresponding
civil tort. The crime of assault, for example, is also the civil
tort of battery; the crime of attempted assault is both the criminal
and civil act of assault. A person who attempts or commits the crime
of rape, robbery, or assault has probably also violated the civil
torts of assault or battery. Other torts that victims may sue for
are false imprisonment, the infliction of mental distress, negligence,
wrongful death, libel and slander, invasion of privacy, and arrest
without a warrant.

A crime victim usually sues the offender if he has sustained
physical injuries or suffered psychological distress. It is not
necessary for the state to press criminal charges against the offender
for a victim to initiate, or to win, a civil suit. In a civil case
the crime victim only has to prove his case by a preponderance of
evidence, meaning that the victim's case need only be more convincing
to a judge or jury than that of the offender's. Hence it is considerably
easier to win a civil case than a criminal one in which severe rules
of evidence require that the state prove a defendant's guilt "beyond
a reasonable doubt." Furthermore, since the jury is deciding only
whether the offender should pay the victim a monetary award, juries
do not have the same reluctance to convict as they often do in criminal
cases.

While in principal this theory is sound, it has proven to be
most impractical as a means of attaining financial assistance or
reparation for the victim of crime. The most obvious drawback to
such a system is the relatively low percentage of offenders arrested: the Uniform Crime Report, for example, indicates that only some 21 percent of all index crimes are solved by arrest of the offender. It is obviously not possible for a victim of a violent personal crime to institute a tort action against an offender who remains unapprehended.

Even if the offender is apprehended, however, there remain substantial barriers to winning a civil action against him. The offender generally has few, if any, reserves of funds, and most of these would be expended in the process of defense against criminal charges. If sentenced to prison, the offender has little chance to earn an income which could serve as the basis for a civil award. The civil court process itself is extremely time consuming for the victim and may result in substantial expenditures of the victim's own funds. A victim may also fail to sue a criminal because he fears retaliation or harassment by the offender. Victims may also feel guilty about collecting damages however justified and necessary because of hospital and medical costs. It might be misinterpreted by their peers as "profiting" from their victimization. Occasionally a crime victim may feel the criminal has "learned his lesson" because a police officer reprimanded him at the police station, and the victim, unaware of subsequent expenses arising from the crime, reluctantly drops the charges.

Yet, few victims of violent crimes consider initiating a civil suit as shown in a study undertaken by the Osgood Hall Law School in
Canada of 167 crime victims in 1966. Of the crime victims surveyed by mail and telephone, only 14.9 percent considered suing; 5.4 percent consulted a lawyer; 4.8 percent had tried to collect damages from their attackers; and only 1.8 percent (or 3 out of 167 respondents) actually collected damages. It seems that if the victim does pursue a civil court action, it would be a difficult, costly, and time consuming process with little chance of being compensated from the attacker.

Third Party Litigation

Under certain circumstances, victims of violent crimes may obtain reparations from third parties who had the obligation to prevent a crime, and yet failed to do so. Lamborn has noted that third parties "could have prevented the commission of a crime through the exercise of due care . . . Such liability (however) extends only to those having a duty to have interfered with the offender or on behalf of the victim." By requiring these third parties to apy reparations, Lamborn notes that negligence which may allow the commission of a crime may be reduced. For example, in Schuster v. City of New York (1958), New York City was found responsible for failing to provide proper police protection for Schuster after he cooperated as an informer and was later murdered by persons unknown. Other, more recent "third party" suits have included the payment of damages by hotel chains, furniture delivery companies, or universities for failing to provide proper lock systems that would have protected the victim against an criminal assault or for not screening employees properly to uncover
prior convictions for violent crimes. However, this method of obtaining compensation is limited by: the sovereign immunity claimed by many governments; the expense of litigation; and the relatively few instances in which such a suit would be appropriate. While this approach may hold promise for some, it is unlikely to answer the needs of the vast majority of crime victims.

Public Assistance

Welfare, Social Security, Medicaid, Medicare, Aid to Dependent Children, Assistance for the Handicapped, and other forms of public assistance may provide methods for compensating victims of violent crime. These forms of assistance may be among the most readily available because the administrative structures for these programs are already established in every community. Unfortunately, public assistance also presents several drawbacks for the crime victim. Most programs limit availability of benefits to individuals meeting certain levels of financial need, age, or disability, and these limitations could bar substantial numbers of victims from public assistance benefits. With the present state of the economy, cutbacks in these types of programs seem more likely than there is for any hope of expansion. In addition, the level of benefits provided may not fully compensate victims for the true amount of loss experienced as a result of the crime.
Restitution

Only in the last couple of decades has the use of restitution as a sanction on criminal offenders been developed. As early as 450 years ago, Garofalo proposed restitution and suggested that in cases where the offender is solvent his property should be confiscated and restitution made there-from by order of the court; if insolvent, he should be made to work for the state. Still another proposal, made by Prins and also by Garofalo, was to balance the burden of fines and restitution between the rich and the poor. According to this proposal, a poor man would pay in days of work, a rich man by income or salary based on an equal number of days of work. If, say, $2 represented the value of a day’s work, and the poor man were sentenced to pay $2, he would be released after giving one day’s labor to the victim. The rich man, instead of being sentenced to so many days of labor, would pay out of income or salary an amount based on an equal number of days of work. If this represented, say $200 a day, he would have to pay accordingly.

British philosopher Jeremy Bentham (1748-1832) advocated restitution when he said, "What is paid by the offender as a fine, is a punishment, and nothing more; what he pays as a satisfaction is also a punishment, and a punishment even more than ordinarily strong, besides this, it is a satisfaction for the party injured; that is to say, a good." Schafer proposed "correctional restitution" and suggested that if the offender were at liberty after punishment but had to make
restitution through work, restitution would retain its punitive-reformative character. At the same time the state would be relieved to a certain extent of the need to solve the problem of restitution; however, the criminal court should have to consider this question within the scope of the criminal procedure that deals with the criminal case itself.14

Only recently, British writer Kathleen Smith recommended the "self-determinate prison sentence" as "a cure for crime," and proposed that all victims of crime should be "compensated through the personal labor of the prisoner in the correctional institution. Smith suggested that prisoners be required to work a 42-hour week, at full union rates, "until their crimes were paid for out of their earnings, and their victims compensated."15

Although it is possible to say with some certainty what restitution is, it is less straightforward to determine what it is not. Similar concepts, to be distinguished and considered for their independent usefulness, include composition, reparation, restoration, and indemnification. In its narrowest interpretation restitution has been said to refer only to the process by which stolen goods or proceeds are returned to a victim upon conviction of the offender. Composition can be defined as a sum of money paid by an offender as satisfaction for a wrong or personal injury, to the person harmed, or to the family if the victim died. Restitution is used in this sense under modern law in connection with pretrial diversion programs and some misdemeanor statutes allowing victim-offender compromise
under court supervision. However, in its more familiar sense, restitution differs from composition insofar as restitution rarely is viewed as total satisfaction by criminal justice decision-makers. Instead, it is used most prominently in conjunction with other criminal sanctions such as probation or parole.

Reparation signifies a "making of amends" for a wrong or an injury. It is often used synonymously with restitution although it lacks the strict sense of returning something taken from its rightful owner, or the equivalent. Recently however, restitution has taken on the more generic meaning of simply making up for loss of injury caused by a crime. Restoration, on the other hand, has the more literal sense of putting back into a former state. As such, it can be taken as merely one form of restitution, as indeed it is under the civil law order of restitution in integrum. Examples of restitution under this meaning might include the direct return of stolen goods or the repair of damage caused.

Indemnification is a term frequently encountered where the government gives indemnity (or compensation) for private property taken for public use. Indemnification also has strong insurance connotations of security against future loss. In both cases an offender could be said to indemnify the victim if restitution were to become a routine component of criminal dispositions. Restitution, then may be viewed as a combination of composition, reparation, restoration, and indemnification.
In criminal-victim relationships, restitution concerns reparation of the victim's loss or better, restoration of his position and rights that were damaged or destroyed by and during the criminal attack. It is an indication of the responsibility of the offender; it is a claim for restitutive action on the part of the offender; it is penal in character and thus represents a correctional goal in a criminal case. Restitution is offender-oriented, is a sanction that can be imposed on offenders and may be used to meet various social objectives of sanctioning, that is, rehabilitation, deterrence, or punishment of the offender in proportion to the seriousness of the offense. It is imposed by an official within the criminal justice system which often requires an offender to make a service payment, a monetary payment, or both, to the victim of the crime and/or the community.

Advocates of modern restitution programs cite four principal purposes and benefits of restitution: it offers the offender a method of circumventing more severe but permissible means of punishment such as a prison term; it helps to restore the offender's self-respect; it is less costly than keeping an offender in prison; and it gives the victim psychological and material satisfaction. In Multnomah County, Oregon, for example, a new restitution program repaid $480,000 to victims within eighteen months. In 1975, inmates on parole in Colorado paid $518,000 in restitution to their victims. One restitution program in Minnesota had eighty-seven paroled men participating
between 1972 and 1975. Each man made an average payment of $400 to his victim and after the convicts' release, only 8 percent committed new felonies. As a comparison, a nationwide follow-up study of 78,143 offenders released during 1972 indicated that by 1976, 81 percent of all burglars and 74 percent of all types of criminals had been rearrested.

