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## Victim-Induced Criminality

Studies required by proposals for compensation of victims provide new insights for crime prevention.

Michael Fooner

Proposals for compensating victims of violent crime (1) are gaining widespread support in the United States, but studies analyzing the behavior of victims suggest that legislators should be alert to the possibilities that some compensation schemes may contribute to the growth of crime and add unwarranted complications to the administration of criminal justice.

The number of victims of violent crime in the U.S. is growing at a disturbing rate. In 1964 there was a national total of 2.6 million serious crimes, nearly 215,000 of which resulted in injury or death to victims (2). In 1966—to forecast from recent trends of criminality—there will be over 3 million serious crimes, of which over a quarter of a million will result in death or injury of the victims.

The history of crime and punishment in the whole civilized world reveals a steadily increasing concern with the treatment of the criminal, and a virtual blackout of attention to the situation of the victim. For more than 1000 years prior to the mid-20th century, the victim of crime in our society—and in the administration of justice—has been ignored.

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Meanwhile, principles of humane treatment for criminals have been extensively developed and applied. In the United States vast resources are devoted to the care and rehabilitation of the offender. Recently, the 89th Congress passed three crime bills, of which one was aimed at helping police agencies "fight crime" while two were aimed at helping convicted offenders through the easing of parole requirements and the improvement of rehabilitation services. Victims were not provided for.

In the past decade, however, a new line of interest has opened up. The victim has been "discovered," and there are signs of change. Victims, it is being said, are also human; they bleed and suffer; their children and spouses may be deprived of the breadwinner's support.

New Zealand (3), Britain (4), California (5), and New York City (6) have already installed victim-compensation systems and are paying out public money. Many other jurisdictions here and abroad are drafting such legislation.

One observer has suggested that legislators are finding the programs attractive, in the light of mounting public anger over alleged leniency in the treatment of offenders, as a means of placating constituents who demand stern measures against perpetrators of violence. The reasoning may be faulty, but there is public concern, and the sentiment has been gathering momentum.

### Uncertainty about Objectives

Most people approve the humanitarian motivation of victim-compensation proposals. But there is a serious degree of uncertainty—even a degree of confusion in some quarters—about the specific objectives and proper functioning of the compensation-for-victims concept.

Compassion is but one consideration. Former Associate Justice of the Supreme Court Arthur J. Goldberg, speaking in favor of compensation, declared that the victim of a robbery or assault should be considered to have been "denied protection of the laws" and that "society should assume some responsibility for making him whole" (7). However, there are documented studies [those of Von Hentig (8) and Wolfgang (9), for example] which indicate that the victim himself often contributes to the occurrence of the crime—through his own carelessness, aggressive behavior, or imprudence.

Though some people may consider it paradoxical that criminals should be aided by their victims, this phenomenon is one with which criminologists are familiar. There is a growing literature on the role of the victim in crimes of violence; in addition, similar studies have recently been made in the field of property crimes (10).

These studies suggest that where, for example, a person has not acted with reasonable self-protective behavior in handling his money, jewelry, or other valuables, and has become the victim of a robbery, he cannot be considered an innocent victim—he has in effect created a "temptation-opportunity" situation, giving the criminal incentive and help.

In popular parlance, "he has himself to blame"; in the explorations of criminology he may begin to look very like an "accomplice" of the criminal. But under current compensation legislation he may be entitled to a cash award for injuries sustained while he was being robbed.

Even where robbery is not involved, the potential for confusion is large if future legislation follows precedents already set. In mid-January of 1966 two men were seriously injured on a New York subway. The newspaper report said they jostled each other during rush hour, then got into an argument in the course of which one was cut in the face with a knife, the other was shot in the stomach. New York State currently has victim compensation legislation under development, and it may one day have to adjudicate a claim arising out of this type of incident. There was a comparable incident in Britain recently: two men got into an argument on a bus; one struck the other, blinding him in one eye and causing him to lose 8 weeks' work; the British Criminal Injuries Compensation Board awarded him \$5660.

Whereas Britain seems to emphasize loss of earnings, California emphasizes need, plus young dependent children. Although hailed as a "pioneer" in concern for unfortunate victims of violent crime, California makes them ineligible for compensation if they are unmarried individuals, childless married couples, elderly people, or individuals unable to pass a public-welfare needs test.

