

THE ECONOMICS OF VICTIM COMPENSATION

by

Roger Evert Meiners

Dissertation submitted to the Graduate Faculty of the
Virginia Polytechnic Institute and State University
in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

Economics

APPROVED:

Richard E. Wagner, Chairman

Gordon Tullock

James M. Buchanan

W. Mark Crain

M. M. Ott

October, 1976

Blacksburg, Virginia

ACKNOWLEDGMENTS

The author would like to thank the members of his committee, especially Professor Richard E. Wagner, for their generous assistance in the development of this study. He would also like to thank his wife, Christine, for providing the incentives necessary to get to this point.

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CHAPTER I

INTRODUCTION

"... under several systems in early American law, a thief, in addition to his punishment, was ordered to return three times the value of the stolen goods, or in case of insolvency to place his person at the disposal of the victim for a certain time."¹ Today only a minute percentage of the victims of criminal attacks receive any payment from the person who committed the act.

In the past decade there has been increasing interest in the financial losses suffered by the victims of crime. This concern has been manifested in legislation that would enable some victims of criminal acts to collect a payment from the state for the money value of the losses they have suffered in attacks. This procedure is generally called victim compensation.

Definitional Limitations

Because "victim" is a broader concept than "crime," it is necessary to distinguish victims of natural forces, accidents, and civil wrongs from the victims of criminal acts. Only actions made criminal by the law and of serious consequence to the victims, such as murder, rape,

¹E. Ruggles-Brise, Report to the Secretary of State for the Home Department on the Proceedings of the Fifth and Sixth International Penitentiary Congresses (London, 1901), pp. 51-52, quoted in Stephen Schafer, The Victim and His Criminal (New York: Random House, 1968), p. 14.

robbery, and arson, are under consideration.¹ The death or injury must be sustained by an "innocent" victim. Usually this means that the degree of contributory negligence by the victims will emerge as a test of victimization. When the victim is found to have consented to the act, or incited the criminal to act, he is not likely to be judged an innocent victim. However, exposing oneself to high risk situations is generally not considered contributory negligence.²

In the modern context, compensation is generally meant to be the "granting of public funds to persons who have been victimized by a crime of violence and to persons who survive those killed by such crime. . . ."³ These payments are usually for medical costs and loss of wages incurred by the victim, and possibly compensation for pain and suffering, but generally not for the value of property lost except for items lost in an attack on the person. Often there is to be no connection between the criminal and the victim in this process, unlike what was the case in most compensation schemes throughout history.

Scope of this Study

There are numerous issues surrounding victim compensation, some of which do not readily appear to be related to the topic, at least as it has been typically discussed. The traditional issues will be

¹Leroy L. Lamborn, "Toward a Victim Orientation in Criminal Theory," Rutgers Law Review 22 (1968): 736-38.

²Richard Cosway, "Crime Compensation," Washington Law Review 49 (1974): 561-62.

³Herbert Edelhertz and Gilbert Geis, Public Compensation to Victims of Crime (New York: Praeger Publishers, Inc., 1974), p. 3.

considered in this chapter. This topic arouses many questions that are relevant to the analysis of other public programs. Currently most costs of victimization are borne in the private sector. Victim compensation would require the public sector to absorb many of these costs. Since some crime insurance would be moved from the private to the public sector, it is important to study the desirability of such a change in liability.

The plight of the victim has become a greater social, political, and economic problem, due to the growth of crime. The impact that public compensation would have on the status of all potential crime victims needs to be studied. The sheer magnitude of the costs that crime imposes on society underscores the need for economic analysis of the criminal-victim relationship. Crime may well account for 10 percent of gross national product. One estimate, the validity of which is not clear, is that "white collar" crimes alone cost about \$40 billion a year.¹

The methodology of public choice is aptly suited for analytical application to governmental compensation programs. This analysis will suggest, in a positive framework, what can be expected to emerge in operation if the present proposal for victim compensation is adopted. Such an analysis will take account of the motives of the participants involved, the origins of the program, its political support, and the likely manner of operation. The theory of bureaucracy is especially

¹National Institute of Law Enforcement and Criminal Justice, Exemplary Projects: Prosecution of Economic Crimes (U. S. Government Printing Office: 1975), p. 1.

applicable in this instance; moreover, the enactment of victim compensation will even provide a test of the predictive abilities of this theory.

Equity considerations need to be developed in considering the role of the victim in the framework of a democratic society. Most equity considerations are tied to emotional pleas and political norms of justice. Employing a Rawlsian framework for examining such equity issues as justice and fairness for victims may help to avoid one of the traditional pitfalls of equity discussions.

As a proposed public program that may involve substantial sums of money, victim compensation also raises important issues concerning efficiency. The impact of the proposed program on victims and criminals can be considered, as can the specific organization of the proposed program. The system can be compared to alternatives, such as other forms of public programs, or simply compared to the private insurance system that operates currently. These and other issues will be developed in this study.

Traditional Rationales for Victim Compensation

To this point the discussion of victim compensation has been carried on almost exclusively by members of the legal profession. The rationales for compensation by the state can be found in many of the scores of articles written on the topic in the last decade. The major arguments can be summarized as follows: the duty of the state to protect citizens, the inadequacy of civil remedies for crime victims,

the inequities of the income distribution, and the sociological view that crime is the fault of society in general.

The argument made by many proponents of state compensation for victims is that "the state has a duty to protect its citizens from crime and that if it fails to do so it incurs an obligation to indemnify those who are victimized."¹ This is the primary argument used in advocating the federal proposal for compensation by Senator Mike Mansfield, joint author of the Mansfield-McClellan compromise version of the Victims of Crime Act, who said, "if society fails in its efforts to provide basic protection, then the social contract has been breached; the citizen has suffered."²

This argument must be made on normative grounds in Western jurisdictions. In the strict sense the argument is legally groundless. One lawyer, who favors compensation, notes that, "It is doubtful ... that any underlying liability of the state for the criminal acts of third parties actually exists."³

Compensation is technically more of a welfare payment than an insurance payment. As the writers of the 1964 British compensation program noted:

Compensation will be paid ex gratia. The government does not accept that the state is liable for injuries caused

¹Bruce R. Jacob, "Reparation or Restitution by the Criminal Offender to his Victim," Journal of Criminal Law, Criminology and Police Science 61 (1970): 153.

²Mike Mansfield, "Justice for Victims of Crime," Houston Law Review 9 (September 1971): 77.

³Cosway, "Crime Compensation," p. 553.

to people by the acts of others. The public does, however, feel a sense of responsibility for ... the innocent victim, and it is right that this feeling should find practical expression in the provision of compensation. ...¹

Indeed, as of early 1973, none of the 22 jurisdictions that had established crime compensation programs had accepted the theory that the government has a duty to compensate victims.²

One strange aspect about the argument of proponents of state liability for criminal costs is that they specifically limit compensation to personal injury. "This limitation is neither inherent, nor natural, and, in addition, seems to possess a great number of criminopolitical disadvantages." The argument should apply "with equal vigor to harm to property, or honor, etc." in order to be consistent.³ This limitation has been noticed recently, and there are numerous proposals to expand the coverage of victim compensation. This expansion is to be expected, as will be demonstrated later when the impact of the bureaucracy on compensation is considered, so that the concern that a public compensation program may be inadequate in coverage is probably only a short run problem for proponents.

Another argument made in favor of public payments to victims is based on the inadequacy of civil action against criminals. A victim

¹Great Britain, Home Office and Scottish Home and Health Department, Compensation for Victims of Crime and Violence, Cmnd. 2323 Para. 8 (1964), quoted from Cosway, "Crime Compensation," p. 552.

²LeRoy L. Lamborn, "Propriety of Governmental Compensation of Victims of Crime," George Washington University Law Review 41 (March 1973): 463.

³G. O. W. Mueller, "Compensation for Victims of Crime: Thought before Action," Minnesota Law Review (December 1965): 214, 217.

of criminal attack may, in some jurisdictions, and for some crimes, bring civil action against his assailant for all pecuniary and non-pecuniary losses. This is of little practicable use to victims, as the majority of criminal assailants are not apprehended or even identifiable by the victims.¹ Of those who are apprehended, few are of legal age to be subject to such action or have the resources to pay for the costs of the damages they have inflicted. For instance, it has been estimated that 90 percent or more of the inmates of the federal prison in Atlanta are indigent, in that they could not raise as much as \$300 to retain legal counsel.²

A study of 167 victims of violent crimes in Toronto in 1966 disclosed that although 75 percent of the victims incurred pecuniary losses, only 15 percent considered suing for reparation, only 5.4 percent consulted a lawyer, and only 4.8 percent actually did try to collect from their attackers. Only 3 of the 167, or 1.8 percent of the victims, actually did collect anything from their attackers.³

The argument that civil action is inadequate in providing relief to victims is well taken, but is rarely accompanied by an analysis of the law that has made civil suit against criminal assailants so rare. While it is certain that, due to the low rate of criminal capture, a civil suit would be effective in only a small minority of cases of

¹Lamborn, "Propriety of Governmental Compensation," p. 452.

²Jacob, "Reparation or Restitution," p. 152, footnote 3.

³Allen M. Linden, "Victims of Crime and Tort Law," Canadian Bar Journal 12 (February 1969): 21.

criminal attack, such suits would be more common were it not for the distinction in Anglo-Saxon law between civil and criminal cases.

Civil relief is impaired because, in general,

a criminal judgment of conviction or acquittal is not admissible in a civil action, even as evidence of the facts. ... The victim's time and testimony in the criminal action must be repeated and the additional cost of proving the offense before a civil jury is on him.¹

This separation of civil and criminal law is often surprising and confusing to laymen. Whether sensible or not, as common law developed, especially in the last four centuries, there has been a greater and greater legal distance placed between the criminal and his victim.

A criminal act is an offense against the state, while a tort is an offense against the individual. Hence, if a man is captured and found guilty of rape, he is punished by the state because rape injured society. His victim may sue him, but not for rape since that was a criminal act. She must sue in tort for civil damages such as medical expenses, loss of income, pain and suffering, etc., but this requires that the victim bear the expense in civil court of proving the act of rape.

This weakening of the potential for victims to receive restitution from criminals developed over a long period of time. Since the civil-criminal distinction has worsened the position of the victim, it would seem more logical to change the law and its attendant weaknesses

¹Joan M. Covey, "Alternatives to a Compensation Plan for Victims of Physical Violence," Dickenson Law Review 69 (Summer 1965): 398.

rather than to paper over the process with public payments. In any event, it is not necessarily a logical conclusion that inadequate civil remedies should be replaced by public compensation since private compensation is available.

Another argument raised in favor of compensation pertains to considerations of income equality. It has been claimed that "low income may preclude the purchase of insurance. In only about 9 percent of the incidents reported in a recent survey of victims of crime was there any indemnification from insurance."¹ Another perceived problem with the regime of private insurance is that "the victim will have to bear the cost, at least of the premium payments, to protect himself from the anti-social, criminal activities of another."² Rather, this particular author argues, society should bear the cost of compensating the victim.

Some proponents, such as the one just cited, appear to believe that if society provides victim compensation then victims will not have to bear the costs of private insurance. The notion that services provided by the government are free has generally been recognized as false even by the most staunch supporters of massive public welfare programs. Public compensation would operate much like private insurance, taxes paid to the government would substitute for private insurance premiums. The real concern here is that some crime victims are in financial need

¹Leroy L. Lamborn, "Remedies for the Victims of Crime," Southern California Law Review 43 (1970): 42.

²Boyd L. Wright, "What About the Victims?" North Dakota Law Review 48 (Spring 1972): 479.

because they did not have sufficient private insurance to cover the losses they suffered.

The argument that society should help some victims because they are in financial need is a purely normative judgment. Most legislative bodies that have established compensation programs have stated that the rationale was humanitarian and was not based on the liability of the state for these expenses. The role of the economist here is to point out the costs and benefits of such a program, so that normative judgments can be made in the light of positive analysis. However, this study will also consider, in a more rigorous framework than is commonly employed, the equity arguments that apply to this situation.

The last major argument made in favor of public payments to victims is based on a normative sociological position. Compensation is viewed as desirable due to "the responsibility which society must bear for the crime itself. Crime is, after all, a sociological and economic problem as well as a problem of individual criminality."¹ Some sociologists argue that there is a general societal responsibility for violent behavior because violence is the product of acculturation of the young into patterns of violence, and is also due to the exclusion of some groups from normal political participation.²

The sociological argument that society has caused people to commit criminal acts, and therefore society should pay the victim, is

¹Arthur J. Goldberg, "Preface" (Symposium on victim compensation) Southern California Law Review 43 (1970): 1-2.