Another example of a restitution program is one in Georgia where some offenders may be diverted to the restitution program instead of being placed in prison. Offenders are allowed to work in the community during the day, and return to the Restitution Center in the evening. Their paychecks are forwarded to the Restitution Center where appropriate sums are deducted for the restitution payment. While the program appears to be successful to date, not enough is yet known about its cost-effectiveness or suitability for other jurisdictions.

Some forms of common street crimes can be deterred by making them unprofitable. For example, a young man pleaded guilty to burglarizing a neighbor's home and taking a television, a tape recorder, and a camera. The television and tape recorder were worth about $700; he had sold them for less than $100. The defendant still had the camera, which he was ordered to return. Rather than being sentenced to prison, the young man was placed on probation, a condition of probation being that he repay the victim, at $25 per week, the $700 plus court costs. The stupidity, if not the immorality, of his act
was impressed upon the defendant every week as he paid $25 out of his small wages. A sentence of three to six months, average for such a crime, would have cost the taxpayers several thousand dollars, probably taught the defendant more about crime than he already knew, and not helped the victim.

The barriers to the concept of restitution are many. First, and perhaps most limiting, is the fact that restitution would be available only in those cases in which the offender is apprehended and convicted. As noted earlier in the section on Civil Remedies, this number represents a relatively low percentage of all victimizations. Even if the offender is apprehended, the chances for a meaningful restitution program are minimal in most cases. As Harland has noted, "The victim's claim to restitution must assume its place among the hierarchy of traditional (criminal justice) system goals of deterrence, deserts, rehabilitation, and incapacitation. If these goals are in conflict with restitution, experience with current restitution programs shows that the victim will usually drop out of the picture." 17 Additionally, Lamborn has noted that restitution may be ordered infrequently due to the extra time and effort such an order would require from the criminal justice system. 18

The financial condition of most offenders may also prevent restitution. The offender will most likely spend what little funds he has available on his criminal defense. If sentenced to prison he will most likely participate in a prison industries program where the wages are so inadequate as to preclude restitution payments.
If the offender is sentenced to probation or released on parole, judges and probation officers may be reluctant to enforce restitution orders, fearing that imposition of this extra burden might prejudice the offender's chance of successful readjustment. Finally, the offender may indeed experience considerable difficulty in making the restitution payment. A significant percentage of the offenders for any major crime will consist of persons under 18 years of age. Even the adult offenders may have income levels which would effectively preclude restitution payments. For example, Harland cites the results of a national survey of jail inmates in the United States which showed that "among inmates who were either awaiting trial or who were sentenced to jail terms . . . the model income category for twelve months prior to incarceration was below $3,000."\textsuperscript{19}

Nonetheless, when all the difficulties are taken into account, restitution remains a worthwhile goal. No other approach promises to meet the needs of all parties (victim, offender, and society) as well as it does. If it needs to be supplemented by a compensatory program, then so be it. But we should recognize that restitution provides a way to compensate the greatest victim of crime: society itself. And though we may not be able to employ punitive restitution as often as we would like, that is no reason not to employ it as often as we can.

Compensation

Victim compensation refers to a publicly administered social insurance program in which victims of violent crimes receive payments
from a public body (usually a state board) to cover medical expenses and monetary losses resulting from the criminal victimization. Because victim compensation is a relatively new concept and is rapidly growing in the United States, a more detailed and extensive discussion is undertaken in the next chapter.
CHAPTER III

FOOTNOTES


2 Ibid., p. 309.

3 Ibid., p. 310.


18 Lamborn, p. 226.

19 Harland, p. 219.
CHAPTER IV

VICTIM COMPENSATION

Revival of active interest in compensation for crime victims in contemporary times is attributable to British penal reformer Margert Fry. In her book *Arms of the Law*, published in 1957, Fry noted, "We have seen that in primitive societies this idea of making up for a wrong has wide currency. Let us once more look into the ways of earlier man, which may still hold some wisdom for us." Fry believed that the state must assume the obligation of ameliorating deprivation suffered by its members as part of enlightened social policy. "The logical way of providing for criminally inflicted injuries would be to tax every adult citizen . . . to cover a risk to which each is exposed." Fry felt that "the state which forbids our going armed in self-defense cannot disown all responsibility for its occasional failure to protect."

By 1964 the arguments made by Fry and other pro-victim criminologists began to yield results. New Zealand became the first modern state to provide government funded crime compensation which has become the world's largest in terms of numbers involved and costs. In the United States, several states began recognizing the serious needs of many crime victims and the shortcomings of available systems of financial relief for them. In response, many states have developed special crime victim compensation programs to manage
some of the financial consequences of victimization. These programs
compensate innocent victims injured as a result of crime, and in
cases of death, compensate the surviving dependents of the victim.
Funds are usually provided for unreimbursed medical costs, loss of
earnings, loss of support and funeral expenses. These compensation
programs are intended to provide some or all of the following
objectives: demonstration of the states concern for the victim of
violent crime; reduction of the financial impact of criminal injuries;
increased reporting of crime; increased victim cooperation; more
effective delivery of assistance to victims; and improved victim
services throughout the state.

In 1965, California passed the first victim compensation statute
in the United States. New York and Hawaii followed in 1967, while
Maryland and Massachusetts enacted compensation statutes in 1968.
To date, 29 states have enacted some form of compensation legislation,
while one state (Rhode Island) has passed a bill but delayed its
implementation. For each of these states, Table 1 lists the year
legislation was passed, program beneficiaries, and benefits.

<table>
<thead>
<tr>
<th>State</th>
<th>Year Legislation Enacted</th>
<th>Beneficiaries</th>
<th>Maximum Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>1972</td>
<td>victims; intervenors; dependents; persons who as-</td>
<td>$25,000 per victim; $40,000 for two or more survivors</td>
</tr>
<tr>
<td></td>
<td></td>
<td>sume costs for the victim</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Year Legislation Enacted</td>
<td>Beneficiaries</td>
<td>Maximum Benefits</td>
</tr>
<tr>
<td>------------</td>
<td>-------------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>California</td>
<td>1965</td>
<td>victims; dependents; persons who assume costs for the victim; intervenors</td>
<td>$10,000 medical; $10,000 lost earnings/support; $3,000 rehab.; $5,000 for intervenors or their dependents</td>
</tr>
<tr>
<td>Connecticut</td>
<td>1978</td>
<td>victims; intervenors; dependents</td>
<td>$10,000</td>
</tr>
<tr>
<td>Delaware</td>
<td>1975</td>
<td>victims; dependents; persons who assume costs for the victim</td>
<td>$10,000</td>
</tr>
<tr>
<td>Florida</td>
<td>1978</td>
<td>victims; intervenors; dependents</td>
<td>$10,000</td>
</tr>
<tr>
<td>Georgia</td>
<td>1967</td>
<td>intervenors; dependents; persons who assume costs for the intervenor</td>
<td>$5,000</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1967</td>
<td>victims; intervenors; dependents; persons who assume costs for victims and intervenors</td>
<td>$10,000</td>
</tr>
<tr>
<td>Illinois</td>
<td>1973</td>
<td>victims; intervenors; dependents; relatives who assume costs for the victim</td>
<td>$10,000</td>
</tr>
<tr>
<td>Indiana</td>
<td>1978</td>
<td>victims; intervenors; dependents; law and fire officers injured in performance of duties</td>
<td>$10,000</td>
</tr>
<tr>
<td>Kansas</td>
<td>1978</td>
<td>victims; intervenors; dependents; other third persons</td>
<td>$10,000</td>
</tr>
<tr>
<td>Kentucky</td>
<td>1976</td>
<td>victims; intervenors; dependents</td>
<td>$15,000</td>
</tr>
<tr>
<td>Maryland</td>
<td>1968</td>
<td>victims; intervenors; dependents</td>
<td>$45,000; unlimited perm disable &amp; death benefits</td>
</tr>
<tr>
<td>State</td>
<td>Year Legislated</td>
<td>Beneficiaries</td>
<td>Maximum Benefits</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>1968</td>
<td>victims; dependents</td>
<td>$10,000</td>
</tr>
<tr>
<td>Michigan</td>
<td>1976</td>
<td>victims; intervenors; dependents</td>
<td>$15,000</td>
</tr>
<tr>
<td>Minnesota</td>
<td>1974</td>
<td>victims; intervenors; dependents; victims' estates; persons who assume costs for the victim</td>
<td>$25,000</td>
</tr>
<tr>
<td>Montana</td>
<td>1977</td>
<td>victims; intervenors; dependents</td>
<td>$25,000</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1978</td>
<td>victims; intervenors; dependents; persons responsible for maintenance of the victim</td>
<td>$10,000</td>
</tr>
<tr>
<td>Nevada</td>
<td>1969</td>
<td>intervenors; dependents; persons responsible for the injured party</td>
<td>$5,000</td>
</tr>
<tr>
<td>New Jersey</td>
<td>1971</td>
<td>victims; intervenors; dependents; persons responsible for maintenance of the victim</td>
<td>$10,000</td>
</tr>
<tr>
<td>New York</td>
<td>1967</td>
<td>victims; dependents</td>
<td>unlimited med; $20,000 wage loss</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1975</td>
<td>victims; intervenors; dependents</td>
<td>$25,000</td>
</tr>
<tr>
<td>Ohio</td>
<td>1975</td>
<td>victims; intervenors; dependents; specific third persons</td>
<td>$50,000</td>
</tr>
<tr>
<td>Oregon</td>
<td>1977</td>
<td>victims; intervenors; dependents</td>
<td>$23,000</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>1976</td>
<td>victims; intervenors; dependents</td>
<td>$25,000 loss of earn/support; $15,000 death benefits</td>
</tr>
<tr>
<td>State</td>
<td>Year</td>
<td>Legislation Enacted</td>
<td>Beneficiaries</td>
</tr>
<tr>
<td>---------------</td>
<td>------</td>
<td>---------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1976</td>
<td>victims; dependents; persons responsible for maintenance of the victim</td>
<td>$25,000</td>
</tr>
<tr>
<td>Tennessee</td>
<td>1976</td>
<td>victims; intervenors; dependents; persons responsible for maintenance of the victim</td>
<td>$10,000</td>
</tr>
<tr>
<td>Texas</td>
<td>1979</td>
<td>victims; intervenors; dependents</td>
<td>$50,000</td>
</tr>
<tr>
<td>Virginia</td>
<td>1976</td>
<td>victims; intervenors; dependents</td>
<td>$10,000</td>
</tr>
<tr>
<td>Washington</td>
<td>1974</td>
<td>victims; intervenors; dependents</td>
<td>unlim, amounts set by Workers' Compensation</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>1976</td>
<td>victims; intervenors; dependents; persons responsible for maintenance of the victim</td>
<td>$10,000</td>
</tr>
</tbody>
</table>