This kind of variation from Britain to California may suggest complexity; equally notable is the potential for confusion. While Goldberg spoke in favor of "society making the victim whole" as a proper rationale for a compensation system, he also is reported to have endorsed the new California law, with its restrictions, and to have called it "beneficial legislation" which deserves to be "widely emulated throughout the country" (11).

### Uncertainty about Costs

Uncertainty about objectives is matched by uncertainty about costs. Legislators thus far seem not to have concentrated on this aspect of the matter. Notable generosity sometimes is advocated by public officials, but usually with reference to particular cases that receive extensive publicity.

The *Wall Street Journal*, in an article reporting on compensation proposals (12), found that "despite voluminous statistics on rising crime rates, there is no way to estimate the total cost of a compensation program." It also quoted a consultant to the California government as saying, "Quite frankly, we

don't have the faintest idea what the program will cost. . . ."

The California legislature, however, disposed of this uncertainty through the simple expedient of setting a ceiling—a maximum of \$100,000 for claims in the first half year. Meanwhile, the British Criminal Injuries Compensation Board reported it had made 282 awards totaling \$232,000 in its first 11 months of activity. Elsewhere there is talk of greater generosity. New Jersey, for example, is reportedly considering a scaling of awards from \$500 to \$25,000 per individual. The attorney general of that state is quoted as saying he is drafting legislation that does not make use of a means test for entitlement (13). An Illinois assemblyman declares his state will avoid having "just another form of welfare dole." The first award made under a New York City law was \$4200 per year to a murder victim's widow; with her life expectancy assumed to be 50 years, this represents over \$200,000 to one person.

### Search for a Theory

It seems evident that evaluation of proposals for victim compensation will require consideration of a rather wide spectrum of questions, and that legislators at present have little information on which to base answers. Probably, considerable research is needed on the following points. Is one to be guided solely by considerations of compassion, or does the victim have a "right" to compensation? Should all victims receive compensation, or only those who are in financial straits? How is a victim's financial need to be measured? If a victim is to be compensated, should the offender in some way have, or share, the obligation to pay?

In the recent literature one may find considerable research on the ways of primitive and ancient peoples but a regrettable paucity of fact related to present-day reality. The Hammurabi code and the wergild of the age of feudalism have a genuine fascination but offer little guidance in a modern street-corner robbery or subway assault. There are a number of basic theories and issues that must be investigated, debated, and resolved after the facts and the consequences have been considered.

For example, from certain points of view compensation might be regarded as a moral and even legal right of the victim. This might be based on the

"state duty" theory, which holds that society has a duty to protect its citizens from crime, that occurrence of a crime represents society's failure in the performance of that duty, and that this failure entitles the victim of the crime to a compensatory payment, usually in money.

Moral and legal right might also be established on the "wheel of fortune" theory, based on the assertion that crime is an inherent hazard of our society; that it inevitably falls upon someone, though the particular victim may be "selected" by chance; and that the individual, as victim, should not have to bear his misfortune alone. Under this theory, compensation is a mechanism by which lucky members of society "make it up" to the ones who are unlucky.

Under the "state duty" theory, the local, state, or national government would be obligated to pay, on the basis of an action for damages or an out-of-court settlement; the compensation law would merely systematize and perhaps expedite claims.

Under the "wheel of fortune" theory, there are two basic methods of financing to choose from: a fund appropriated by local, state, or national government or an adaptation of the "social insurance" practice now followed in the United States.

If the social insurance route is chosen, government declares by fiat that crime, like unemployment and old age, is an "insurable hazard" of its citizens; it would collect contributions from them through its taxing powers, and devise a scale of benefits.

If the "insurable hazard" concept is adopted, two other methods are also possible: private insurance, comparable to automobile insurance, and a "Blue Cross" type of arrangement.

In contrast to the "right to compensation" concept is the "social welfare" theory, which holds that society ameliorates the distress of its members not as a "right" but as "social policy," if they become widowed, orphaned, or indigent. Victims of crime would be added to the lists of individuals eligible for relief payments under existing state or local welfare systems.

Another approach is more specialized, providing compensation for those harmed when attempting to protect their fellow citizens from criminals, or when cooperating with police. For example, the New York City law which grew out of the strongly publicized case of a man killed when going to the aid

of two women being molested in the subway provides a pension for the widow similar to that given one whose husband was a policeman killed in the line of duty.