²Marvin E. Wolfgang, "Social Responsibility for Violent Behavior," Southern California Law Review 43 (1970): 6.

debatable on scientific grounds. The economic view of man being responsive to incentives to commit crime and to punishment received for crime committed does not square with the sociological argument advanced by some scholars. In general the weight of empirical evidence at the present time would support the punishment of criminals over alternative actions as the most effective deterrent to crime.¹ This evidence tends to refute the sociological view of criminal activity.

Conclusion

The basic justification for victim compensation programs, as they presently exist and are generally proposed, must rest on normative humanitarian grounds, since the legal arguments have little weight and the sociological argument is subject to severe dispute. This is not to say, of course, that compensation programs of a different form and/or under different systems of legal organization may be defensible on other than humanitarian grounds. This study is designed to present some new arguments about public compensation, based on positive methodology, in order to allow normative decisions in an informed setting.

¹See Gordon Tullock, "Does Punishment Deter Crime?" The Public Interest (No. 36, 1974); and Isaac Ehrlich, "The Deterrent Effect of Capital Punishment: A Question of Life and Death," American Economic Review 65 (June 1975).

CHAPTER II

PAST AND PRESENT METHODS OF COMPENSATION

The History of Victim Compensation

The Babylonian Code of Hammurabi, more than 4,000 years old, is often cited as the first legal record of victim compensation. In part it reads:

...the man who has been robbed, shall in the presence of God, make an itemized statement of his loss, and the governor, in whose province and jurisdiction the robbery was committed, shall compensate him for whatever was lost. If it be a life (that was lost), the city and governor shall pay one mina of silver to his heirs.¹

Under this system of law, and under Mosaic law, public compensation generally was awarded only when the criminal was not caught, so that public officials would have a greater incentive to apprehend criminals. "Compensation was motivated less by a concern for the victim than by a desire to punish society for failing to find the criminal."² Whatever the motives, the result apparently was an effective form of compensation. A captured criminal was forced to pay as much as 30 times the value of the damage he caused.

This merger of civil and criminal law combined restitution and atonement. The practice was common in almost all ancient law, its use

¹Quoted from Robert D. Childress, "Compensation for Criminally Inflicted Personal Injury," New York University Law Review 39 (May 1964): 444.

²Goldberg, "Preface," p. 1.

was recorded in Islam, Indian Hinduism, and Roman law. Citizens had an incentive to assist in the capture of criminals, since the compensation payments were made from taxes collected in the village where the crime occurred.¹ In almost all primitive cultures, past and present, some form of collective law enforcement is practiced. The criminal is forced to compensate his victim and/or society and, additionally, often is forced to suffer a physical punishment.

Various combinations of blood-feuds and restitution were common in the early centuries in Europe. In the first century, a German murderer or thief would pay a fine in oxen or cattle, half the fine paid to the king and half to the victim or to his relatives. By the time of Alfred in 871, feuds were resorted to only after compensation had been requested but was refused. The Doms of Alfred, as well as laws set out by other kings, specified the prices of various criminal acts.

A man who "lay with a maiden belonging to the king" had to pay 50 shillings, but if she were a "grindling slave" the compensation was halved. Compensation for lying with a nobleman's serving maid was assessed still lower at 12 shillings. If a freeman raped the slave of a commoner he paid no more than five shillings compensation, but if a slave raped the same girl he was castrated. And although fighting in the presence of an archbishop was 25 times more expensive than fighting in the house of a commoner, to fight in the house of the King of Wessex could cost a man everything he possessed.²

Specific payments for damages inflicted in attacks were common in Europe through the Middle Ages. Frequently there were negotiations between the offender and the victim. This process is known as

¹Schafer, The Victim and His Criminal, pp. 12-13.

²Christopher Hibbert, The Roots of Evil (USA: Minerva Press, 1963), pp. 3-4.

"composition." It remained in use in many non-European cultures when abandoned in Europe, and is still used in various places. Often a dual compensation, one to the victim and one to the state, was required.

By the middle of the tenth century a growing number of offenses were punished by mutilation or death, instead of by compensation. The growth of royal and ecclesiastical authority in the Middle Ages contributed to a sharpening division between tort law and criminal law. "Christian concepts of sin were absorbed into penal law and altered its character; murder, robbery and rape were no longer regarded as torts which could be settled by compensation, but as sins for which penance was required."¹

By the twelfth century the victim's right to reparation was largely replaced by fines assessed by a state tribunal against the offender. More and more offenses came to be considered crimes against society, or breaking the "king's peace," so that punishment was to be meted-out by the king, and the king would be compensated.² The development of common law eliminated most compensation as civil and criminal law became more distinct over time.

A few vestiges of restitution remained in some cases, such as seventeenth century colonial American law. According to limited court records from the 1670s restitution was imposed on criminals in about one-half of the theft cases in some Massachusetts counties. It was also

¹Richard L. Worsnop, "Compensation for Victims of Crime," Editorial Research Reports 22 (September 1965): 696.

²Richard E. Laster, "Criminal Restitution," University of Richmond 5 (Fall 1970): 75-79.

imposed in cases of manslaughter, assault and battery, burglary, and lewd, lascivious and wanton behavior.¹ It was common for a thief to be "required to make restitution, sometimes threefold, sometimes double. The law left the matter largely to the judge but provided specifically for treble restitution for stealing from a person's yard or 'orchid'." Servants who could not meet the payment would have their term of service extended and a "completely destitute thief faced the possibility of being sold into slavery, for the Bible has set the precedent for dealing with this type: 'if he have nothing, then he shall be sold for theft.'"²

The revival of compensation was considered during the nineteenth century movement for penal change. Jeremy Bentham advocated the return of compensation, holding that "'satisfaction' should be drawn from the offender's property, but 'if the offender is without property ... it ought to be furnished out of the public treasury, because it is an object of public good. ...'"³ The restitution of crime victims was also discussed at each of the five International Prison Congresses held during the latter part of that century. Almost all eminent criminologists hailed various forms of compensation as desirable, generally in the form of direct compensation from the criminal to his victim, either immediately or through prison wages. Garofalo noted that: "A fund of this sort existed in the Kingdom of the Two Sicilies as well as in the Duchy of

¹Edwin Powers, Crime and Punishment in Early Massachusetts, 1620-1692 (Boston: Beacon Press, 1966), pp. 404-8.

²Powers, Crime and Punishment, p. 410.

³Worsnop, "Compensation for Victims of Crime," p. 696.

Tuscany, but it never appears to have been of much service to claimants, as the treasury always put it under contribution to defray the expenses of the courts."¹

Modern Revival of Compensation

Serious discussion of victim compensation was revived in England in the early 1950s. Many credit the writings of Margaret Fry, a British advocate of penal change, as influential in bringing the topic to public attention.² Fry originally proposed, in the vein of the historical form of compensation, that the criminal make reparation to his victim as a part of the rehabilitation process. However, Fry soon decided that the historical form of compensation was impractical, and, in the late 1950s advocated state responsibility for victims' injuries.³ According to the common view of the recent legal history of compensation, Fry was so influential that her work led to the adoption of compensation in Great Britain, New Zealand, and several other jurisdictions around the world.

Compensation in New Zealand

Victim compensation was discussed in England for six or seven years before it was adopted. New Zealand, however, was the first Anglo-

¹Raffaele Garofalo, Criminology (Montclair, N.J.: Patterson Smith, 1958), 1905 Edition, p. 434.

²Margaret Fry, The Arms of the Law (1951), cited in Jacob, "Reparation or Restitution," p. 152.

³Margaret Fry, "Justice for Victims," The Observer (London), July 7, 1957, cited in Jacob, "Reparation or Restitution," p. 152.

Saxon nation to establish a public program of victim compensation, preceding the British by seven months. The program in New Zealand, which began operation on January 1, 1964, is credited as having been "largely the work of Margaret Fry and the investigatory bodies in Great Britain," according to the authors of the most comprehensive work on victim compensation legislation.¹ An alternative explanation of the implementation of the program in New Zealand was offered by Dr. J. L. Robson, Secretary of Justice. The National Party had recently abolished capital punishment and was sponsoring legislation for a work-release program for imprisoned criminals. The government offered the compensation program

as a palliative to blunt opposition to these penal reforms, as well as to respond to the public's general concern about crime. In addition, the legislation was consistent with the multitude of benefits offered citizens under the social security system.²

The original victim compensation program in New Zealand was similar to the program that exists in Great Britain, which will be discussed.³ The Accident Compensation Act of 1972, which took effect April 1, 1974, eliminated the victim compensation program by absorbing it into a universal accident compensation system. This program, which is now under consideration in Australia, "covers everyone in the country,

¹Edelhertz and Geis, Public Compensation, p. 238.

²Kent M. Weeks, "The New Zealand Criminal Injuries Compensation Board," Southern California Law Review 43 (1970): 108.

³Peter Brett, "Compensation for the Victims of Crime: New Zealand's Pioneer Statute," Australian Law Journal 5 (1964).

whether resident or visitor, for any kind of accident -- no matter how or when it happens or who is at fault."¹

Coverage is so complete that about the only injury not covered by the program is one that is self-inflicted. The program pays for medical costs, incidental losses, rehabilitation and retraining, 80 percent of lost wages indefinitely, and lump sums for permanent physical disability and for pain and suffering. The family of the victim will be reimbursed for injury-related expenses, for funeral expenses, will be paid a lump sum upon the death of spouse or parent, will be paid 50 percent of wages that were earned by the deceased spouse, with extra payments for children, indefinitely or until remarriage, at which time a bonus will be given equal to two years' wage payments.²

The Accident Compensation Act prohibits suits seeking damages for personal-injuries from alleged tortfeasors. Thus, a major common-law tradition with hundreds of years of development has been felled by one act. No matter what the origin of the injury, with a few exceptions, the injured party files a claim with the Accident Compensation Commission. Its agents investigate claims and recommend the award to be made. Generally, moral judgments are not to be made. "The philosophy of the law isn't to look at the character of the man or the circumstances of the accident," says the commission chairman. In one incident, two

¹"To Accident Victims, New Zealand Offers the Balm of Money," Wall Street Journal, September 16, 1975, p. 1.

²J. L. Fahy, "The Administration of the Accident Compensation Act 1972," Economic Bulletin, Canterbury Chamber of Commerce, No. 592 (Christchurch, N.Z., 1975), Sec. 5.

gentlemen who injured each other in a fight were both paid for their losses.¹

The scheme is financed by motor vehicle registration and license fees and by a tax on employees' wages. The tax ranges from 25¢ to \$5 per \$100 earnings, depending upon the danger of the job. Self-employed persons are similarly assessed.² The first year of operation, \$81 million was collected in revenues and \$33 million was paid out. The commission plans to build a cash reserve to pay for claims which require payments lasting many years.³

Because it has so many novel aspects, and is a dramatic departure from the Angle-Saxon tradition, the New Zealand program may provide an interesting case study in many areas in the coming years. The point of most interest to this study is whether the program will provide an added incentive to criminal activity. The following example will illustrate this issue:

Imagine for a moment you are a clumsy criminal from New York intent on blowing open a safe here in New Zealand. You bungle the job and blow off your left thumb.
... Two arms of the government take over. One tosses you into jail for your crime. The other pays you for your suffering.

¹"New Zealand Offers the Balm of Money," Wall Street Journal, p. 1.

²Fahy, "The Accident Compensation Act 1972," sec. 4.

³Dollar amounts are New Zealand dollars, which are worth a little more than U.S. dollars. It is interesting to note that New Zealand, long recognized as a welfare state, only recently adopted old-age social-security. The program is more flexible than the American program. An employee can opt to be covered by a company plan and can also vary the contribution from his wages if he uses the government plan. "New Zealand Offers the Balm of Money," Wall Street Journal, p. 1.