Compensation programs in the United States differ considerably from one jurisdiction to another. The federal and the 50 state jurisdictions provide laboratories in which different approaches to the same end may be undertaken experimentally in order to learn which is the most efficacious. Key features of victim compensation programs are: criminal incident; coverage; eligibility; application process;
claims decisions; public awareness; outreach; benefits; award limitations; and payment methods. These key features are discussed below.

Criminal Incident

A common denominator of victim compensation programs is that the "victim" must have suffered personal injuries or death by reason of the criminal conduct of another. These programs require only that the victim be the object of what appears to be a crime. The options for defining a criminal offense are to either state a generic definition or to list specific actions that are considered to be compensable. In practice, it has made little difference in program scope whether "criminal offense" has been given a generic definition or has been confined to a prescribed list of crimes. Either practice will usually include death, stabbing, shooting, and assault without weapon claims. These account for practically all claims filed.

Even though the esoteric case has been insignificant in producing claims, its exclusion from a list of compensable crimes presents the possibility for irrational inequities to result in compensating victims for excluded offenses. For this reason, it has been suggested that a generic classification of crime for compensation purposes is preferred.

Coverage

The most basic decision to be made by victim compensation programs is the circumstances under which they will provide compensation. Specifically, programs must determine the types of losses

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which will result in compensation. Thus, for example, losses may include the following: medical expenses; rehabilitation costs; physical disability; loss of the services of a family member; loss of support for dependents; funeral costs; loss of future earnings; mental impairment; and property loss and damage. However, for a variety of reasons including cost, ease of administration, practicality, and the political and moral values of program designers, most programs do not attempt to compensate every possible loss resulting from a crime.

There is universal agreement that medical expenses directly resulting from violent crime are compensable. Some indirect losses are, however, not payable. For example, no program in the United States will pay claims of a rape victim for abortion or for maternity costs.

The general issue of how compensation is to be determined was a concern of Gurley v. Commonwealth. Gurley was a Massachusetts case involving a claim for compensation by dependents of a victim of violent crime. The relevant Massachusetts statutory provisions read as follows:

Any compensation paid under this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or support resulting from such injury. Any compensation for loss of earnings or support shall be in an amount equal to the actual loss sustained; provided, however, that no award under this chapter shall exceed ten thousand dollars.

The petitioners first alleged that the statutory phrase "compensation for loss of earnings or support" included "future loss of earnings and support." The Commonwealth did not contest this
allegation. The court decided as follows:

We can see no logical reason why the victim's death should not be treated as a permanent loss of support to be computed on the basis of life expectancy and actuarial tables in determining the victim's future loss of earning capacity ... We conclude that the judge erred in the denial of the petitioners' request for a ruling to this effect.

Certain statutes specifically include expenses for other types of losses. Some examples are: Florida stipulates that expenses for nonmedical care or "treatment rendered in accordance with a religious method of healing" will be compensable; California provides that occupational training costs will be reimbursable by the victim compensation program; and Delaware specifies that loss of future earnings may be compensated.

Programs customarily provide for payment of victims' funeral expenses. This represents a problem for decision-makers because, unlike medical expenses, there are almost no limits to what dependents will consider a reasonable expenditure. To meet this problem the New Jersey board promulgated a rule limiting funeral expense reimbursement to $750; New York set a $1,000 limit. In the future it may, however, be necessary to consider whether the automatic allowance of maximum funeral benefits does not encourage more expensive funerals than might otherwise be held.

Eligibility

Compensation programs define and limit the scope of their activities and clients by imposing specific eligibility criteria.

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on victims and their dependents. Policies concerning eligibility are generally formulated with the following objectives in mind: to define the intended beneficiaries of the victim compensation program; to minimize the possibility of "unjust" attainment of benefits; to promote victim cooperation with the criminal justice system; and to contain the potential costs of providing crime victim compensation.

An eligibility option of some programs concerns a residency requirement. In some states such as Maryland, New York, and Washington, benefits are extended to all innocent victims of crime injured in the state, regardless of their actual state of residence. A minority of programs, however, make compensation available only to residents. Pennsylvania has established a unique solution to this problem by including a reciprocity clause in their statute. Thus, they will compensate residents of another state only if the other state similarly provides for residents of Pennsylvania.

Many jurisdictions provide for a minimum claim (e.g., $100 in Maryland, New York, Massachusetts, and New Jersey). This plan supposedly discourages small claims and thereby reduces administrative costs. Compensation programs should not set a minimum loss. Loss is relative, of course, and the real or imagined hardship will vary from one person to another. For example, one fundamental unfairness of minimums is that they treat equally those who are unequal, which is a prescription for injustice. A $100 loss may be greater for someone with a $6,000 income than for someone with a $12,000 income.
Solutions advanced to meet this problem usually involve complex formulas and are not attractive.

As for the allegation that claims for small amounts would greatly increase administrative workload and costs, it appears to be unsubstantiated. Since every claim must be investigated to determine whether the claimant is eligible for compensation, there would seem to be little opportunity here for effective savings. In New York an inexpensive mail and telephone inquiry is conducted before a claim is accepted. Enlightened administrative practice would seem to be preferable to a minimum loss requirement.

Some states such as California, Maryland, and New York require that claimants show that they need financial assistance to qualify for compensation. In fact, during its first year, the California scheme was administered by the Department of Public Welfare which used the standards of aid to families with dependent children to determine eligibility.

If victims are to be compensated because they bear the burden of society's failure to prevent crime, it makes little sense to compel them to deplete their resources in order to qualify for benefits. If victim compensation is only another form of welfare, it is difficult to understand why victims of crime should be favored over others also in need.

The financial costs of administering this needs test have not been carefully balanced against savings realized by the imposition of the requirement. Verification of other elements of claims are
easier to investigate than financial need. A search for undisclosed assets is difficult and time consuming, as well as demeaning to a claimant who must suffer the injury of surrendering privacy in addition to the criminal injury already suffered. While the financial need requirements are a part of some of the earlier legislation, it is significant that recent legislation tends to omit this requirement. It is not found in the laws of Hawaii, Massachusetts, New Jersey, and most of the Canadian provinces.

Designers of programs have been concerned about the potential for fraud or the possibility that the program might unwittingly allow benefits to persons whose status as an "innocent" victim of crime is open to question. Thus, several eligibility criteria have been established which are intended to minimize the payment of benefits to "undeserving" individuals: restrictions concerning family members; exclusions or reductions based on victim contribution to the injury; and, to a lesser extent, reporting requirements.

A very common and controversial criterion is the provision that victims who are related to the offender are ineligible for compensation benefits. Two reasons are advanced for the exclusion: (1) determining the facts would be especially difficult when victim and offender belong to the same family; and (2) an award to such a victim might benefit the offender. Neither reason withstands examination. First, fact-finding complexity is not confined to these cases; other cases, not excluded, present situations in which the facts are just as difficult to determine. Second, admittedly the
offender should be prevented from sharing the award, but this poses no more than a technical problem, and various solutions have been suggested.

These provisions create potential inequities in the law. A spouse injured by a mate in a criminal assault would not be eligible for compensation, nor would a child battered by his parent; in many jurisdictions, the limitation also excludes relatives not living in the household of the offender. Considering the fact that the high percentage of murders and assaults emanate from family quarrels and lover triangles, this limitation may well subvert the intent of the law. Sander has suggested that the aim of avoiding fraud and providing pecuniary gain to the offender can be accomplished by means of alternatives other than eliminating relatives from coverage; he suggests the requirement that the claimant testify at criminal proceedings and that compensation be limited to medical expenses. 13

Where the victim's conduct contributes to his injury, some state statutes provide that compensation may be denied or reduced. 14 Victim compensation programs provide numerous avenues for denying awards to culpable victims and their dependents. The culpable-victim argument is lent further credence by the Federal Bureau of Investigation statistics, which indicate that 31 percent of all murders in 1971 resulted from situations in which the offender and victim were members of the same family or were involved in romantic triangles and 41.5 percent grew out of other kinds of arguments.
Childs, in addressing himself to the culpable-victim issues, reiterates a position taken earlier by Margaret Fry: "It seems clear that not many people would risk broken legs or smashed skulls for a week off the job with pay." The culpable-victim issue is one of the major problem areas confronting victim compensation programs. It will remain an issue as long as questions of fault tend to be relevant in awarding losses from injuries.