For the sake of completeness, mention should be made of the theory of individual responsibility—the theory that the criminal should be held financially liable for the injury or death of his victim. Though a few ingenious suggestions have been made for implementing this idea, the concept is largely academic except where the offender is in a high income bracket. Proposals based on this theory seem to evoke the “reparations” concept of our primitive ancestors, or they lean upon avant-garde correctional theory which holds (evidence is yet to be developed) that the offender’s payment to the victim will have a psychological effect which will help in his rehabilitation. There are also proposals which extend this concept to parental responsibility for the acts of children; these proposals would be largely academic except in cases where the offender’s parents are living and affluent.

Which of these theories or concepts might best serve as a basis for legislation can be determined only after further research. Inevitably such research would include a new exploration of the role of the victim in both criminal phenomena and the administration of justice.

Traditionally, in the administration of justice, the victim of crime has a secondary role. Primary attention usually is focused on the criminal. The victim’s function is mainly that of providing information for law enforcement officers, supplying evidence of the criminal act, or being a witness in court proceedings. He is often subjected to inconveniences, indignities, and the harassment of the defense attorney.

One author observes that the victim is “the Cinderella of the criminal procedure.” Many have noted the “inequality of treatment” between criminal and victim. Huge sums are spent on shelter, food, medical care, supervision, vocational training, and rehabilitation of offenders, while the victims and their dependents are left to shift for themselves.

### Philosophical Issues

These are some of the considerations which are lending urgency to what might otherwise be considered a minor

problem in the administration of criminal justice. There are, of course, certain philosophical issues, such as that raised by G. O. W. Mueller when he suggests, by way of illustration, that compensation for the family of a murdered man is not socially defensible unless society at the same time provides compensation for a family whose breadwinner is killed by lightning (14).

Would the administration of criminal justice be seriously affected by proposed systems of victim compensation? If there were no cases other than those in which the victim is clearly an innocent recipient of injury or death at the hands of a criminal, the matter would be simple. But in crimes where there is conflicting testimony, or where there is no credible witness or no apprehended suspect, how should the victim’s claim for compensation be adjudicated? How can it be decided whether the injury was caused by an assault, or by an argument, or by a fall due to drunkenness? How can the victim’s trial testimony be evaluated if victim compensation is a factor in the case? Standards will have to be developed after careful criminological research.

### Summary

In summary, there are certain issues that need to be dealt with if a coherent system of victim compensation is to be created.

1) Is the victim’s entitlement to compensation qualified by his behavior in connection with the crime?

If a Texas tycoon visits a clip joint, flashes a fat roll of bills, and gets hit on the head and rolled, is he entitled to compensation? If a man enters into a liaison with another’s wife and gets shot by the husband, should his dependents be compensated? If a woman goes walking alone in a disreputable neighborhood and is assaulted, is she entitled to compensation?

Unless the answer to such questions is a flat “yes,” the adjudication of victim compensation as a “right” would be embarkation upon a vast sea of confusion.

On the surface it may seem simpler to bypass the issue of “right” and declare for victim compensation as a matter of social policy—a logical extension of the welfare state approach. But the apparent simplicity may quickly prove illusory, in light of the second issue.

2) Is the victim’s entitlement to com-

pensation on the basis of indigency to be qualified by the requirement that an offender be apprehended and his guilt determined by a court?

There are two levels to this problem. First, if a severely injured man reports to police that he has been mugged and robbed and if the police cannot apprehend a suspect, how is the administrator of compensation to know that the man is in fact the victim of a crime? The administrator of compensation must determine whether the episode was a criminal act or an argument—and who started it, and who precipitated the violence. What shall be the role of the witnesses, and of investigators? More important is the second level of the problem: How will law-enforcement officials and the courts evaluate the testimony of the victim if compensation of the victim may be at stake?

In the evaluation of proposals for victim compensation, criminologists may need to think very hard about such questions and about the probable effects on the administration of criminal justice.

These are pragmatic problems; there is a third problem which may at this time seem speculative, but is, nevertheless, quite important.

3) To what extent will a particular proposal for victim compensation contribute to a temptation-opportunity pattern in victim behavior?