You get a check for \$1,960 ... to compensate for the lost thumb. Medical bills are paid. You probably are reimbursed for the clothes tattered by the blast. And when you get out of jail, you will be trained for work in which a missing thumb won't be missed.¹

Compensation in Great Britain

The most widely cited program outside of the United States has been the program in Great Britain. Following general public discussion of possible public compensation schemes, the issue was raised in the Parliament in 1957 and 1958. In 1959 and 1960 two Labour Party members introduced "private members bill" for public compensation. In June of 1961 the Home Office Working Party issued a report. Compensation for Victims of Crimes of Violence, which examined the practical problems involved in a compensation scheme.²

In late 1961 the chairman of the Conservative Party's Advisory Committee on Policy appointed the Committee to Consider Compensation for Injuries Through Crimes of Violence. In June 1962, this committee reported favorably on compensating crime victims. The same year, the British Section of the International Commission of Jurists reported favorably on compensation, repeating the position it had taken four years previously. Favorable debate on the issue continued up to the time of adoption by the government.

In March 1964 a White Paper entitled "Compensation for Victims of Crimes of Violence" was published. In May the issue was debated in

¹"New Zealand Offers the Balm of Money," Wall Street Journal, p. 1.

²Edlehertz and Geis, Public Compensation, p. 214.

the House of Commons and the House of Lords, which produced some amendments to the proposal. In June the Home Secretary declared the program to be effective, and named the chairman of the new Criminal Injuries Compensation Board (the Board). As an administrative tribunal, the executive powers of the government were sufficient to order the program into existence, and actual operations began on August 1, 1964.¹ About this time, the government issued another White Paper, entitled "The War Against Crime," which included numerous proposals to combat crime, including the introduction of the victim compensation scheme. This was apparently similar to the situation in New Zealand, in that governments perceive the need to offer compensation plans as a palliative, or as part of a larger program for the benefit of the public.²

The compensation program has grown rapidly since implementation, but remains relatively small by American standards. Initially the Board had six members, which had increased to eight members by 1967, and was assisted by a staff of about 40.³ By 1971 the Board had 9 members and a staff of 70, which increased to 85 in 1972.⁴

¹Edelhertz and Geis, Public Compensation, pp. 214-15.

²Duncan Chappell, "The Emergence of Australian Schemes to Compensate Victims of Crime," Southern California Law Review 43 (1970): 70.

³"Recent Legislative Action," Harvard Law Review 78 (June 1965): 1684. J. F. Gardner, "The Criminal Injuries Compensation Board," Public Law (1967): 323.

⁴David H. Harrison, "Criminal Injuries Compensation in Britain," American Bar Association Journal 57 (May 1971): 476. Edelhertz and Geis, Public Compensation, p. 216.

Applications for compensation increased from 2,452 in the first year of full operation (1965-66), to approximately 10,000 for the fiscal year ending March 31, 1972. Compensation awards rose in that time period from £402,718 to about £3 million. Administrative costs added about 10 percent to the Board's budget.¹ One author estimates that the 10,000 applications the Board was receiving in the early 1970s represented only one-third of the total number of victims eligible.² This number does not seem inconsistent with the estimate of Board researchers in the late 1960s, who estimated that "the maximum number of applications we could ever expect to receive (subject, of course, to any startling increase in crime) is between 16,000 and 18,500."³

The compensation procedure is less legalistic than it is in some jurisdictions. Applications may be submitted by the applicant in person. More commonly, however, they are submitted on a form supplied by the Board. Although application forms are available only from the Board, police stations and other agencies have copies of the program and procedural guides.⁴ A little more than half of the applicants are represented by a lawyer or by trade union officials. Those represented by a

¹Edelhertz and Geis, Public Compensation, p. 232, citing Criminal Compensation Board, Annual Reports, 1965-71. The Times (London), Nov. 12, 1971, p. 3; and New York Times, Nov. 29, 1972, p. 2.

²Alec Samuels, "Criminal Injuries Compensation Board," Criminal Law Review (July 1973): 418.

³Criminal Injuries Compensation Board, Fourth Report: Accounts for the Year Ended 31st March, 1968, Cmnd. 3814, 1968, cited in Edelhertz and Geis, Public Compensation, p. 225.

⁴Gardner, "Compensation Board," p. 324.

lawyer must pay for his assistance; however, their success rate for receiving compensation is much higher than the non-represented individuals.¹

New applications are received by staff members, who act as case-workers on each application they process. The case-worker makes sure the application is complete and gathers whatever information he believes is needed to prepare the case for consideration. Since there are no formal rules of evidence, work is done on a basis of voluntary cooperation with public officials, medical authorities, and witnesses. "In general, it is the caseworking officer's duty to see that all relevant matters are brought to the attention of the board member whether they are in the applicant's favor or to his detriment."²

When all inquiries have been completed the staff member prepares a summary that, with the application and all other relevant materials, is sent to a single member of the Board. Members receive, in rotation, batches of 10 cases. The member makes his own assessment of the application, and can reject the application, accept it, or make a smaller award. The decision is then returned to the case-worker who notifies the applicant of the decision, which can be accepted or rejected. About 90 percent of the single member decisions are accepted, each having an administrative cost of about £25 on the average, compared to the £120 average cost incurred in each appeal (in 1972).³

¹Samuels, "Criminal Injuries Compensation Board," p. 419.

²Harrison, "Compensation in Britain," p. 478.

³Samuels, "Criminal Injuries Compensation Board," p. 429.

When an appeal is made it will be heard by three other members of the Board. Their decision will rest solely on the evidence given at the hearing, which is open for review by the applicant. The report used in the single member's decision is not used as evidence. A new investigation of the case provides evidence for presentation in a closed hearing, not bound by normal court procedures. The applicant is represented by a lawyer about half the time. If there is no lawyer for the applicant, then the Board's lawyer acts as amicus curiae, presenting all relevant facts and arguments, whether favorable or unfavorable to the applicant's case.¹ The three-man Board makes an assessment completely independent of the initial, single member's decision, so that a claimant may have his award reduced. However, in 80 percent of the appeals the award is increased in value.²

In a case brought against the Board after a three-man ruling, the court ruled that the Board is not exempt "from the supervisory control by the High Court over that part of their function which are judicial in character." Therefore, to this extent the Board is subject to an "appeal" to the courts; in other respects the decision of the Board consequent upon a hearing is, of course, "final."³

The Board has changed little in Great Britain since its inception. There has been some criticism of the awards assessment, which are

¹Harrison, "Compensation in Britain," p. 479.

²Samuels, "Criminal Injuries Compensation Board," p. 429.

³Gardner, "Compensation Board," p. 329, citing R. v. Criminal Injuries Compensation Board, ex p. Lain (1967) 2 All E.R. 770, at p. 781.

low by American standards, and of the fact that the state does not provide applicants with free legal assistance.¹ However, the program is broader in scope than most, and provides compensation for some damages that many programs do not. Except for a \$50 deductible, "compensation in injury cases is paid both for pain and suffering, disfigurement and the impairment of the enjoyment or activities of life, and for loss of earnings past and prospective and the out-of-pocket expenses incurred as the result of the injury."²

Due to a development unrelated to the compensation program, it has become easier for victims of crime to receive some compensation from their assailants. The Theft Act of 1968 conferred wide powers of restitution on the court, and gave limited powers to award compensation directly from the criminal to cover the property damages suffered by their victims. A criminal court judge can order a criminal to return stolen goods or, if it is not possible to return them, to collect funds from the criminal equal to the value of the goods or the property damage.³

Similarly, the Civil Evidence Act of 1968, which provides that the conviction of an offender is admissible evidence in civil proceedings has made it easier for a victim of property loss to receive compensation for the loss. "In practical terms, therefore, once the offender is

¹J. C. Walker, "Valuations of the Criminal Injuries Compensation Board," The Solicitors' Journal 110 (December 30, 1966): 970-71.

²Harrison, "Compensation in Britain," p. 477.

³Terence Prime, "Reparation from the Offender - I," The Solicitors' Journal 115 (November 19, 1971): 859-61.

convicted, that conviction will in the majority of cases be ample corroboration to obtain a civil judgment, and indeed in the majority of cases it would seem unlikely that civil proceedings would be defended."¹ This contrasts with American courts, where the existence of a criminal conviction is legally unrelated to any civil proceedings taken by the victim to recover property losses.

Compensation in Northern Ireland

Victim compensation in Northern Ireland is interesting, not because the program is significantly different from that in Great Britain, but because it may provide a subsidy for the violent internal strife that has plagued Northern Ireland in the 1970s.

First it is worth considering the compensation scheme that existed in what is now the nation of Ireland at the time of the Irish revolution. The Easter Rising of 1916 marked the beginnings of the revolution which continued for about the next six years. Ireland gained independence in December of 1921 and was allowed to withdraw from dominion status in December of 1922. Property damage that was suffered during the revolution could be compensated under traditional Irish law. One could receive compensation from county governments for property damages due to riots and other acts that were non-insurable by private means.

Due to the extensive damages inflicted during the revolution, county governments soon became unwilling and unable to pay court ordered

¹Terence Prime, "Reparation from the Offender - II," The Solicitors' Journal 115 (November 26, 1971): 880-82.

compensation awards. This led to the Criminal Injuries (Ireland) Act of 1920:

by which it was enacted that a decree against a county council under any enactment relating to compensation for criminal injuries was to be a debt due, and that it was to be the duty of the County Treasurer to pay the amount on demand, or out of the first monies coming into his hands, whether raised as compensation or not.¹

This led to a great burden on county governments to meet the compensation due, so that following the revolution the Irish central government and the British government agreed to pay the compensation claims.²

The county compensation scheme came under similar pressure in Northern Ireland due to cross-border raids in the late 1950s. The Criminal Injuries Act (Northern Ireland) of 1956 stipulated that the Ministry of Home Affairs would reimburse local governments for 50 percent of the compensation payments awarded. The burden continued to be so great however, that the Criminal Injuries Act (Northern Ireland) of 1957 allowed for the Ministry of Home Affairs to reimburse county councils for compensation payments made for property damage "caused by a malicious person acting on behalf of an unlawful association."³ This Act was extended on an annual basis until made permanent in 1970.

The Criminal Injuries to Persons (Compensation) Act (Northern Ireland) of 1968 inaugurated compensation for criminal injuries. This program is comprehensive, providing awards through the county courts for

¹D. R. Miers, "Paying for Malicious Injuries Claims," The Irish Jurist 5 (Summer 1970): 56.

²Miers, "Malicious Injuries Claims," pp. 58-9.

³Miers, "Malicious Injuries Claims," p. 63.

personal injuries attributable to criminal behavior. Coverage is so complete that if a cyclist is injured by a dog on the road, the cyclist will receive compensation because the loose dog violated the leash law, so that injury was caused by a criminal offense.¹

Compensation is for all injuries, including bodily harm, pregnancy, and mental or nervous shock, due to direct assault or incurred in attempting to prevent a crime or assist an officer in an arrest. All expenses incurred by the victim and/or his dependents, including pain and suffering and loss of amenities, will be awarded by the court. In case of death or disability, besides the expenses incurred, total annual income for up to two years will be awarded.²

This coverage, as broad as any offered anywhere, was a great expansion of the limited compensation that had been available in Northern Ireland since 1775. It provided that one would be compensated if a person had been killed or injured "as the result of the activity of an illegal association or unlawful assembly."³

The possible relationship between compensation legislation and the violence in Northern Ireland is well worth noting:

Available statistics on applications for compensation heard by the county courts prior to the new Act coming into operation (March 1, 1969) indicated a marked correlation between such application and the incidence of political disturbances and the introduction of criminal injuries

¹D. R. Miers, "Compensation for Victims of Crimes of Violence: The Northern Ireland Model," Criminal Law Review (November 1969): 577-78.

²Subject to an original limitation of £44 10s. per week, an amount double the average weekly earnings for men over age 21.

³Miers, "Compensation for Victims," pp. 578-79.

legislation. Such legislation in Ireland can patently be shown to be indissolubly connected with its recent political history.¹

The Northern Ireland Criminal Injuries Act provides that any person convicted of a criminal offense may be required, upon application by the Ministry of Home Affairs, to reimburse the Ministry in part or in whole for the compensation awarded by the county court. This procedure leads to a court review of the case and assessment against the offender based on his ability to pay, his financial position, the possibility of future employment, and the liabilities to his family.² How much this feature is in fact used in practice is unknown. If it is used as little as it is in other jurisdictions that have this procedure, then it is likely to be insignificant in impact.