Every victim compensation program requires as a precondition for eligibility that the crime be reported to the police within a certain period of time. As the primary intent of this requirement is to promote victim cooperation with the criminal justice system, it will be further discussed in Chapter VI.

Application Process

In considering applications for compensation, answers to four questions are required: (1) Were the losses sustained from a crime falling within the purview of the law?; (2) What is the extent of loss?; (3) What dollar amount should be attached to this loss?; and (4) How should benefits be paid to the claimant? The forms vary greatly in terms of length, complexity, and intrusiveness. Information on the application is verified, and if necessary, additional information may be sought through an investigation. The extent of verification and investigation carried out differs considerably among programs. Hearings are a common feature in many states. Most states conduct these proceedings on an as-needed basis; however, some programs
conduct hearings on every claim, while others conduct no hearings at all.

Claims Decisions

The procedures and personnel used for claims decisions are determined by the placement of the program and the specific claims processing options prescribed in the victim compensation statute. There are currently three major types of organizational placements for victim compensation program. In the first, a new administrative agency is created specifically for the purpose of operating the victim compensation effort. Newly created victim compensation programs generally are characterized by the establishment of a board or commission, appointed by the Governor, and charged with decision-making concerning victim compensation claims, establishment of program rules and regulations, and policy decisions for the program. Depending on the size of the program, the board or commission may be assisted by administrative and/or investigative personnel.

In a second type of administrative placement, responsibility for the victim compensation effort is placed in an existing administrative agency by expanding the original jurisdiction of that agency to include victim compensation. Generally, the agencies chosen for this placement are affiliated with an existing board or commission, such as the board of claims or workmen's compensation board. The existing board and the administrative staff which support the board
are given responsibility for victim compensation operations in addition to their previous duties.

A third potential placement is within the courts system. Under this option, most often judges or commissioners of the court bear responsibility for claims decision-making, while court staff, the State Attorney General's office, or local District Attorneys are responsible for claims processing. Table 2 below illustrates the organizational affiliation of the 29 victim compensation programs in the United States.

**TABLE 2**

**ADMINISTRATIVE PLACEMENT OF U.S. CRIME VICTIM COMPENSATION PROGRAMS**

<table>
<thead>
<tr>
<th>State</th>
<th>Year Legislation Enacted</th>
<th>Program Placement</th>
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</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>1972</td>
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</tr>
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<td>New York</td>
<td>1969</td>
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</table>
Table 2 (continued)

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Legislation Enacted</th>
<th>Program Placement</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Dakota</td>
<td>1975</td>
<td>Existing Administrative Agency</td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td>1975</td>
<td>Courts System</td>
<td></td>
</tr>
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<td>Existing Administrative Agency</td>
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<td>New Administrative Agency</td>
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</tr>
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<td>Rhode Island</td>
<td>1976</td>
<td>Courts System</td>
<td></td>
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<td>1976</td>
<td>Courts System</td>
<td></td>
</tr>
<tr>
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<td>1970</td>
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<td>Existing Administrative Agency</td>
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</tr>
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<td>Washington</td>
<td>1976</td>
<td>Existing Administrative Agency</td>
<td></td>
</tr>
<tr>
<td>Wisconsin</td>
<td>1976</td>
<td>Existing Administrative Agency</td>
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</tr>
</tbody>
</table>


The choice of program placement options may be affected by a number of factors including: the anticipated costs associated with each placement; the willingness of existing state agencies to accept the victim compensation program; the degree of formal authority thought to be necessary for the program; and philosophical and/or policy decisions concerning the way in which claims should be handled.

In most cases, the initial decision is open to review or appeal. In some programs, appeals may be held at two levels, internal/administrative and judicial. However, it is not uncommon for programs to offer only one of these two appeal procedures. Regarding judicial review:
Alaska provides that all orders and decisions of its board shall be final. Hawaii permits judicial review by one aggrieved on the sole ground that a decision was in excess of the Commission's authority or jurisdiction. In California and New Jersey there are no statutory provisions for appeal, but it appears that since in each a hearing is required, judicial review would be permitted under their respective Administrative Procedure Acts. In Massachusetts the claim is filed in a district court, a hearing is held by a district court judge and decisions are apparently appealable as in other civil cases. In Washington appeals are expressly provided for under that state's Administrative Procedure Act.16

Public Awareness

The effectiveness of a program such as crime victim compensation must be judged not only in terms of the way it handles claims, treats the victims of crime, and distributes benefits, but also on its ability to reach those members of the public it is intended to serve. This ability will be profoundly affected by general public awareness of the program's existence and services and, more specifically, the awareness of those individuals who are the intended beneficiaries of the program; the crime victims and their dependents.

Lack of public awareness of victim compensation services and requirements is a major problem. Some programs make no special effort to improve this situation fearing that widespread public awareness will result in substantial increases in claims volume and subsequent strains on the program budget. Other programs assume responsibility for public awareness by instituting one or more of the following procedures: distribution of printed materials such as brochures and posters; use of public service announcements on
radio and television; news coverage of the program's activities and services; and paid advertisements.

There seems to be a problem with public awareness of victim compensation programs which is demonstrated on a number of fronts. Discussing the New York State compensation program, Eielhertz and Geis noted in 1974:

The discrepancy between the number of presumed potential qualifiers for state (victim compensation) aid and the number of persons actually to apply for such assistance is largely regarded as a function of lack of public and official information about the program's existence. Oddly enough, an article in the New York Times Magazine notes that very few people know the program exists. There are even prosecutors who have never heard of it, one of the board members observed. The failure to attract more eligible applicants is a theme that recurs in board reports. Generally the tone is one of concern, based on the assumption that the state had mandated the program with the intent of having every person who qualifies receive assistance.

The concern with low application rates continues in New York and other locations. The 1978 Annual Report of the New York Crime Victims Compensation Board estimates that there were approximately 20,000 eligible crime victims in that state in 1977-1978. Still, only 4,914 applications were received—approximately one-fourth of the eligible population.

The responsibility of program administrators to educate the general public, particularly people in high-crime areas, should be clearly articulated in victim compensation legislation and recognized in agency budgets. There should be no doubt that this is one of the standards by which administrative performance will be measured.
Such a legislative provision should also authorize police, prosecutors, and other public officials to cooperate in informing specific victims without hazarding litigation based on victim allegations that they failed in this task.

Outreach

Some programs go beyond simple public awareness efforts. Rather than relying on the victim to take the initiative, these programs contact victims directly. Among the available outreach approaches is to require the police to inform every violent crime victim of the compensation program. Such an approach was implemented in New York in 1977, and preliminary results indicate a noticeable increase in victims' awareness following implementation. A second approach is to enlist the assistance of other agencies which are likely to come into contact with crime victims: hospital emergency rooms; social service agencies; and victim/witness assistance programs. These groups can easily notify victims of the compensation program benefits and procedures. A third approach provides individualized notification. Under this system, police incident reports are screened and all potentially eligible victims are sent information concerning victim compensation. Notification may be carried out by compensation program staff, police agencies, or victim/witness assistance groups.

Benefits

A claim which surmounts all of the eligibility hurdles still faces certain limitations and conditions regarding the award and
payment of benefits. Almost all programs place upper limits on awards and provide for deductions of amounts received from collateral sources. Additionally, some programs impose a minimum deductible. Many statutes also contain a provision authorizing payment of emergency awards in certain circumstances, thereby enabling the awarding authority to ease the plight of the victim or claimant while the claim is under consideration. Attorneys' fees may influence the amount of the recovery. Restitution may also play a role in the overall scheme of victim compensation, although it may be of less direct interest to the claimant than other benefit provisions.

The various options states employ in defining and limiting their victim compensation benefits provide for: all medical costs not reimbursed through other sources; unreimbursed loss of earnings; payments for loss of support for dependents of deceased victims; funeral costs; medical costs of the deceased victim; and short-term emergency awards for claimants who may experience severe financial difficulty without immediate assistance.

In addition to these basic benefits, some programs offer: reimbursement for rehabilitation training; reimbursement for costs of replacing the services which the victim would normally provide for the family free of charge; replacement of certain medical devices such as hearing aids, eyeglasses, or artificial limbs; attorney's fees incurred by victims engaging in the compensation process; costs of psychiatric treatment necessitated by the crime; compensation for
disability or disfigurement; and in some rare cases, awards for pain and suffering. Each of these features reflect the different desires for programs of different scope. This may in turn reflect one or more primary concerns of each program such as cost control objectives or perhaps a desire to get at least a minimal program established.