In previous studies it has been pointed out that large numbers of our fellow Americans have tended to acquire casual money-handling habits—generically designated “carelessness”—which contribute to the national growth of criminality. How the victim helps the criminal was sketched in reports of those studies (10).

It was made abundantly clear that human beings in our affluent society cannot be assumed to be prudent or self-protective against the hazards of crime. Even when the “victim” is not overtly acting to commit a crime—as in the case of the property owner who hires an arsonist—he often tempts the offender. Among the victims of burglary—statistically the most prevalent crime in the United States—are a substantial number of Americans who keep cash, jewelry, and other valuables carelessly at home or in hotel rooms to which the burglar has easy access through door or window. Victims of automobile theft—one of the fastest growing classes of crime—include drivers who leave the vehicle or its contents invitingly accessible to thieves.

And so on with other classes of crime.

As pointed out in previous studies, when victim behavior follows a temptation-opportunity pattern, it (i) contributes to a "climate of criminal inducements," (ii) adds to the economic resources available to criminal societies, and (iii) detracts from the ability of law-enforcement agencies to suppress the growth of crime.

### Conclusions

It would seem, therefore, that we can draw the following conclusions.

1) If "society should assume some responsibility for making the victim whole," it should also require victim-behavior that will diminish the number of temptation-opportunity situations for offenders. Such behavior could be encouraged through educational programs on citizen defenses against criminality, plus legislative provisions which make victim compensation contingent upon the victim's actions not being contributory to the crime. Similar standards of behavior might be studied for adaptation to casualty insurance practices. The new practices would either be adopted voluntarily or imposed through legislation.

2) The experience of insurance companies probably offers considerable material for study of the victim-compensation problem. Among other things, there is a seeming paradox: if the beneficiary of a life insurance policy causes the death of the insured the claim will not be paid, but with burglary insurance an individual can be careless or imprudent to the point of "inviting" theft and still be compensated for a loss. "Insured" thefts seem to be a law-enforcement problem of growing significance (15). The relationships between compensation and carelessness and between carelessness and criminal incentives need to be studied for guidance in creating a workable victim-compensation system.

3) Provisions for compensation of the citizen injured while assisting a law officer or while, on his own initiative, restraining an offender can be administered effectively only if standards of citizen behavior are carefully defined. Payment of compensation must be on such a basis as to discourage the vigilante and the busybody. A large-scale educational effort would have to be conducted, so that citizens would know their obligations and rights (16).

Careful criminological research is needed to help resolve these issues, and

to avoid opportunism, contradictions, and serious stresses in public finance.

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### NEWS AND COMMENT

## Canada: Science Advisors To Propose Priorities

Ottawa. Canada, having witnessed the enormous and somewhat frantic growth of U.S. science and technology over the past 20 years, foresees an accelerated expansion of its own science and technology and hopes that, in contrast to the American experience, it will be guided by a well-thought-out scheme of national priorities. Accordingly, the Canadian government has created an advisory Science Council and Scientific Secretariat which bear some resemblance to the White House science advisory structure. There are, however, significant differences between the advisory structure in Washington and the one here.

Canadians know that their vast country is rich in natural resources, but they are becoming acutely aware that the scientists and engineers necessary for the development of those resources are at a premium. The supply of scientific and technical talent, necessarily limited in a country of only 20 million people and rarely sufficient even in more heavily populated countries, is seen as a major factor governing the growth of Canada's economy. The Canadian government will look to the Science Council for advice as to which scientific activities should be encouraged in order to get the greatest rewards, both in training more people

and in producing economic benefits.

The Economic Council of Canada, established 3 years ago, has stressed the point that more industrial research and development are needed if Canadian products are to be competitive on world markets. It is apparent that Canada, lacking a large national market, must continue to be a major world trader. Specialization in fields in which Canada, by virtue of available resources and a technological lead, holds an advantage is seen as the way to success. The Economic Council and the Science Council have stated that it is their intention to work together closely in trying to focus the government's attention on the areas of greatest technological and economic opportunity.

The Science Council was created after Parliament passed authorizing legislation in May. The 29 council members were chosen by Prime Minister Lester B. Pearson largely from among scientists and engineers holding high positions in Canadian universities, industry, and government. In 1964 the Prime Minister, by executive order, established the Scientific Secretariat as part of the