Australian Compensation Schemes

Advocates of governmental compensation are often unhappy with the compensation plans that have emerged in some Australian states. Beginning with the Criminal Injuries Compensation Act in 1967 in New South Wales, three other states, Queensland, South Australia, and Western Australia, followed in the next three years with compensation plans almost identical to that implemented in New South Wales.³

¹Miers, "Compensation for Victims," p. 583. This possible correlation is, of course, only one man's opinion, but it is an interesting hypothesis.

²Miers, "Compensation for Victims," p. 585.

³Edelhertz and Geis, Public Compensation, p. 248.

The statutory basis for the New South Wales plan is in the Crimes Act of 1900 and the Criminal Injuries Compensation Act of 1967. The 1900 Act gave courts the power to pay a sum, not exceeding \$2,000, out of the property of a convicted offender to his victim for the loss or injury sustained by the commission of the felony or misdemeanor.¹ In cases of courts of summary jurisdiction, the award was not to exceed \$300. The 1967 Act extended the 1900 Act so that, if the funds could not be extracted from the offender, the court could award compensation via the state Treasury, subject to approval by the Treasurer.²

The 1967 Act, although based on the 1900 Act, is largely novel in effect since the 1900 Act was almost never used. Although the courts may still extract payments from the offender, subject to his ability to pay, as of 1971 in less than one percent of the total compensation payments rendered had part been paid by the offender.³ Initially, eligibility for compensation was to be coincident with the conviction of the criminal, but the Attorney-General of New South Wales subsequently ruled that ex gratia payments could be made to all crime victims.⁴

Somewhat similar to the New South Wales case, the Queensland Criminal Code provides that a first-offender may, upon suspension of

¹Maximum award was increased to \$4,000 in 1972. All dollar sums are Australian dollars; A\$1 equals US\$1.12 approximately.

²Duncan Chappell, "Compensating Australian Victims of Violent Crime," Australian Law Journal 41 (May 31, 1967): 9.

³K. M. McCaw, "Report on the New South Wales Criminal Injuries Compensation Act," in The Australian Criminal Justice System, Duncan Chappell and Paul Wilson, eds. (Buttersworth, 1972), p. 785.

⁴Chappell, "Emergence of Australian Schemes," p. 73.

the execution of his sentence, be ordered to make restitution to his victim to pay for the damages inflicted, in lump sum or installments. Queensland judges have "quite frequently included an order for payment of compensation as one of the requirements of a probation order."¹

Numerous Australian states allow for compensation of individuals who are injured in attempts to assist the police in preventing a crime or apprehending a criminal.²

The Australian compensation schemes were passed into law for two reasons claimed to be the primary motives. First, it was assumed that violent crime had increased rapidly in the 1960s, and that there were numerous compensable injuries. Second, existing laws were considered defunct in almost never providing victim compensation through restitution by the criminal or by tort action.³

In the Australian scheme the method of administering compensation may create a conflict of interest within the prosecutor's office. The prosecutor not only is charged with presenting the state's case against the offender, but also is charged with rebutting the victim's claim for damages. The prosecution is supposed to expose the true extent of injuries, which could give the impression that the victim is unreliable or not as grievously injured as claimed, so that the case

¹P. R. Delemothe, "Victim Compensation: The Queensland Scheme," in The Australian Criminal Justice System, p. 792.

²For example, see "Police Assistance Compensation Act 1968 (Victoria)," in The Australian Criminal Justice System, pp. 795-97.

³Chappell, "Emergence of Australian Schemes," pp. 76-77.

against the criminal could be biased.¹ It is not clear whether or not this has been a problem in practice. It would be desirable for the prosecutor to expose unreliable victims.

Compensation in Canada

As of 1973, victim compensation programs existed in eight of the ten Canadian provinces.² A 1967 report issued by the Legislative Committee of the Canadian Corrections Association urged national adoption of victim compensation, including compensation for property losses. "Offenses committed by a member of the victim's family upon him and losses from motor vehicle injuries were both included within the proposed compensation approach."³ This contrasts with the almost uniform exclusion of compensation for both of these classes of offenses in all existing programs, as well as the usual exclusion of property losses. The Committee also urged that grants be given to individuals who were erroneously prosecuted or convicted of any offense. Although compensation was adopted in numerous provinces, none of the usual features advocated by the Canadian Corrections Association were adopted.

Saskatchewan initiated compensation in Canada, proclaiming the Criminal Injuries Compensation Act on September 1, 1967, but retroactive in effect to one year before that date. The program was generally modeled after the New Zealand approach, creating a three-man Board to

¹Chappell, "Compensating Australian Victims," pp. 9-10.

²In order of implementation: Saskatchewan, Ontario, New Brunswick, Manitoba, Alberta, British Columbia, Quebec, and Newfoundland.

³Edelhertz and Geis, Public Compensation, p. 242.

have absolute discretion over all cases, with no appeal to courts possible. Few bounds are placed on the awards that may be made to victims who have suffered injuries in a crime, in attempting to prevent a crime, or in attempting to assist a policeman in preventing a crime or making an arrest. There is a \$50 minimum on awards and a stipulation that any awards over \$5,000 must be approved by the Lieutenant Governor. There are the usual rules about contributory negligence reducing the amount of the award, a statute of limitations on making claims, and the like, but lump sum or periodic payments can be awarded for all non-property expenses incurred, for pain and suffering, and for losses due to disability or death.¹

As in some of the Australian states, in Saskatchewan the Attorney General may sue a criminal for the amount of compensation awarded by the Board to his victim, if the victim did not sue the criminal for civil damages. This power is at the discretion of the Attorney General, who must take into account the financial status of the criminal and any family responsibilities he may have.² If the experience is like that of other jurisdictions with this rule, it will be used rarely.

The compensation schemes in the other provinces do not differ greatly from the Saskatchewan plan, except in some details which are noted here. Ontario is the only province that does not provide an

¹James Eremko, "Compensation of Criminal Injuries in Saskatchewan," University of Toronto Law Journal 19 (1969): 263-76.

²Eremko, "Compensation in Saskatchewan," pp. 269-70.

explicit list of offenses for which compensation can be granted. So long as an individual is the victim of a criminal offense, he may receive an award. Ontario is also the only province which places no minimum on the compensation that may be requested.¹ Ontario and New Brunswick are the only provinces that allow compensation for property loss, although only in cases where the loss is the consequence of attempting to perform a lawful arrest, preventing a crime, or assisting a police officer. Only Ontario permits all questions of law to be appealed to the High Court, and allows review by use of the prerogative writs.²

The only province which administers claims through hearings by a judge of the County Court is New Brunswick.³ It also has an unusual provision that allows the recovery of about 10 percent of the benefits received from insurance sources, on the ground that this amount represents the cost of the victims' insurance premiums.⁴

Compensation for pain and suffering is not allowed in Manitoba and Quebec because the schemes are tied to the provinces' Workmen's Compensation Act. Benefits under these Acts do not allow recovery for pain and suffering.⁵ This means that in Manitoba a victim can receive

¹Edelhertz and Geis, Public Compensation, pp. 244-45.

²Peter Burns and Alan M. Ross, "A Comparative Study of Victims of Crime Indemnification in Canada," University of British Columbia Law Review 8 (No. 1, 1973): 124-25; 127-28.

³Burns and Ross, "A Comparative Study," p. 127.

⁴Edelhertz and Geis, Public Compensation, p. 246.

⁵Burns and Ross, "A Comparative Study," pp. 124, 126.

up to three-quarters of the minimum wage in effect in the province (about \$8,000 in 1972) plus their medical expenses. If victims remain permanently disabled, they may receive a pension for the remainder of their lives.¹ Manitoba, Alberta, and British Columbia provide expenses for rehabilitating the applicant for employment purposes.

Alberta and Manitoba allow appeals to the Queen's Bench on jurisdictional questions and matters of law. Like Saskatchewan, these provinces have no statutory limit on the size of awards. Like Newfoundland and Saskatchewan, Alberta grants the right to legal counsel to anyone appearing before the Board.² The executive secretary of the Crime Victim Compensation Board in Alberta told delegates to the Third International Conference on the Compensation of Victims of Crime (1972) that "... unfortunately, 80 percent of our applicants in Alberta tell lies," presumably in an attempt to increase the size of their compensation awards.³ (The 80 percent figure appears to be a pure guess and is not substantiated.) Other delegates noted similar problems.

The programs in British Columbia and Quebec are similar. Both are based on their Workmen's Compensation Act and are administered by the Workmen's Compensation Board or Commission. These provinces require that the applicant elect either to pursue any possible civil remedy or apply for compensation.⁴ An unusual feature of the Quebec plan is "that the

¹Edelhertz and Geis, Public Compensation, p. 246.

²Burns and Ross, "A Comparative Study," pp. 126-28.

³Edelhertz and Geis, Public Compensation, pp. 246-47.

⁴Burns and Ross, "A Comparative Study," pp. 126-28.

commission may grant an annuity to the mother of a child born as a result of rape if she provides for the maintenance of the child."¹

Newfoundland's program, which went into effect in April 1972, is modeled on the compensation system in Saskatchewan. Its only unusual aspect is the small size of the maximum award that may be granted, either \$1,000 in a lump sum or \$30 a month in periodic payments.²

In 1973 federal subsidization of the provinces' programs was implemented. The central government will pay the lesser of the following amounts: (1) five cents per annum per person living in the province, or (2) not more than 90 percent of the total compensation granted, excluding awards for pain and suffering and administrative expenses. It has been estimated that this plan will cover half of the costs of the program in Ontario.³

Compensation in Non-English Nations

Few non-English speaking countries have victim compensation programs, probably because many have such extensive social welfare programs that compensation would be mostly repetitive, and because they do not have Anglo-Saxon tort and criminal law procedures, which makes compensation more difficult.

Sweden instituted a small compensation program in 1971, supposedly pressured by the increase in crime. Due to comprehensive insurance

¹Edelhertz and Geis, Public Compensation, p. 247.

²Burns and Ross, "A Comparative Study," p. 126.

³Edelhertz and Geis, Public Compensation, p. 247.

schemes in that country, in practice the compensation applies only to a small percent of the population and to visitors to the country. There was some discussion of implementing similar programs in Norway and Finland.¹

On January 30, 1976, the West German parliament passed a law which will allow victims to collect up to about \$19,000 for personal injury or property damage, whenever the costs are not covered by insurance, the attacker is unknown or the attacker is unable to pay compensation. Compensation will also be paid to individuals who suffer losses assisting victims of crime or victims of automobile accidents. The annual cost to federal and state governments was estimated to be about \$5 million.²

American Compensation Plans

California was the first American state, and the third Anglo-Saxon jurisdiction, to implement a plan for compensating victims of crime. Perhaps because the program was passed into law before the first federal legislation was proposed, the California scheme was unusual compared to the programs adopted by all other states, which benefited from the existence of the victim compensation bill before Congress.

Enacted during the 1965 legislative session, the compensation program began operation the first of 1966. Part of the legislation was a "Good Samaritan" provision, that allowed citizens injured in aiding in

¹Edelhertz and Geis, Public Compensation, pp. 250-51.

²Miami Herald, January 31, 1975, p. 11.

the apprehension of a criminal or in the prevention of a crime to appeal to the State Board of Control for compensation for all costs incurred.¹ This provision was essentially unrelated to the victim compensation scheme and has not become significant. In the seven fiscal years from 1967 through 1974 only 101 grants, totaling \$272,947, were awarded.²

The compensation portion of the legislation was placed within the jurisdiction of the State Department of Social Welfare. It was instructed to

establish criteria for the payment of aid substantially the same as those used in the program for aid to families with dependent children (AFDC). Crime victims, however, need not meet the property qualifications of AFDC.³

To qualify, a victim had to show that he was incapacitated, and that his family income fell below a certain level. The program, therefore, provided monthly assistance to individuals meeting the proper qualifications, but did not provide medical or hospital care, or any other expenses directly associated with the crime suffered.

To help finance the program the bill established an Indemnity Fund, which required that:

¹James E. Culhane, "California Enacts Legislation to Aid Victims of Criminal Violence," Stanford Law Review 43 (November 1965): pp. 266+.

²State Board of Control, "Indemnification of Private Citizens," data part of annual report. Correspondence of November 1974 from State Board of Control, Sacramento, California, to author.

³Culhane, "California Enacts Legislation," pp. 268-69.