**Award Limitations**

Almost every program places some maximum limit on the benefits offered. These maximums range from $5,000 in Nevada to $50,000 in Ohio, with approximately one-third of the states recognizing a $10,000 limit. In most cases the statutory maximums set for awards have been more than sufficient to meet the needs of crime victims. But in most egregious cases (where a victim's lost earnings or medical costs could easily exceed the maximum benefits allowable) the plans are not that helpful. It would seem appropriate to eliminate arbitrary limits for assisting victims who have through no fault of their own suffered catastrophic injuries at the hands of criminal offenders. Certainly the program experience to date indicates that relatively few awards ever approach the state maximums, so an open-ended system would not only help those few victims who need the most assistance but would not be likely to create fund-solvency problems. For example, New York, Alaska, and Minnesota, have raised their maximums after having gained greater experience with their victim compensation programs.
It is also common for programs to limit weekly payments to some specific maximum, usually between $100 and $250. Maximums may also be set on particular categories of benefits, such as attorneys' fees, funeral costs, or wage loss. In addition to maximum limits, many programs require certain minimum losses or minimum deductibles. Commonly, these are expressed either as a minimum dollar loss, ranging from $25 to $250, or some minimum time lost from work, usually one or two weeks. Again, these criteria are intended to reduce program costs.

Payment Methods

Depending on the amount and type of award, programs may offer either lump sum or protracted payments. The lump sum award is generally used in cases where the costs are easily determined and the award is moderate in size. Protracted payments on the other hand, are used for large awards, for awards in which costs are not fixed, and for long-term disability or loss of earnings/support.

Much more common, however, is the option of providing both lump sum payments and payments made on an installment basis. Generally programs are required to make lump sum payments for the majority of their claims. However, in cases of death or disability, the program is mandated to provide payments on a protracted, installment basis. Several states make reference in their statutes or regulations to providing both lump sum and protracted payments for victims of crime. No state statute includes a provision that only installment or protracted payments may be made.
SUMMARY

Public programs such as victim compensation almost inescapably become known by their administrative arrangements, their costs, and their eligibility requirements. However, it is felt by many to be the most equitable and consistent method to date for compensating victims of violent crime. Unlike tort systems and restitution payments, it is available even when the criminal offender is not apprehended. The victim's ability to receive compensation for his injuries does not rely on the offender's ability to make payment. In addition, the program does not carry the strong bias against the indigent, sick, or high-crime area resident that may be found under an insurance plan for victim compensation.

The major drawbacks to victim compensation are the costs of the program and legislators' fears concerning the possible expense of the program if eligibility for compensation is not restricted to certain limited situations and individuals. These concerns for costs have resulted in several major restrictions on programs such as: financial need requirements; minimum claims; maximum award limits; and restrictions on the types of losses compensated. This latter area contains the almost universal restriction against payment for property loss found in existing compensation programs. The effect that these restrictions may have on the availability of victim compensation is dramatic. Harland notes that on a national scale, some 90 percent of all victims are excluded from compensation by the
property loss restrictions alone. Of those qualifying as injured
victims of violent crimes, Harland notes that current restrictions
on eligibility would allow compensation for only 8 percent. All
of these restrictions, inevitably, turn direct attention away from
the personal condition of consumers of the program, the innocent
crime victims.
CHAPTER IV

FOOTNOTES


3. Ibid., pp. 192-193.

4. Ibid., 193.


7. Supra note 26, at 477 479.

8. Ibid., p. 479.


14. See New York Consolidated Laws, Article 22, sections 624(2); 631(5); Maryland's Annotated Code, Article 26A, sections 5(b), 12(e); New Jersey, Criminal Injuries Compensation Act of 1971, sec. 18; Hawaii Revised Statutes, sec. 6; Laws of Alaska, 18.67.110(b)(3).


CHAPTER V

RATIONALES FOR
COMPENSATING CRIME VICTIMS

In most contemporary societies, individuals have given up the right to settle their own crime related predicaments. With the development of the rule of law, certain restrictions on potential victims of crime have been imposed. Citizens are supposed to be protected by the state. Instead of a citizen exacting retribution directly from the offender, now victims must rely on the intervention of the government through the use of the criminal justice system. However, from the victim's perspective, turning one's grievance over to the strangers who represent society as a whole is surely a less satisfying way of redressing the emotional injury suffered.

It is apparent that any criminal justice system will fail to always protect its citizens from violent crime. When the state sets a norm of conduct it should besides punishing breaches of this norm, see that, where it is transgressed, any injury caused is repaired. This can best be accomplished by utilizing a victim compensation program. Victim compensation programs are movements to satisfy the claims of violent crime victims. They are movements to seek real justice, that meaning, justice for the innocent victims of our society. There are several political, social and moral reasons offered for state compensation. Almost all proponents of state compensation rely on one or more of the following arguments.
The first argument advanced for public/victim compensation is the obligation-of-the-state rationale. Derived from legal theory, this argument finds its roots in the separation of criminal and civil law. "The state has monopolized the crucial areas of law enforcement and the right to punish wrongdoers; it has further separated indemnification to the victim from punishment of the wrongdoer, so that restitution is no longer a usual form of punishment. While making this separation, the state has failed to provide workable alternative means of redress to the victims of crime."\(^1\) Civil suits are made less effective by the state because the state punishes the offender by incarceration, thus making it difficult for the victim to recover any damages. The state in the interest of controlling violence denies the victim the right to use direct physical means of forcing the offender to undo the wrong. Because of its monopolization of law enforcement (and use of force), its separation of punishment from indemnification, and its failure to provide for the victim a workable way of securing restitution, the state creates a contract to provide its citizens with protection from crime. Taxes are collected for the sole purpose of providing this protection. "The failure to provide effective protection as well as the denial to the victim of alternative means of redress creates an obligation on the part of the state to compensate the victim for his losses."\(^2\)

In the early 1800s, Utilitarian legal philosopher Jeremy Bentham studied the matter at some length and concluded:
Those who have suffered by crime, either in their person or their fortune, are abandoned to their evil condition. The society which they have contributed to maintain, and which ought to protect them, owes them, however, an indemnity when its protection has not been effectual.

Bentham believed that the costs of failures of police protection, as well as the costs of providing it, should be borne by the state, and thus ultimately shared by the community as a whole. More recently, while a Justice of the United States Supreme Court in 1964, Arthur J. Goldberg made the following suggestion:

Whenever the government considers extending a needed service to those accused of crime, the question arises: But what about the victim? We should confront the problem of the victim directly; his burden is not alleviated by denying necessary services to the accused. Many countries throughout the world, recognizing that crime is a community problem, have designed systems for government compensation of victims of crime. Serious consideration of this approach is long overdue here. The victim of a robbery or an assault has been denied the protection of the law in a very real sense, and society should assume some responsibility for making him whole.

Also Norval Morris and Gordon Hawkins, in their book The Honest Politician's Guide to Crime Control, expressed the following approach to victim compensation:

Crime is endemic in our society and . . . it is only proper for a society so organized that crime is endemic to share the burden which is by chance imposed on particular (unfortunate) individuals. The analogies with workmen's compensation and with compulsory third-party motor vehicle insurance are of some relevance; perhaps a closer analogy in this country is the extensive medical and social welfare provisions of the Veterans Administration legislation by which the community shares in the loss to the individual who has suffered for us from the external aggression of war. We should likewise share the loss to those who suffer for us from the internal aggression of crimes of personal violence.
The entire social institution of the law -- statutes, the police, courts, prisons -- helps to reduce the risks of criminal activity. Nevertheless, the presence of other members of this same society who violate the law and commit criminal assaults on others purports there are tangible risks inherent in collective life. The lack of adequate police protection, due to negligence, corruption, insufficient appropriations, or simply the obvious inability of the police to be in all places at all times, means the individual victimised by a criminal assault has a legitimate claim. If that claim is not one hundred percent police protection, it may be at least to compensate for injury. Ferri states his opinion as:

The State, negligent in not having taken more precautions against the crime and more care for protection of its citizens, arrests the culpable ... (and) the State, which must care for the superior interest of absolute justice on behalf of the public does not concern itself with the injured party ... Thus the State cannot prevent crime, cannot repress it, except in a small number of cases, and consequently fails in its duty for the accomplishment of which it receives taxes from its citizens, and then, after all that it accepts a reward ... It is evident that this manner of administering justice must undergo a radical change. The State must indemnify the individuals for the harm caused them by crimes which it has not been able to foresee or prevent.

A second argument supporting victim compensation is the social welfare rationale. All present victim compensation programs are based on this rationale. Framers of these programs have treated the duty to protect as justification for social legislation on behalf of the victim rather than as a basis for state liability. Crime is perceived as an inherent hazard of modern society and victim
compensation programs are considered as the mechanism for spreading the risks (i.e., nonvictimized members of society share the cost of those who have been victimized). "Victim compensation proposals can be compared with other types of social insurances, especially workmen's compensation; just as modern governments have assumed the responsibility for seeing that the worker is insured against the risk of industrial accident, so also have they insured against the risk of criminal victimization."7

Analogies have also been found with veterans' benefits. Just as injured or disabled veterans are entitled to public benefit because they have been victims of external aggression, so also can crime victims be made eligible for public benefits for injuries sustained from internal aggression. Linden for example, finds the rationale and motivation in an awakened social consciousness:

Most of the governments of the modern world, reflecting the awakened social consciousness of their people, are now committed to assisting all victims of adversity, whether it be because of illness, disability, old age or unemployment. There is no reason to deny that the desire to aid crime victims is largely a manifestation of these social welfare goals.