Upon conviction of a person of a crime of violence resulting in the injury or death of another person, the court shall take into consideration the defendant's economic condition, and ... shall, in addition to any other penalty, order the defendant to pay a fine commensurate with the offense committed. The fine shall be deposited in the Indemnity Fund, in the State Treasury, and the proceeds in such fund shall be used for payment of aid under this section.¹

In the first year of operation of the Indemnity Fund (1966) a total of \$5,200 was received from six offenders.² The initial enthusiasm of California judges in applying this provision apparently waned, as that much money was never collected again. In fiscal 1971 less than \$1,500 was collected.³

Upon enactment, the Director of the Department of Social Welfare announced that the duty of administering the program was "improperly placed," and claimed that his Department would only provide assistance to those in "need" (those who fully qualified for AFDC).⁴ The Director's indignation was further aroused by the first year's appropriation of \$100,000, which he stated was "like telling us to go out and buy a steak and giving us 35 cents to do it with."⁵ However, the Director managed not to overspend his budget. In November 1967 the entire program was turned over to the State Board of Control.

¹California Welfare and Institutions Code, 11211 (1966), cited in Edelhertz and Geis, Public Compensation, p. 81.

²William Shank, "Aid to Victims of Violent Crimes in California," Southern California Law Review 43 (1970): 86.

³Edelhertz and Geis, Public Compensation, p. 82.

⁴Shank, "Aid to Victims in California," p. 87.

⁵Edelhertz and Geis, Public Compensation, p. 83.

The Board of Control acts as an administrative tribunal. A staff prepares the cases for review and decision by the Board, which decrees the awards. Hearings, not bound by the rules and procedures of a court, are held by the Board or by appointed hearing officers, who recommend action to the Board. While all decisions rendered by the Board are subject to legislative approval, in practice this is generally a rubber-stamp approval.¹

Amending legislation in October 1973 increased the maximum amount that may be awarded to \$10,000 for medical expenses, \$10,000 for lost income, and \$3,000 for employment rehabilitation expenses. The Board is also authorized to pay attorneys' fees, not exceeding 10 percent of the award, or \$500, whichever is less.²

Despite the size of California, the program has remained relatively small. This may be because the Board of Control has less incentive to advertise the existence of the program and to encourage applications than would a full time victim compensation board. The budget, which has approximately doubled every year since fiscal 1968, was only \$1.4 million in fiscal 1974.³

On October 9, 1965, Arthur F. Collins attempted to prevent a drunk from bothering several elderly women on a New York City subway car,

¹Shank, "Aid to Victims in California," pp. 89-91.

²Senate Bill No. 149, Chapter 1144, October 2, 1973, State of California.

³State Board of Control, "Victims of Crimes Program," part of annual report. Correspondence of November 1974 to author.

and was stabbed to death while his wife looked on. This case received considerable attention in the press, and stimulated the adoption of victim compensation in New York. This program is quite similar to that in most other states that have since adopted compensation programs. As such, it can stand as a model for the typical state compensation program.

Five weeks after Collins' murder, the New York City Council passed a "Good Samaritan" statute, which "authorized awards for the death or injury of any person other than a peace officer caused during an attempt on a public street or in a city-owned transit facility to prevent a crime or to preserve the peace."¹ Loss of earnings, medical expenses, and, in case of death, an award to surviving dependents would be provided.

Two weeks after Collins' death, Governor Rockefeller endorsed the victim compensation concept and established a committee to study its feasibility for adoption by the 1966 legislative session. The first bills introduced in both houses of the legislature in 1966 were compensation measures. The proposal recommended by Rockefeller's committee was presented in April 1966; the measure easily passed the legislature in July of that year, and went into effect in March of 1967.²

The Crime Victims Compensation Board was established to operate the New York program. The original three man Board was increased to five

¹Herbert Edelhertz, et al., "Part I -- Public Compensation of Victims of Crime: A Survey of the New York Experience," Criminal Law Bulletin 9 (January 1973): 8-11. Collins' widow received an annuity worth \$4,420.26.

²Edelhertz, et al., "Part I -- Public Compensation," pp. 14-27.

members in 1973, to help with the increasing claims load.¹ By 1973 the Board had established three offices, in Albany, New York City, and Buffalo, to facilitate the handling of claims. Staff investigators process claims, preparing the cases for consideration by the Board.² Decisions are rendered by individual Board members, but are subject to appeal to the full Board, as happens in about 10 percent of all cases. Appeal by the attorney general or the controller is possible, but has never occurred.³

Compensation for pain and suffering is not allowed, as the law limits awards to out-of-pocket expenses plus loss of earnings or support resulting from the injury sustained. However, compensation is not allowed unless the Board is "convinced that the claimant will incur 'serious financial hardship' in the event that compensation is withheld."⁴ The interpretation of the hardship test is left to the discretion of the Board members.

Like most states, New York has a \$100 deductible from awards, intended to reduce the volume of small claims. The maximum award, in lump sum or in periodic payments, is \$15,000, except for medical expenses,

¹"State Program to Aid Crime Victims Reaches Only a Few of Those Eligible," New York Times, March 15, 1973, p. 45.

²Crime Victims Compensation Board, "Seventh Annual Report," State of New York, Legislative Document (1974), No. 94, pp. 6-7.

³Herbert Edelhertz, et al., "Part II -- Public Compensation of Victims of Crime: A Survey of the New York Experience," Criminal Law Bulletin 9 (March 1973): 110.

⁴Michael J. Novack, "Crime Victim Compensation: The New York Solution," Albany Law Review 35 (1971): 725-27.

which have no upper limit. Although the award limit is higher than in some states, there has been considerable dissatisfaction with the \$15,000 limit, as the losses incurred by some individuals in crime are considerably higher than the official limit.¹

Although the Board awards attorney fees, only about one in every five claimants is represented by an attorney. This is thought to be due to the low fees that are granted, usually between \$25 and \$350 per case. The fee is based on the "amount of work actually done for the claimant," not the size of award obtained for the claimant. However, it is believed that just as some attorneys specialize in workmen's compensation cases, some attorneys will specialize in victim compensation cases, enabling more claimants to be represented.²

The program has changed little since its inception, despite attempts to alter its scope. Various bills before the legislature have proposed compensation for pain and suffering, compensation for property damages resulting from crime, and compensation to churches for damages suffered by vandalism, bombing, or arson.³

Since the early 1970s the program has not grown rapidly, its budget remaining in the neighborhood of \$2.2 million. The slow growth is partly blamed on the information lag, that many individuals are not aware of their eligibility for compensation.⁴ It seems likely, however,

¹Edelhertz and Geis, Public Compensation, pp. 47-49.

²Edelhertz, et al., "Part II -- Public Compensation," pp. 108-09.

³Edelhertz, et al., "Part I -- Public Compensation," pp. 30-31.

⁴Novack, "Crime Victims Compensation," p. 730.

that the program, like other states' programs, is merely in a holding operation, awaiting passage of federal legislation which would heavily subsidize the program. This was noted by the Board Chairman, who complained of the "need requirement" of claimants:

With an eye to the impending enactment of the Federal Crime Victims Compensation legislation (S-800), hopefully this year, and its inclusion of a need requirement phrased in the less stringent language of "financial stress from pecuniary loss," the Board will then be able to enlarge the number of claims eligible to receive awards.¹

The compensation program in Massachusetts is the only one in the United States that is administered through the office of the attorney general, which has a Victim's Bureau prepare cases for presentation in local courts.² The program has grown steadily since its implementation on July 1, 1968. From fiscal 1969 to fiscal 1974 the number of claims increased sevenfold (to 351), the number of awards increased sixteenfold (to 146), and the average award increased from about \$500 to about \$4,725.³ However, the total size of the program is still relatively small.

Hawaii's program of crime victim compensation is similar to the New York program, except that there is no financial needs test, and it is the only state to provide compensation for pain and suffering.⁴ 1969

¹Crime Victims Compensation Board, "Seventh Annual Report," p. 12.

²Samuel A. Vitali, "A Year's Experience with the Massachusetts Compensation of Victims of Violent Crime Law, 1968 to 1969," Suffolk University Law Review 4 (Winter 1970): 237-366. Edelhertz and Geis, Public Compensation, pp. 107-129.

³Statistics provided by the Department of the Attorney General, The Commonwealth of Massachusetts, in correspondence of October 9, 1974.

⁴Edelhertz and Geis, Public Compensation, pp. 130-53.

was the first year of full operation in Hawaii, and, except for an increase in the size of the program the year following its introduction, the program did not change significantly in size from 1970 through 1973. The percentage of all payments made to victims which went for pain and suffering was 46.1 percent in 1973.¹

Governor Agnew signed Maryland's victim compensation program into law in May 1968. The program is quite standard, except that benefits are generally tied to the state's workmen's compensation award schedule, and, since July 1973, there has been no upper limit on awards.² Awards have cost the state about \$1 million a year since 1972. The state appropriation is supplemented by a fund composed of a mandatory \$5 fine imposed on "all persons convicted of a crime by any Judge with criminal jurisdiction in the State."³ This fund has collected an average of about \$110,000 a year since fiscal 1969.

New Jersey (1971), Alaska (1972), Illinois (1973) and Minnesota (1974) enacted compensation programs similar to the New York model. Washington (1973) instituted a program based upon workmen's compensation, similar to numerous Canadian plans and the Maryland program. Rhode Island (1972) passed a compensation law similar to the Massachusetts

¹Statistics provided by the Executive Secretary of the Criminal Injuries Compensation Commission, Honolulu, Hawaii, in correspondence of October 18, 1974.

²Edelhertz and Geis, Public Compensation, pp. 175--80. "Criminal Victim Compensation in Maryland," Maryland Law Review 30 (Summer 1970): 266-83.

³Criminal Injuries Compensation Board, "Fifth Annual Report, 1974," Baltimore, Maryland, p. 10.

program, which would cover most of the state's costs. In 1969 Nevada passed a compensation program, but it only applies to "Good Samaritans," persons injured attempting to prevent the commission of a crime. As of mid-1974 only six awards had been made under this scheme.¹ Georgia amended its constitution in 1966 to enable the legislature to make special awards to "Good Samaritans," but as of 1973 no awards had been made.²

Former Senator Ralph Yarborough of Texas introduced the first federal "Victims of Crime Act" in the Congress in June 1965.³ The bill has been reintroduced, with modifications, in every session of Congress since then. A compromise version of the bill, sponsored by Senators Mansfield and McClellan, passed the Senate in September of 1972 by a vote of 60-8, and was passed again in 1973 by the Senate.⁴ Some form of a federal compensation bill appears to have a good chance to become law in the next few years in a form close to its present structure.

The Act would establish a Violent Crimes Compensation Board as an independent agency within the Justice Department. It would be composed of three members, appointed by the President with the approval of Congress. One Board member will be designated as Chairman. His

¹Information from the Office of the Attorney General, Carson City, Nevada, in correspondence of October 15, 1974.

²Edelhertz and Geis, Public Compensation, pp. 182-83.

³Ralph W. Yarborough, "The Battle for a Federal Violent Crimes Compensation Act; The Genesis of S. 9," Southern California Law Review 43 (1970): 93-106.

⁴"Votes in Congress," The New York Times, September 23, 1972, p. 25. U.S. Congress, House, Victims of Crime Act of 1973, 93rd Cong., 1st Sess., 1973, S. 300.

qualifications are that he must have been a member of the bar of a federal court or of the highest court of a state for at least eight years. No Board member would be allowed to engage in any other business during the time of his service. Although the positions of executive secretary and general counsel are decreed by the bill, the Board would have broad powers to create whatever full-time staff positions and advisory committees it believes necessary to execute its functions.

The Board would have full power of subpoena and operate much as a court does, except that it could admit anything as evidence deemed appropriate in the opinion of the Board members. Hearings could be held in private when the interests of the victims would be best served in that manner, or when the criminal has not been tried, so as not to bias the judicial proceedings. All attorneys who appear before the Board in connection with any case could file for and collect their fees from the Board.

After deducting any private insurance payments received, the Board would be authorized to make payments of not less than \$100 in any one case, to be paid in lump sum or on a periodic basis. Victims in federal jurisdictions are entitled to be compensated for medical expenses, loss of earnings, and other pecuniary losses up to \$50,000. "Intervenors" in the commission of a crime, that is, one injured in an attempt to prevent a crime or stop an assailant, are also entitled to collect for property losses, though there is no maximum limit in these cases. These payments would apply to injuries sustained as a result of any proven criminal act.

A Criminal Victim Indemnity Fund is to be established to help pay for the awards. In this program, all federal courts are to take into

consideration the financial condition of convicted felons, who has caused personal injury, property loss, or death, and order those persons to pay fines of not more than \$10,000, in addition to any other penalty. All other funds would come through the Department of Justice budget.

The Violent Crimes Compensation Board would sit on all cases which occur in federal jurisdictions, such as the District of Columbia and Puerto Rico, and would be authorized to pay for 75 percent of the costs of state operated programs which meet the standards set by the Board. Funds would be administered by the Law Enforcement Assistance Administration.

Given the heavy federal subsidization of state compensation programs, it is likely that a majority of the states would quickly implement such programs, and compensation would be nationwide.¹ Existing programs, which cover over a third of the nation's population, may have to be slightly modified to meet federal standards for subsidization.

¹At least 13 states have previously refused passage of a state-sponsored victim compensation program at least once. See Edelhertz and Geis, Public Compensation, p. 184.

CHAPTER III

PUBLIC CHOICE CONSIDERATIONS OF VICTIM COMPENSATION

The proposed federal program to assist victims of crimes presents an interesting opportunity for the application of some aspects of the theory of public choice that have been developed in recent years. In particular, there is substantial opportunity for application of the emerging theory of bureaucracy. This paper explores why the victim compensation bill has emerged, why it is likely to pass Congress, how much it is apt to cost in operation, who the major beneficiaries would be, and how the bureaucrats running the programs could be expected to behave in pressing for expansion.

Potential Costs of a Compensation Program

In a crude calculation of the possible cost of national victim compensation, Duane G. Harris estimated that in 1970 public victim compensation would have cost over \$1 billion. Harris based his estimate on the assumption that 700,000 victims of violent crimes (the estimated number in 1970) would all receive compensation payments averaging about \$1,500 each, which was comparable to workmen's compensation payments in

New York and Pennsylvania.¹ Extrapolating this figure to 1975, Harris' method of estimation would yield an annual cost of about \$4 billion.²

A 1972 staff study by the Program and Management Evaluation Division of the Office of Operations Support of the Law Enforcement Assistance Administration (LEAA) estimated that, if compensation programs were implemented in every state by fiscal 1974, and the federal program providing 75 percent subsidization of the state programs was effective, by fiscal 1979, when the program would be operational nationwide, it would cost \$26,845,000. Of this, \$21,084,793 would be the share of the federal government. This cost estimate took the New York and Maryland state compensation programs' cost figures for the early 1970s and extrapolated the numbers to the rest of the country. It accounted for the lower crime rates in other states and the higher maximum payment allowed by the federal plan. The LEAA believed this estimate was superior to another projection which simply extrapolated the New York and Maryland programs nationally, yielding a total cost estimate of \$34,200,000

¹Duane G. Harris, "Compensating Victims of Crime: Blunting the Blow," Business Review (Federal Reserve Board, Philadelphia, June 1972): 19.

²Harris' estimate of 700,000 victims was based on figures from the FBI's Uniform Crime Reports, which are replaced here by the superior LEAA data. As Table 1 shows, there were approximately 1.7 million victims of violent crimes in 1973. Assuming about a 17 percent increase in crime through 1975, there would be 2 million crime victims receiving average payments of about \$2,000 each, assuming that the cost of victimization increased at the same rate as the general price index since 1970. Price index from National Economic Trends, Federal Reserve Bank of St. Louis, December 29, 1975 release, p. 14. The FBI reported a 17 percent increase in crime for 1974, New York Times, July 22, 1975, p. 37. This is not supported by LEAA estimates, so 17 percent was assumed for the two year period for simplicity.

for fiscal 1976.¹ However, this latter figure was accepted as most appropriate by the Congressional sponsors of the victim compensation bill.

The Harris estimate is very crude and may be rejected on the grounds that some of its assumptions are inappropriate. In particular, the condition that all victims would receive compensation is incorrect, at least for the near future. On the other hand, the LEAA estimate seems designed primarily to stimulate support for a program which would benefit the LEAA. Bureaus often understate the estimated cost of new programs so that they are more appealing to legislators. In any case, that estimate is based on assumptions of dubious validity, as will be discussed below.

It is true that an accurate estimate is difficult. One based on conservative assumptions is made below, utilizing some limitations assumed by bureaucrats involved with compensation programs. Since bureaucrats have incentives to understate the likely costs of new programs, this estimate may be suspected to be on the low side.

An analysis prepared for the State Senate of Washington of the victim compensation bill that was passed and implemented there in 1973 contains estimates of the future cost of the program. The estimates were primarily based on the experience of the state of Maryland, which has had

¹U.S. Congress, Senate, Committee on the Judiciary, Hearings on S. 16, S. 33, S. 750, S. 1946, S. 2087, S. 2426, S. 2748, S. 2856, S. 2994, and S. 2995, Victims of Crime, 92nd. Cong., 1st Sess., 1971 and 1972, citing: U.S. Department of Justice, Law Enforcement Assistance Administration, "Victims of Crime Act of 1972," Staff Study, Program and Management Evaluation Division (Washington, D.C.: U.S. Government Printing Office), pp. 719-47.

a compensation program for a relatively long time and, as a state, is similar to Washington in size and the extent of crime. The Maryland program is also the closest to the federal proposal in coverage. Based on previous program performance in Maryland, both states estimated that 5.8 percent of all victims of violent crimes would receive compensation in fiscal 1975.¹

Assuming that the 5.8 percent rate of compensation for violent crimes victims were to hold nationwide, this would mean that over 100,000 claims would have been collected in 1975. This figure is based on the data in Table 1, which uses statistics provided by the first comprehensive victimization survey taken by the LEAA for 1973. This estimate excludes some crimes which potentially would also be compensated, such as murder, arson, and crimes inflicted on persons under 12 years of age. It also excludes millions of crimes which yield "minor injury (e.g., bruises, black eyes, cuts, scratches, swelling) or in undetermined injury requiring less than 2 days of hospitalization."² Assuming that only 5.8 percent of the crimes with injury were compensated, there would have been 100,655 awards nationally in 1973. Bringing the estimate forward to 1975, one could assume 130,000 compensations, allowing for a 29 percent increase in the number of such victims.³

¹The figure in Maryland was expected to rise from 4.5 percent in 1974 to 7.1 percent in 1976. The 5.8 percent estimate for 1975 will be used for this estimate. Figures provided by the Administrator of the Crime Victims Act of the State of Washington, in correspondence of October 9, 1974.

²Criminal Victimization in the United States: 1973 Advance Report, p. 44.

³These figures are sufficiently rough that only the general

TABLE 1^a

Crime Rate per 1,000 Population Age 12 and Over

| Crime | 1973 Rate | Total Number |
|--------------------------------|-----------|----------------|
| Rape and attempted rape | 1.0 | 162,200 |
| Robbery with injury | 2.4 | 389,300 |
| Aggravated assault with injury | 3.4 | 551,500 |
| Simple assault with injury | 3.9 | <u>632,600</u> |
| Total | | 1,735,600 |

^aPopulation age 12 and over was 162.2 million. Injury is defined as "serious injury (e.g., broken bones, loss of teeth, internal injuries, loss of consciousness) or in undetermined injury requiring 2 or more days of hospitalization."

Source: National Criminal Justice Information and Statistics Service, Criminal Victimization in the United States: 1973 Advance Report, A National Crime Panel Survey Report, No. SD-NCP-N-2 (Washington, D.C.: U. S. Government Printing Office, May 1975).

The mean compensation award for 1975 in the state of Washington, using past experience in Maryland, was estimated at \$4,061. This is close to the \$4,000 figure used here, and is near the mean award of \$4,725 given in Massachusetts in fiscal 1974.¹

Multiplying the figures above would yield a total compensation bill of \$520 million nationally for 1975. This amount ignores administrative costs that would probably add another 10 percent to this total. Considering that both the crime rate and hospitalization costs are increasing, an estimate of nearly a \$0.6 billion annual outlay for the late 1970s would not seem out of order, based on the assumptions made here. This estimate does not account for the impact of federal subsidization, which will be discussed later.²

Political Pressures

A victim compensation program of the size just discussed would be large enough to make some difference in the financial position of numerous crime victims. The LEAA Staff Report, on the other hand, envisioned annual compensation of about \$25 million. If awards averaged

magnitude of the numbers is important. This figure was chosen to account for the increase in crime and to allow for compensation to victims not counted in the LEAA study, such as the families of murder victims.

¹Figures provided by the Administrators of Washington and Massachusetts compensation programs in correspondence with the author.

²This estimate assumed that every state adopted victim compensation along the lines of the federal program, which is like the Maryland plan. It does not assume aggressive bureaucratic expansion of the program, nor does it assume that more than 5.8 percent of crime would be compensated. This figure probably would increase over time. The Maryland and Washington compensation directors forecasted rapid growth. This forecast is probably correct, as will be discussed in this chapter and in Chapter V.

\$1,000, which is below what is given currently in any state with a compensation program, only 25,000 victims would be assisted annually, probably about one percent of the victims in 1979. A program of this magnitude simply would be insignificant and would stir little interest in any sector. In fact, numerous groups have actively supported the measure, presumably because there are incentives to do so. One can consider some of the possible motives of the supporters, noting which groups perceive benefits from passage, and why there is no organized opposition to the bill.

The American Bar Association has enthusiastically endorsed a governmental restitution program.¹ The rationale for this support is easy to discover. As proposed, the federal bill allows all individuals who wish to file a claim for compensation to do so with or without the assistance of a lawyer. However, if one secures the services of a lawyer in pressing a claim, whether that claim is successful or not, the compensation board would pay the fees of the lawyer.

In several states that have victim compensation programs, lawyers receive 15 percent of the award given the victim, out of the victims' payments. Applying this percentage to the estimated one-half billion dollars to be given in awards, lawyers might collect \$75 million annually for successful claims alone. If a lawyer can operate an office for \$75,000 a year, including his salary, office help, office rental, and other expenses, the pursuit of successful claims would provide full time

¹U.S. Congress, Senate, Committee on the Judiciary, Victims of Crime, pp. 489-91.

employment for 1,000 lawyers. In a rapidly growing profession such subsidies are welcomed; this program would not support a massive number of lawyers, but a number large enough to make action by the lobbying arm of the profession worthwhile. Since a large number of congressmen are lawyers, they undoubtedly see as reasonable this provision of the proposed program.

The International Association of Chiefs of Police was an early supporter of restitution for crime victims, unanimously passing a resolution in favor of adoption at the 1966 annual conference.¹ Although there is no direct assistance for policemen in the compensation legislation, it usually was joined with legislation providing federal payments for policemen and fireman killed in the line of duty. By supporting both pieces of legislation some logrolling is accomplished, although it is possible that victim compensation would be supported on its own merits.

The continual growth of crime has placed the efficiency and quality of public police services under question.² Most citizens who are victimized have little incentive to call the police because usually there is little the police can do for them.³ The odds that the police will

¹U.S. Congress, Senate, Committee on the Judiciary, Victims of Crime, pp. 491-92.

²According to a 1970 survey of Louis Harris and Associates, 33 percent of the individuals interviewed in a nationwide survey rated the job done by local law enforcement officials unfavorably. National Criminal Justice Information and Statistics Service, Sourcebook of Criminal Justice Statistics -- 1973, Michael J. Hineland, et al., ed. (Washington, D.C.: U.S. Government Printing Office, 1974), p. 134.

³Surveys taken in 13 large American cities on victimization in 1972 showed that between 40 and 51 percent of all crimes of violence were reported to the police. For all personal crimes the figures were

capture the criminal are low, so that without some monetary reward victims will simply incur time costs by cooperating with the police.¹ A restitution program would have a potential two-fold beneficial effect for police bureaus. First, because some victims would be compensated, the public might be mollified that something is "being done" for the innocent victims, for whom there is general sympathy. This would relieve some of the pressure on the police to "do something" about the criminals. Second, because one must report a crime to the police to be able to apply for compensation, there would be an increase in the number of crimes reported. This added work load and perceived increase in crime would provide justification for an increase in police budgets.