If certain segments of society are compensated, should not the innocent victims of crime be compensated also? It is inconceivable that financial aid is not provided for a citizen whose only act is walking along a street in a city of America and is injured as a result of criminal activity.
Similar to this argument is the "grace of the government" rationale. In contrast to the social welfare view, which reflects whole classes or categories of people, the "grace of the government" argument mirrors the merciful intervention of the state only in individual cases.

The last rationale for compensating the needy crime victim is that it will lead to a more effective criminal justice system. In order to be eligible for compensation, victims of violent crimes are required by all present day state programs to report the criminal incident to the police. Reporting the crime, cooperating with the police and prosecutor, and taking the case to court can be positive experiences for the crime victim. Working within the criminal justice system allows the victim to be directly involved in societies' efforts to stop crime. It gives the victim a way to fight back, to do something positive to achieve the satisfaction he needs and deserves. There is really nothing to match the feelings of a victim who does achieve a feeling of justice. This high level of satisfaction is an unusual experience but the possibility is available only for those victims who enter the system by reporting the crime to the police.

In reality, however, the crime victim often chooses not to report the incident to the police. Nonreporting victims outnumber victims who do report their crimes in many jurisdictions. It is estimated that fewer than half of the personal crimes committed nationwide ever come to the attention of law enforcement officials. The reasons for this low level of nonreporting are complex and vary.
from victim to victim. Victims often fail to cooperate with criminal justice agencies because these agencies often do not fulfill their expectations.

The first step the victim needs to take in order to be compensated and to achieve their desire for justice is to report the crime to the police. Victims are admitting defeat if they fail to report crime and the criminal wins again. This encourages the criminal to repeat the violation over and over again and the police are left helpless because they can't do anything if the crime is not reported in the first place. Nonreporters of crime argue that the criminal justice system is ineffective. This may be true up to a point but the nonreporters are adding to this ineffectiveness. Their behavior is self-fulfilling; if no victim or witness ever reported a crime, the criminal justice system would be reduced to handling only the very small percentage of crimes that are actually witnessed by the police.

Nonreporters of crime are also likely to experience negative repercussions on a personal level. There is no legal way whatsoever to get satisfaction. Victims add to their feelings of helplessness and increase their mistrust of society. Additionally, nonreporters are left with the sense that nobody cares, that nothing can be done, and they may suffer unresolved feelings after the crime. Thus non-reporting can be emotionally costly for the victim as well as weakening the criminal justice system and the society that system strives to serve.
Part of the reason why nonreporters are left with this feeling of helplessness and a sense that nobody cares is because both the police and the courts are mainly concerned with criminals. Their professional business is catching and convicting wrongdoers. These crime fighters often become preoccupied with winning and if they have to invade the privacy of a witness or hurt the feelings of a victim to get the criminal, it will be done. The police officer or prosecutor who is good at both aggressive crime fighting and compassionate identification with victims is rare. Their professional training and the policies of their systems often give the victim low priority. Emotional and functional economy often requires many criminal justice professionals to maintain a certain amount of insensitivity in order to perform their job effectively. Most people can't be both empathic counselors and combat soldiers at the same time. For many of these professionals, their job strategy is to wage war on criminals but often this has an unintended side effect of creating further difficulties for the victims of violent crime.

Once an individual becomes a victim, he often encounters indifference or even hostility from the police, hospital emergency room personnel, insurance investigators, and even in the courtroom. The criminal justice system and most of the other institutions that serve the victim are bureaucracies, large, proliferating hierarchies with many rules and few ways to make exceptions. At the same time, victims often have trouble in dealing with their own intense feelings
and in addition they must handle uncertainty, frustration, unfamiliar situations, and rude strangers. In this state of heightened vulnerability, victims are least equipped emotionally to handle the aftermath of their victimization. Problems the crime victim encounters are summarized in Table 3.

**TABLE 3**

**CRIME VICTIM PROBLEMS**

<table>
<thead>
<tr>
<th>Problem</th>
<th>Victims experiencing problem</th>
<th>Victims rating problem as &quot;very serious&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>Percent</td>
</tr>
<tr>
<td>Physical injury</td>
<td>470</td>
<td>27</td>
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<tr>
<td>Property loss</td>
<td>768</td>
<td>45</td>
</tr>
<tr>
<td>Property damage</td>
<td>658</td>
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</tr>
<tr>
<td>Lost time</td>
<td>835</td>
<td>49</td>
</tr>
<tr>
<td>Lost income</td>
<td>446</td>
<td>26</td>
</tr>
<tr>
<td>Lost job</td>
<td>39</td>
<td>2</td>
</tr>
<tr>
<td>Insurance cancelled</td>
<td>13</td>
<td>1</td>
</tr>
<tr>
<td>Mental or emotional suffering</td>
<td>1,001</td>
<td>57</td>
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<tr>
<td>Reputation damaged</td>
<td>251</td>
<td>12</td>
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<tr>
<td>Problems with family</td>
<td>358</td>
<td>25</td>
</tr>
<tr>
<td>Problems with friends</td>
<td>215</td>
<td>12</td>
</tr>
</tbody>
</table>


The criminal justice system has many shortcomings but the fact remains that it is the only system there is. Unless people want vigilante "justice," in which each person handles his or her own grievances, active support must be given to the existing system.
The rule of law is a tedious, inefficient, time consuming process, but the alternative is chaos. "People who want law and order have a social responsibility to participate in the criminal justice system, a responsibility that includes reporting crimes to the police." It is possible that because of victim compensation programs, victims will be more likely to report their crime to the police. Certainly improved cooperation from concerned citizens, witnesses, and victims will greatly reduce their alienation with the present day criminal justice system and make it even more efficient in obtaining its goals.

SUMMARY

A great deal of verbal and intellectual discussion has been expended in searching for a satisfactory rationale for victim compensation. Such exercises appear to be rather futile. A legal framework for victim compensation could readily describe its ingredients without recourse to a placing of responsibility. Perhaps the soundest approach concerning this matter appears to be that suggested by Robert Cross:

I am content to do without theoretical justification... After all, these are questions of public welfare and they should be determined by public opinion. Human needs account for the most of the Welfare State, and its evolution has nothing to do with tortuous lines of reasoning... If there is a widely recognized hardship, and if that hardship can be cheaply remedied by state compensation, I should have thought that the case for such a remedy was made out, provided the practical difficulties are not too great. The hardship in these cases is undoubtedly widely recognized.
CHAP TER V

FOOTNOTES


9 For example, it is estimated that in 1974, 47 percent of all rape and attempted rape was not reported to the police; 54 percent of all assault was not reported; 71 percent of all pocket picking and 51 percent of all household burglary was not reported. Hindelang et al, Sourcebook of Criminal Justice Statistics - 1976. (Washington D.C.: United States National Criminal Justice Information and Statistics Service, 1977), table 3.1, p. 358.


CHAPTER VI

RENOVATING THE
CRIMINAL JUSTICE SYSTEM

In the decade of the 1970s, the violent crime rate has risen approximately 48 percent on a national basis. On the average, the likelihood of a serious personal attack on any American in a given year is about 1 in 550. Additional figures indicate that the risk of serious attack from spouses, family members, friends, or acquaintances is almost twice as great as it is from strangers on the street. At the same time, medical costs and the cost of living has risen 96 and 84 percent respectively.

A major reason for this increase in violent crime is because most of the people who commit crimes in this country get away with it. Of the seven FBI Index crimes reported, fewer than 25 percent result in the arrest of any suspect who is charged with the crime. Most victims who do report their crimes (about 50 percent don't) never see anybody arrested. Within the court system, of all suspects charged with committing an Index crime and held for prosecution in 1975, only 38 percent were found guilty as charged, fifteen percent were acquitted or dismissed, and forty-two percent were referred to juvenile court where the penalties that can be levied are extremely limited. There is no guarantee that the offender will be arrested, convicted, and if sentenced, it would undoubtedly seem too light for the victim. Convicted felons are unlikely to serve the maximum
sentence imposed and they are likely to commit other crimes after they are released from prison. These statistics would tend to indicate a failure of the criminal justice system and as these crimes increase, so does the number of victims. The National Conference of State Legislatures referred to these criminal victims as "the forgotten citizens in our judicial system" and described their plight as follows:

For many of them, physical injury or property loss is only the beginning of their misery. Often, there are endless medical bills, lost wages, long-term physical impairment and serious psychological damage. Many victims have little insurance or means of legal redress and have to bear the costs alone. Indeed, of the millions of criminal victims in America last year, only a small percentage received compensation from any government, local, state, or federal... The problems of crime victims are not easy ones to resolve. More and more, state legislators, governors, judges and district attorneys, however, are beginning to agree that the treatment of victims is fast eroding support for the nation's criminal and judicial systems. The unfairness of spending millions of public dollars annually to incarcerate criminals while dishing out pennies to their victims, and the official mistreatment often given victims of crime by the police and courts, are two areas frequently cited as in need of reform.