The Department of Justice would benefit from the adoption of the compensation program. Because the federal commission and the program funds would be administered through the Justice Department, the Department would be expanded in size, budget, and sphere of influence. This would account for the LEAA study, which pushed for adoption of the program, claiming that the cost would be trivial. The message to the

even lower, ranging from 31 to 41 percent. National Criminal Justice Information and Statistics Service, Crime in the Nation's Five Largest Cities, A National Crime Panel Survey Report (Washington, D.C.: U.S. Government Printing Office, 1974), p. 28; National Criminal Justice Information and Statistics Service, Crime in Eight American Cities, A National Crime Panel Survey Report (Washington, D.C.: U.S. Government Printing Office, 1974), p. 38.

¹In 1971 there were 5.4 million offenses known by the police in 4,500 cities with a population of 105 million. Only 20.9 percent of the known offenses were cleared by the police. A total of 46.5 percent of the known violent crimes were cleared by the police, so that of the number of crimes that actually occur, less than one-half of the figures given would be a more accurate arrest rate. Sourcebook of Criminal Justice Statistics -- 1973, p. 290.

politicians is that a visible and probably popular program can be instituted at little cost. Even if the estimate is wrong, it is doubtful that any punitive action would be taken against the agency responsible for the estimate, especially years after the fact. The LEAA study did not lie, but it did employ highly suspect assumptions, which severely lowered the estimated cost. Once the program were implemented, however, the federal government would be bound by the law to pay for whatever costs were incurred. Congressmen would be hard pressed to vote for a reduction of benefits to innocent victims of crime.

The political popularity of compensation programs is evidenced by its rapid adoption in most Anglo-Saxon jurisdictions, including 11 American states since 1965 (not including "Good Samaritan" statutes). The compensation bill easily passed the Senate in September 1972 and again in March 1973. The bill has since sat in the House Judiciary Committee, supposedly held in a backlog by the Watergate business and since then by the massive bill which would rewrite a large portion of federal crime statutes. It is uncertain when the legislation might be adopted, but it has been endorsed by most major national leaders, including President Ford.¹

Although there are relatively few specific pressure groups that would benefit from the legislation, it may be viewed by legislators as a program which would be generally popular, and apparently would not hurt anyone. The public popularity of such a program was tested in 1966

¹Miami Herald, June 20, 1975, p. 1 (President Ford endorses victim compensation along with other crime related measures); New York Times, December 1, 1971, p. 52 (support by Democrats).

before victim compensation became an issue of which many people were aware. A poll taken in behalf of the President's Commission on Law Enforcement and Administration of Justice revealed that about 60 percent of the responses were favorable to public compensation and about 30 percent were opposed.¹ Given the increased concern about the extent of crime in the last decade the results of a similar survey today might even be more favorable. There is general sympathy for victims of crime and legislators perceive this emotion. The compensation program would indeed do something for some innocent victims of crime. The inefficient aspects of the program are of such a subtle nature that they would not be likely to be linked to the program by many individuals, so there does not appear to be any group that is likely to expend efforts opposing the bill.²

Two groups that would appear to benefit from compensation, but are likely to have little political input, are judges and criminals. 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.³ This may partly be due to the

¹Sourcebook of Criminal Justice Statistics -- 1973, p. 156.

²The only organized opposition to the proposal that may be expected would be from private insurance companies. These companies have made no public sign of awareness or concern. Correspondence with six major insurance companies and numerous professional insurance organizations and lobbying arms has revealed no interest in the issue. It is likely that interest would emerge if the program were to become nationwide for then it would threaten some insurance interests.

³The rate of court commitments as a rate per 100,000 civilian population fell in half between 1954 and 1970. Actual prison population, state and federal, fell from 212,953 in 1960 to 196,429 in 1970. The

extensive use of plea bargaining, the actions of parole boards, and expanded use of probation. If crime victims receive payments, the deeds of criminals may seem less grievous and may politically justify the sentences given to criminals. Such sentences are viewed as too lenient by some, and are an important political issue.¹ Criminals would, of course, directly benefit from any general reduction in prison sentences. Another manner in which criminals would benefit, although it would make little difference in practice, is that the incentive of a victim to sue a criminal for civil damages to recover the costs of a crime would be reduced, simply because it would be cheaper and easier for a victim to collect from the state. Also, to the extent that moral scruples deter crime and the extent of damages inflicted on victims, the consciences of criminals may be eased by the knowledge that victims may be partially compensated for the damage inflicted in the commission of crimes.

Incentives of Politicians Implementing Compensation Programs

The public choice theory of bureaucracy provides guidance for predicting how the participants in a public program can be expected to act.² The primary prediction that can be made about the compensation

number of prisoners received from courts fell from 88,575 in 1960 to 79,351 in 1970. Sourcebook of Criminal Justice Statistics -- 1973, pp. 346-47.

¹For one explanation of the phenomenon of the lack of will to punish, see James M. Buchanan, "The Samaritan's Dilemma," in Altruism, Morality, and Economic Theory, Edmund S. Phelps, ed. (New York: Russell Sage Foundation, 1975).

²Gordon Tullock, The Politics of Bureaucracy (Washington, D.C.: Public Affairs Press, 1965); Anthony Downs, Inside Bureaucracy (Boston:

plan is that it will grow rapidly after initiation. The bill which passed the Senate in 1973 would have appropriated \$5 million for the implementation of the program. That amount was based on the recommendation of the LEAA study. Clearly the budget would increase rapidly in subsequent years, as the federal government would be obligated to pay for the expenses of the federal bureau, claims in federal jurisdictions, and for 75 percent of expenses incurred by states giving compensation that meets the requirements set down by the federal agency. For example, the state of Washington budgeted \$1.1 million for compensation awards for fiscal 1975, the first full year of operation there.¹ On a nationwide basis, assuming that crime in Washington is comparable to the rest of the nation, this would imply \$65 million in compensation payments, in a start-up year ignoring administrative costs. The federal government's share of this expense would be about \$50 million.

In the last few years, many states have implemented compensation programs which are entirely state funded. Some, and possibly most, of these programs were implemented in anticipation of the 75 percent federal subsidy that would be received when the bill passed Congress. This was definitely the case in Rhode Island and in Illinois, which "... enacted a victim compensation statute in 1973, but the legislature failed to appropriate funds to support the program, thus, presumably, keeping it

Little, Brown & Co., 1967); and William Niskanen, Bureaucracy and Representative Government (Chicago: Aldine, 1971).

¹Amount from budget presentation to 1975 Legislature, Office of the Administrator, Crime Victims Act, Olympia, Washington, in correspondence with author.

in limbo, perhaps until federal funds are forthcoming."¹ The states which currently do not have compensation programs could be expected to adopt them in response to the heavy federal subsidy. Presumably they would receive assistance in establishing programs from the LEAA, which directly benefits from the number of states that have programs as well as from the scope of the program nationally.

The incentives for state legislators to support victim compensation are easy to discern. If they do not support compensation they allow federal tax dollars to be shifted from their state residents to states which have the program. The federal subsidy reduces the price to a state of providing a compensation program.² This is illustrated in Figure 1, which is an adaptation of Niskanen's bureaucracy model, including the modifications suggested for this model by Breton and Wintrobe.³ Readers unfamiliar with this model can see Appendix A for a review.

The vertical axis in Figure 1 measures the expenditures (including administrative costs) on compensation provided by a state. The horizontal axis measures the number of awards given in one fiscal year in any state. Hence, the total expenditures on compensation in one state will be the number of awards in that state times the average outlay on each

¹Edelhertz and Geis, Public Compensation, p. 174.

²Richard E. Wagner, The Public Economy (Chicago: Markham Publishing Co., 1973), pp. 66-67; Wallace E. Oates, Fiscal Federalism (New York: Harcourt, Brace, Jovanovich, Inc., 1972), pp. 75-78.

³Niskanen, Bureaucracy and Representative Government, especially Chapter 3; Albert Breton and Ronald Wintrobe, "The Equilibrium Size of a Budget-maximizing Bureau," Journal of Political Economy 83 (February 1975): 195-207.

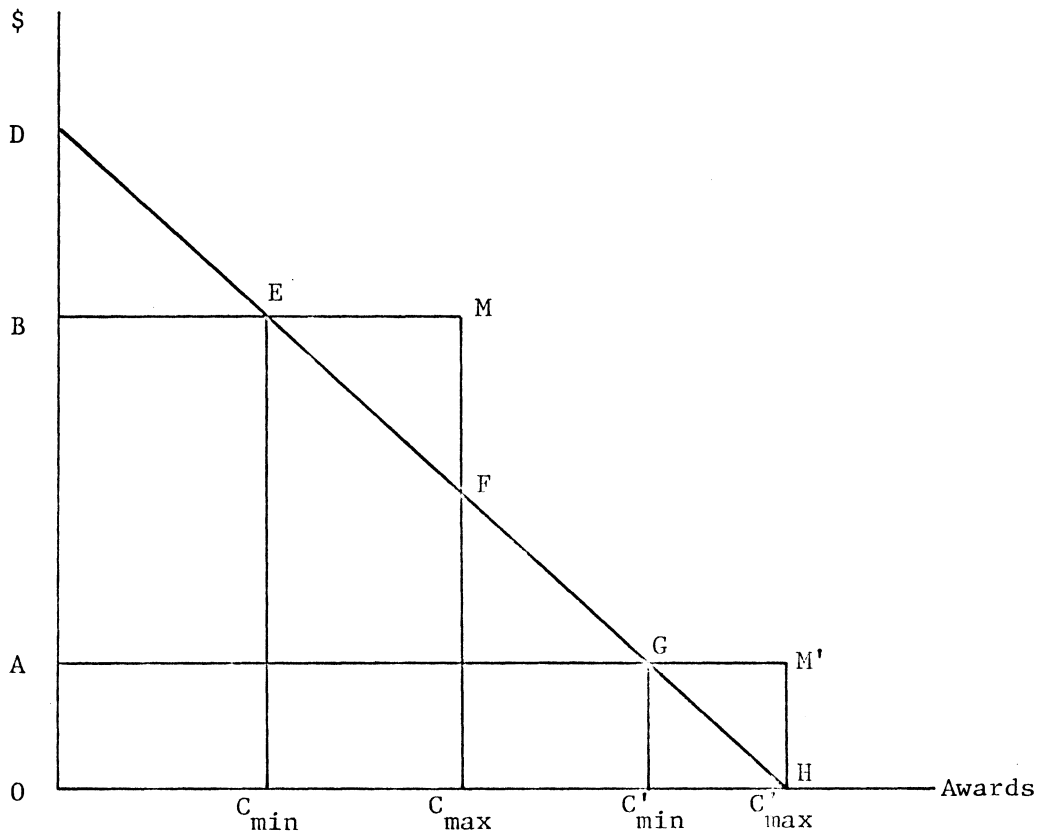


Figure 1: State Expenditures on Compensation

award in the state. Curve DH is the marginal valuation or demand curve of state legislators for victim compensation. The BM curve is the marginal cost curve of the bureau providing compensation payments to the victims of crime.¹

The producers of compensation would like to fully exploit their budget potential, which is constrained at the margins by DH. In this Niskanen world, the number of awards would be at the point where total cost (the area under the marginal cost curve) and total budget are equal. This would yield C_{\max} number of compensations with budget $OBMC_{\max}$ ($=ODFC_{\max}$). Accepting the most restrictive assumptions posited by Breton and Wintrobe, so that politicians could completely control the bureaucracy at no cost, the number of compensations would be C_{\min} . This would yield a budget of $OBEC_{\min}$, the smallest possible budget that could emerge. The actual budget would be likely to lie somewhere between C_{\min} and C_{\max} .

Once the federal program is implemented, and the federal government pays 75 percent of the outlays of the state programs, the marginal cost of compensation falls to one-fourth of its actual level from the

¹It is not obvious what the slope of the marginal cost curve would be. It is possible that victims suffering the largest pecuniary losses could be the first to be compensated, as they would have the most incentive to seek compensation, so that subsequent awards would be smaller. This would tend to reduce the slope of the curve. Evidence from existing compensation programs does not reveal any clear pattern. For simplicity, the marginal cost curve is considered to be horizontal in the range of operations considered here. The basic result would not be altered by assuming an upward sloping marginal cost curve. The marginal cost curve also represents the average cost of the awards given in a budget period. Actual awards vary considerably but the average award is appropriate for this analysis.

perspective of the state legislators, and would be perceived as curve AM' . The real expenditure remains the BM level, but the cost to state decision-makers becomes AM' . In this case the Niskanen model yields a C'_{\max} level of output with budget $OAM'C'_{\max}$, while the most restrictive Breton and Wintrobe assumptions yield a C'_{\min} number of compensations with budget $OAGC'_{\min}$.¹

The number of awards may be H , all compensations the legislators believe are beneficial. If such were the position achieved, as seen in Figure 2, the state legislature would allocate budget $OAM'C'_{\max}$ for the purchase of H compensations. The federal government would pay $ABJM'$, 75 percent of all the entire outlay, $OBJC'_{\max}$.