Since the mid-1960s, considerable attention has been given to the concept of compensating these victims of violent crime. Indicating this public support was a Gallup poll survey which was conducted in 1965. In the Gallup survey persons were asked: "Suppose an innocent person is killed by a criminal -- do you think the state should make financial provisions for the victim's family?" Sixty-two percent of the national sample thought that the state should make such provision, 29 percent disagree, and 9 percent registered no
opinion on the question. There were no differences between men and women on the issue, though there was a tendency for persons with lesser amounts of education and jobs in agriculture or those involving manual labor to be more favorable than persons in business and the professions. Republicans, Democrats, and voters who classified themselves as "Independent" all agreed with the question posed in about 60 percent of their responses, and support appeared fairly uniform in all regions of the country, though somewhat higher in the South (67 percent) and the East (65 percent) than in the West (59 percent) and Midwest (56 percent). The higher the person's income, the less likely he was to be in favor of state compensation for the family of the murdered man. Residents of rural areas registered greater approval of the idea of compensation (66 percent) than residents of the largest metropolitan areas, cities with populations of more than 500,000 persons (59 percent). In sum, though, it was apparent that there existed a receptive attitude toward the idea of victim compensation in the United States.7

At its annual conference on October 6, 1966, the International Association of Chiefs of Police adopted a resolution calling for state and/or federal legislation to indemnify the victims of violent crime and their surviving dependents. A Reader's Digest poll conducted in 1967 reflected that 90 percent of judges, law enforcement officials, correction officials, and other professionals wholeheartedly endorsed this concept. In 1967, the President's Commission on Law Enforcement and the Administration of Justice released The Challenge
of Crime in a Free Society. That report states: "The Commission believes that the general principal of victim compensation ... is sound and that the experiments now being conducted with different types of compensation programs are valuable."

In his 1975 Crime Message to Congress, President Ford urged the passage of legislation to compensate victims of federal crimes who suffer personal injury or certain economic losses. At the Fourth International Conference for the Compensation of the Innocent Victims of Violent Crime, Bruce E. Fein, Special Assistant to the Assistant Attorney General, Antitrust Division, United States Justice Department, concluded with this (Administration) recommendation:

I think legislation to compensate victims of crime can be most effective if it is widely publicized and does not condition eligibility on financial hardship. Publicity is necessary both to insure that eligible citizens take advantage of the program and to enhance its educational value. The presence of a financial hardship test, in my judgment would substantially undermine the most fundamental justification for the program.

Victim compensation is an unusual program in terms of its ability to generate political support. When contrasting justice for the victim with justice for the offender, there is no denying the political expediency of capitalizing on the sympathetic public response invoked by the plight of crime victims, especially when it is contrasted with the very unsympathetic public image of most criminal offenders.

Over the past two decades, numerous bills requiring federal support for victim compensation have been introduced in the United
States House and Senate. None have been passed. In 1965, Senator Yarborough introduced a measure concerning victim compensation:

In this country today we have the peculiar situation that a worker who is disabled while on the job may receive thousands of dollars of compensation even though his negligence in part contributed to the injury, while the same wage earner if disabled from a criminal attack for which he bore no responsibility whatsoever must face a future without any compensation at all. That such a situation should exist in this, the richest nation in the world, I find deplorable.

Critics of federal victim compensation legislation purport several arguments for opposing this type of program. Reasons stated are: 1) these programs don't deal with the real problem which is crime; 2) programs would serve only special interest groups; 3) programs would naturally expand and bureaucratic interests increase along with the costs; and 4) there would be less incentive for citizens to prevent crime and assist the criminal justice system.

First, if a federal subsidized program to support state programs existed, these resources would not reduce the number of victimizations, but in fact, the number would increase. By devoting resources to the victims the root of the problem, that it, the crime problem, would not be affected. As noted in congressional testimony, if victim compensation "should become perverted into a syndrome whereby the criminal is, in effect, subsidized by the state then a terrible disservice will have been done to the safety of society." If compensation is to be adopted, "the criminal justice system must still bend every effort to prevent crime from happening in the first place."
A federal program would be an imperfect humanitarian attempt to do something beneficial for the truly needy crime victim. Professor Roger Meiners states, "At worst it can be viewed as a subsidy for lawyers, another layer of bureaucracy, and an attempt to soothe public ire toward public officials and members of the judiciary who did much to create the terrible problem we have today. A political palliative may retard the day when the pressures for strong actions against criminals build to the point where politicians are forced to pass measures designed to stop criminals. In the meantime the position of individuals as victims would continue to worsen."11

Second, several special interest groups would benefit from such legislation. The American Bar Association has enthusiastically endorsed the governmental compensation program.12 In most of the proposed federal legislation, a claimant would be entitled to the services of an attorney and the compensation board would pay the attorney's fee whether the claim was successful or not. As mentioned earlier, the International Association of Chiefs of Police was an early supporter of federal legislation. Such programs would have a potential two-fold effect for the police. Some of the pressure to "do something" would be relaxed because some of the victims would be compensated and the feeling something is "being done" would be increased. Also because one must report the crime to the police to be eligible for compensation, the number of crimes reported would increase which would provide for further justification for an increase in police budgets. The Department of Justice would benefit from
such a program. The funds would be administered through this department which would lead to its expansion in size, budget, and sphere of influence.

Public opinion polls and the rapid expansion of state compensation programs indicate a political popularity exists. The states would benefit from a federal subsidy which would explain why the states have been lobbying hard for such legislation. Such a program could be viewed by legislators as generally popular and apparently would not hurt anyone because of the general sympathy for the victims of crime. Judges would benefit from such a program. Over time, judges have seemed less willing to send criminals to prison, as evidenced by the general trend of a falling prison population in relation to the nation's population.¹³ The use of plea bargaining, parole board actions, and expanded use of probation may explain this trend but if victims are compensated, the actions of criminals may seem less grievous and may politically justify the sentences given to criminals. Criminals would benefit from: reduced sentences; the incentive for civil suits would be reduced because victims could collect from the state; and the criminal's conscience may be eased somewhat knowing his or her victim will be compensated.

Third, like many governmental programs, victim compensation has the best of intentions. However, a federal program would encompass far more bureaucratic growth and dollars than ever envisioned. Bureaucratic interests would cause the program to expand in size and operations. There would be little reason to prevent all but the most
blatant problems of fraud and padding and incentives from lawyers would exist to bring more and more cases for consideration. After a period of time the general public will become more knowledgeable of such a program and begin utilizing it. Since the decision cost to the states would be only one-half (or whatever percent is decided) of what they would spend, and since the federal government would be legally bound to pay for whatever the states spend, the program would seem likely to grow rapidly.

Finally, citizens would have less incentive to prevent crime or come forward as witnesses. Victim compensation would be supported by some type of tax paid by tens of millions of taxpayers so no one individual would feel any reason to be more vigilant in preventing crimes in hopes of reducing his or her compensation contribution.

Critics may be correct in their assumption that with a federal program to support state programs the estimated costs will grow rapidly, especially as the general public becomes aware of them. However, it is felt that with this awareness and education a chain reaction will be placed in motion. In all the present state victim compensation programs reporting the crime to the police is one of the necessary requirements for receiving compensation. Police and prosecutors need crimes reported in order to begin an investigation, make an arrest, build a strong case, and get a conviction. This sharp increase in reported crime will be documented evidence that the present day criminal justice system is inadequate to handle the amount of crime in our society. This documentation may result in a
public demand for further resources to combat crime. Thus, it will become beneficial for legislators to allocate more funds for the police, courts, and prisons to satisfy their constituents. With more police to catch the criminals, more courts to convict them (less plea bargaining), and more prisons to put them, there will be fewer dangerous criminals on the streets. With fewer criminals there will be fewer victims which is a major goal of any criminal justice system. With fewer victims, the cost and any bureaucratic growth would be greatly reduced.

All of the before mentioned special interest groups (except the criminals) will benefit from a federal supported victim compensation program. The police, judges, and correctional officials will benefit from the increased resources because it will enable them to perform their duties and responsibilities more effectively. The lawyers will also benefit but with fewer and fewer victims there will be fewer claims to file. Certainly victims are entitled to legal representation equal to their criminal counterparts.

Citizens will have a greater incentive to prevent crime and step forward as witnesses because of the feeling that "something can be done" because of the better funded, more effective criminal justice system.

Only the dangerous criminals in our society will not benefit from a federal program. With a more effective criminal justice system, criminal's opportunities to commit violent crimes and get
away with them will be greatly reduced. Victim compensation programs represent too attractive a social goal to have gathered much serious opposition. Gilbert Geis states:

Opposing it is rather like attempting to put together forceful and compelling arguments against compassion, mercy, and decency on the grounds that such indulgences may in the final analysis produce cruelty, ruthlessness, and indecency. It is almost invariably assumed as a matter of course that evil acts cause evil consequences and that good acts produce desirable consequences.
CHAPTER VI

FOOTNOTES


2Ibid., p. 52.

3The seven Index crimes are: murder, forcible rape; robbery; aggravated assault; burglary; larceny-theft; and motor vehicle theft. The rate of arrests is higher for certain very serious crimes - 78 percent of murder and nonnegligent manslaughter cases, 51 percent of forcible rape cases reported were cleared by arrest in 1975. However, only 27 percent of robberies and 18 percent of burglaries were cleared that year. U.S. Department of Justice, Federal Bureau of Investigation, Crime in the United States: 1975 Uniform Crime Reports. (Washington D.C.: U.S. Government Printing Office, 1976), table 18, p. 166.

4Again, suspects charged with criminal homicide were convicted at a much higher rate - 60 percent were found guilty as charged. But 22 percent of those charged with robbery were acquitted or dismissed, as were 12 percent of those charged with burglary. And those charged with forcible rape in 1975, more suspects were acquitted or dismissed than were convicted of rape. Uniform Crime Reports - 1975. (Washington D.C.: U.S. Government Printing Office, 1976), table 22, p. 174.

5The relatively poor performance of the courts and the prisons has been the subject of many studies. Two useful, and opposing, views are expressed in Karl Menninger's The Crime of Punishment (New York: The Viking Press, 1968) and Ernest van den Haag's Punishing Criminals: Concerning a Very Old and Painful Question. (New York: Basic Books, 1975).


CHAPTER VII

CONCLUSION

Through a series of historical events civilized society has taken the right to punish and/or to receive compensation away from the victim and transferred it to the state. The victims of violent crime became excluded from the criminal proceedings and the focus shifted to the criminal and his act. Since this shift in focus there has been no improvement for the innocent victims to compare with other advances made in criminology. However, in the past two decades, governments of several countries have begun recognizing the crime victim and his needs. In the United States, three distinct areas of concern emerge when evaluating the need for compensating victims of violent crime: 1) the availability of public or private systems of financial relief for individuals victimized by crime; 2) the extent of financial need brought about by criminal victimization; and 3) the political support available for public compensation to crime victims.

As discussed in Chapters II and III, the methods for compensating victims are: civil remedies; third party litigation; private insurance; public assistance; restitution; and public compensation. Each of these methods have several shortcomings. Civil remedies are difficult because offenders are rarely apprehended and the few that are often lack the financial resources to pay the victim. Also civil court procedures are often costly and time consuming for the victim. Third party litigation is limited by: the sovereign immunity
claimed by many governments; the expense of litigation; and the relatively few instances in which such a suit would be appropriate. Many victims, especially the young, indigent, or unemployed do not have private insurance. One study of insurance coverage estimated that 11 to 18 million people were without health care coverage in 1978, representing 5 to 8 percent of the population. Public assistance may not be available to many victims because they may not meet appropriate standards of financial need, age, or disability. Shortcomings of restitution are: the low number of offenders actually apprehended; the limited financial resources of many offenders; and the reluctance of criminal justice officials to impose a restitution order, either because of the added burden it may place on the offender or because of the increased workload for the criminal justice agencies involved.

Public compensation programs offer the most equitable and accessible source of monetary assistance for crime victims. Unlike private insurance, there is no bias against the infirm, elderly, unemployed, or low-income individual. Financial relief is not contingent upon the apprehension of the offender nor does it rely on the offenders ability to pay. Also it does not require that the victim institute any private civil actions against the offender.

However, the state victim compensation programs available attempt to contain costs through eligibility and benefit restrictions, many of which unduly limit victim access. For example, one estimate
shows that only 8 percent of the injured victims of violent crimes would qualify for compensation under current eligibility restrictions. Even in states with long standing compensation programs few victims are adequately compensated for their physical, emotional, or property losses. In seven major states with compensation programs (New York, California, Minnesota, Hawaii, Maryland, Illinois, and North Dakota) there were 400,000 reported victims of violent crimes during 1975. Only 3,500 of these were given compensation. During this period in New York state only 4 percent of all rape, robbery, and assault victims were eligible for compensation; less than 2 percent of all violent crime victims in the state did file claims in 1975.

As to the extent of financial need due to criminal victimization, estimates of the financial losses incurred as a result vary widely, and as yet no truly reliable indicator of these costs has been developed. However, some attempts to ascertain these losses have been made and may be used to provide a general picture of the need for crime victim compensation in the United States.

In what is to date the major study of crime victim compensation costs, Garofalo and Sutton have developed estimates of the value of time lost from work and the cost of medical attention for crime victims. Based on data obtained in the 1974 National Crime Survey, the study points out a number of findings which may have some bearing on the need for crime victim compensation. For example, the study found that the economic resources of crime victims are often very
limited: nearly one-third of the victims of personal crimes were not employed at the time of the crime; and it is the lowest income groups which suffers both the greatest incidence and risk of total personal victimization. The study also showed, however, that a relatively small percentage of crime victims actually suffer injuries and that an even smaller percentage of these required medical attention. For example, it was noted:

Of the total victimizations that involved victim/offender contact (5,910,199), 27 percent resulted in some injury to the victim; only 10 percent required medical attention of some sort; hospital treatment was administered in 7 percent of the cases; and a hospital stay of overnight or longer occurred for only 2 percent of the victimizations.

The financial burden of medical expenses and loss of income is relatively small for most victims. Generally, medical costs are less than $100; average loss of income due to the victimization is also less than $100. Thus, the financial justification for victim compensation must rest less with the "average" case (which would be ineligible for compensation under most existing programs), and focus instead on those individuals representing the more extreme cases: the low-income individuals for whom even a loss of $100 may pose a serious financial hardship, or the individuals who suffer serious injury resulting in thousands of dollars in medical expenses and loss of earnings.

Cost for compensation programs has been the single most important issue for government executives, legislators, and program operators. Major concerns center around the possible financial impacts of the
compensation program and the advisability of establishing new financial assistance programs in the face of growing public concern over rising government expenditures. Cost considerations have had a considerable impact on the development of victim compensation: implementation of compensation legislation has been delayed or prevented in some areas; numerous attempts have been made to enact a federal crime victim compensation statute providing financial support to state programs; and cost considerations also affect the form and operations of existing programs. The majority of victim compensation schemes contain provisions restricting victim eligibility and benefit payments. Minimum loss criteria, maximum payment levels, and limitations on types of losses compensated are all intended as cost-saving measures. States that have had programs for several years have been similarly reluctant to commit substantial funds for their programs: $1.8 million in New York (FY 73-74), $1.6 million in California (FY 74), $600,000 in Maryland (FY 74-75), $250,000 in Illinois (FY 76), and $1.8 million in New Jersey (FY 75-76). Considering the magnitude of the crime victim problem in all of the cited states, the funding levels of their programs appear to be rather inadequate and something less than realistic.

While costs continue to be a legitimate concern for policymakers, the experience of existing compensation programs shows that the actual expenditures of victim compensation programs are relatively low. The National Institute's Crime Victim Compensation - Program
Model, which provides detailed cost information on the yearly administrative expenses and benefits payments of 18 programs, shows a range from approximately $44,000 to almost $5.5 million. On the average, programs spent only $.18 per resident per year on benefit payments; half the states spent $.12 per capita or less.

The present policy of spending from $7,000 to $40,000 a year in order to support unproductive imprisoned offenders, while ignoring the victims of their wrongdoing, is a kind of madness. We provide psychiatric, medical, and dental care as well as guidance, counseling, and job training for the wrongdoers. But there are no comparable services available for the victim who may need them desperately. Who, therefore, is able to say that the cost for crime victims is exorbitant? Who can possibly question the amount of money necessary for a crime victims program when we examine the costs of criminal administration? Who is more entitled to be treated mercifully, compassionately, and with justice than the innocent victim of a crime?

In 1974, $15 billion was spent throughout the United States to apprehend, try, and imprison criminals -- local governments accounted for 61 percent, states spent 26 percent, and the federal government spent 13 percent of the total; less than 1 percent went to crime victims.

Those who have been the unfortunate victims of criminal conduct have become an appealing object of social concern in our country. Public opinion polls, rapid expansion of state compensation programs, and the numerous attempts to initiate an federal program, all indicate
that compensating the crime victim is now widely viewed as a necessary extension of governmental responsibility to maintain and/or restore the well-being of all citizens, whenever possible. However, many governmental programs systematically deny benefits to vast numbers of poor people who simply cannot meet their eligibility requirements. But it seems that once a state has decided to undertake a crime victim compensation program, its good intentions inevitably give way to considerations of fiscal feasibility and budgetary restraint.

Beneficial as they may be, however, state crime victim compensation programs demonstrate the categorical and ad hoc approach to dealing with victim compensation that has become commonplace in our society. Political, pragmatic, and idiosyncratic variations all have gone into the cauldron that contains the current mixture of compensation programs and recommendations for such programs. The failure to address the problem of victim compensation comprehensively and in accordance with clearly delineated social goals is as wasteful as it is shortsighted. Certainly it can be concluded by reasonable men that the reimbursement to the innocent victim of crime for his medical expenses and loss of earnings is the least that his government can do for him.

The concept of compensating victims of violent crime is a relatively new one. However, almost twenty years have gone by since the establishment of the first compensation program. As noted earlier, several attempts to institute a federal program in support of crime victim compensation have been initiated without success. An inquiry
into the possible impact of federal legislation on existing state programs and on victim compensation in the United States as a whole would be a valuable undertaking, whether as an evaluation initiated before such legislation is passed or one which occurs after the implementation of a federal program.

In the final analysis, however, compensating crime victims boils down to the charitable impulse to help the less fortunate; an argument that has met with increasing acceptance throughout the modern industrial world. Once the victims of violent crime are being compensated, the general public and their legislative representatives, will come to recognize that the criminal justice system is in great need of additional resources to combat the actual amount of crime in our society.
CHAPTER VII

FOOTNOTES


2 Ibid., p. 19.

3 Ibid., p. 20.

4 Ibid., p. 22.


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