Many states have not implemented compensation programs on their own volition because the expenditures outweigh the benefits perceived by the legislators, as seen in Figure 3, where the cost curve lies above all points on the marginal valuation curve. With federal subsidization, the price of providing awards to victims as seen by legislators falls from B to A . Then they would have the incentive to begin such a program, which will give at least C'_{\min} number of compensations. It is unlikely that any state would have a demand curve so low that even with federal subsidization the cost would still be too high to allow compensation by

¹In terms of an income-compensated demand curve, the net effect will be to leave the average citizen no better off than before. Two distinct impacts can be recognized here. One is the substitution effect due to the subsidy from the federal government. The price of compensation provided by the state legislature declines in proportion to the subsidy, so a greater quantity of compensation will be provided to the citizens of the state. However, the income effect will mitigate the impact of the substitution effect. Citizens' tax burdens will be increased to finance the federal subsidy.

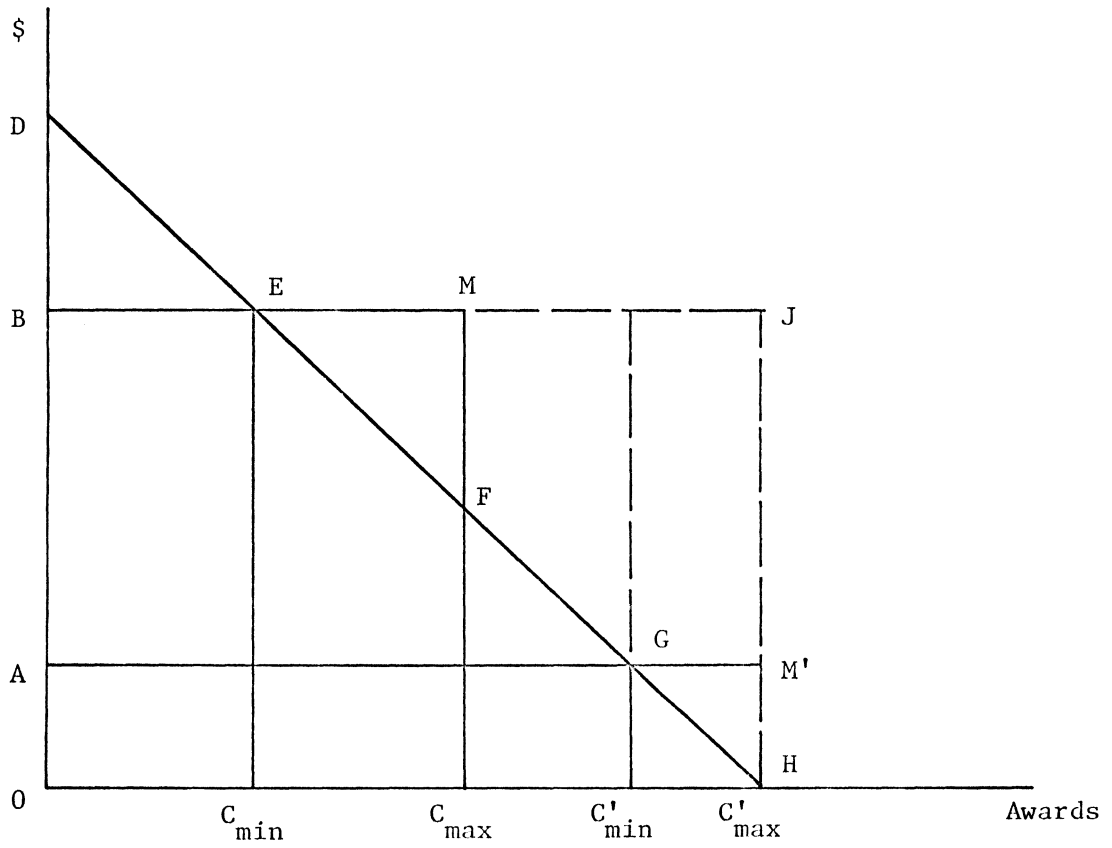


Figure 2: State Expenditures with Federal Subsidy

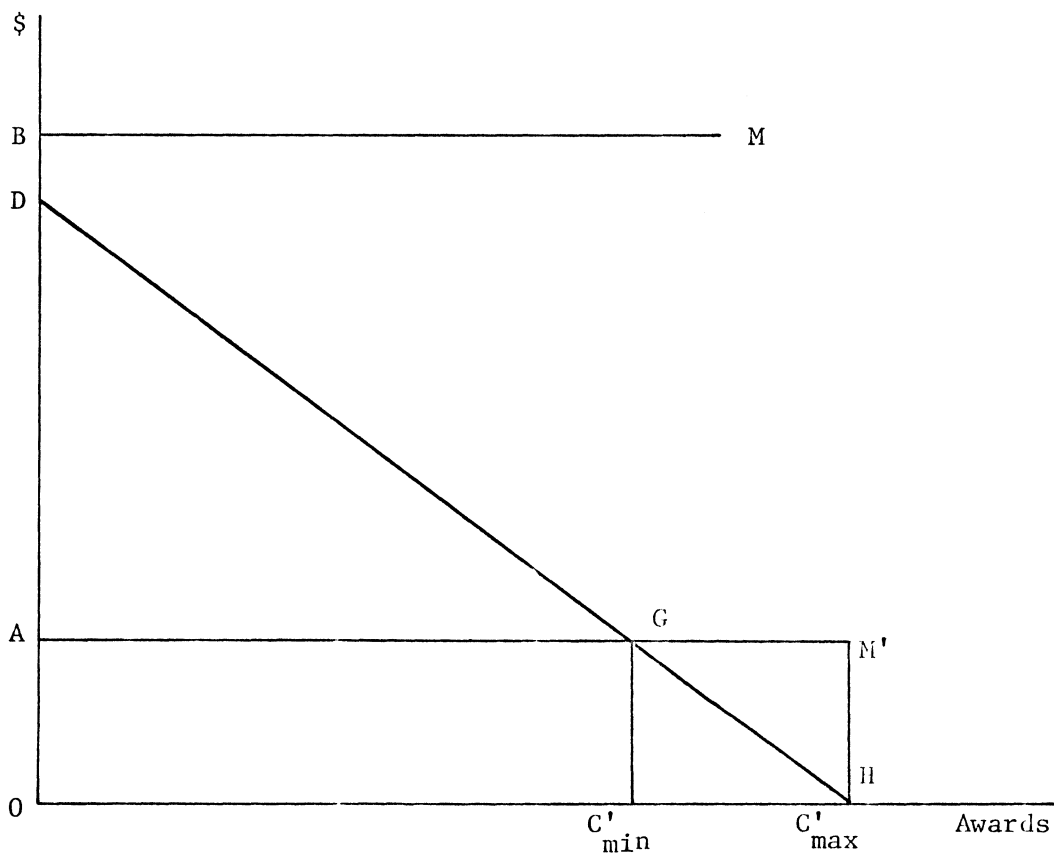


Figure 3: Incentives to Implement State Compensation Programs

the state. The legislators are faced with the choice of financing compensation to get the federal subsidy or allowing their constituents to pay federal taxes for the programs in other states.¹

A budget estimate of over one-half billion dollars for a nationwide compensation system was derived previously. This estimate was made under the assumption that compensation was instituted in every state and at the federal level, and that each state reached a level of awards projected by the Washington and Maryland experiences. But the latter did not reflect the subsidy effect on the size of the program. Once the impact of the 75 percent subsidy is taken into account, the states would be found to engage in more compensation than they would have without federal assistance. As Figure 1 shows, without assistance a state would provide between C_{\min} and C_{\max} compensations, but with federal assistance the number would rise to C'_{\min} at the least, and possibly as high as C'_{\max} . Assuming unitary elasticity of demand on the part of the legislators for compensation, the program would quadruple in size in each state, which would mean a national compensation budget of over \$2 billion annually.

This would be achieved by increasing the size of the average compensation payment as well as by increasing the number of compensation awards granted in each state. Without federal subsidies, the states of Maryland and Washington expect to pay an average of \$4,000 per compensation, as does Massachusetts with payment guidelines lower than the federal standards. With a 75 percent federal subsidy, if a state grants \$16,000 per award, the cost to the state remains at \$4,000. A state could

¹Wagner, The Public Economy, pp. 66-67.

also continue to make awards averaging \$4,000, but make four times the number of payments, and the federal subsidy would leave the cost to the state constant. What would emerge in practice is uncertain, probably some combination of the two extremes. The important point displayed by the Niskanen model is the potential for growth of the compensation programs that could occur due to the impact of the subsidy feature.

Incentives of Bureaucrats Operating Programs

Once public compensation became nationwide, the bureaucrats operating the programs would have incentives to expand the programs, so as to enhance the power of the bureau, and the prestige and pay of their own positions. The federal bureau operating the subsidy program would have no incentive to reduce the growth of the state bureaus since they have concurrent incentives.¹ These motives are not inconsistent with the motives of the victims and their lawyers, who will want to receive the largest awards possible as often as possible.

The size of the bureau that would operate the federal program is difficult to estimate. There would be two parts to the program. One would be the LEAA, which would administer funds to be distributed to the state programs. The other would be the independent compensation board within the Justice Department, which would handle all compensation claims in the District of Columbia and all other federal jurisdictions.

Because the federal board would have jurisdiction over an area comparable to that of a small state, one can extrapolate the estimates

¹Wagner, The Public Economy, p. 123.

for the federal board to the remaining states to derive the size of the bureaucracies that might emerge to direct the programs. The 1972 LEAA Staff Report proposed the staff requirements for the Violent Crimes Compensation Board, which is duplicated in Table 2. This staff was projected to go into effect the first year of operation and remain constant in size over the years as the volume of compensation cases increased.

Since civil service salaries have risen about 20 percent since 1972, a rounded figure of \$1.1 million can be used for 1975 administrative costs. Although federal jurisdiction includes less than one percent of the nation's population, while an average state would have two percent, for simplicity it will be assumed that this commission represents the average size of the commissions that would exist in every state with a compensation program.¹ This would result in a total administrative bill of about \$55 million, as was assumed previously when the size of the entire program was estimated.²

Although the authors of the LEAA study assumed that the staff would begin and remain at this size, that assumption is difficult to accept, considering the motives of bureaucrats and the history of similar bureaus. The growth of other independent commissions which handle

¹The federal board would also cover compensation cases which arise via cases through federal district courts, which would give the board a larger work load than if it dealt only with the portion of the population in federal districts.

²An administrative cost that is excluded here, as it is in most governmental cost estimates, is the annual value of the office space occupied by the bureau. In prime locations in major cities this cost is not negligible.

TABLE 2

Violent Crimes Commission Board Staffing

| Number of Positions | Position Title | Grades | Total Pay |
|---------------------|--|-----------|----------------|
| 1 | Board Chairman | Level III | \$ 40,000 |
| 1 | Member | Level IV | 38,000 |
| 1 | Member | Level IV | 38,000 |
| 1 | Executive Secretary | Level V | 36,000 |
| 5 | Staff Personnel | GS-13-15 | 109,000 |
| 1 | General Counsel | Level V | 36,000 |
| 5 | Staff Personnel | GS-13-15 | 109,000 |
| 1 | Director, Hearings, Review and and Appeals | GS-15 | 25,583 |
| 10 | Staff Personnel | GS-11-13 | 158,660 |
| <u>10</u> | Expert & Consultant Services (man years) | 5 MY | <u>110,000</u> |
| 36 | Total Staffing Costs | | \$701,043 |
| | Administrative Costs (estimate) (salaries and expenses) | | <u>250,000</u> |
| | <u>Total</u> | | \$951,043 |

Source: U.S. Congress, Senate, Committee on the Judiciary, Victims of Crime, p. 742, citing Staff Study, "Victims of Crime Act of 1972."

various types of claims may provide some evidence as to the possible growth rate of the Violent Crimes Compensation Board.

The Occupational Safety and Health Review Commission was established by a December 1970 Act of Congress. In fiscal 1972, the first full year of operation, the Commission had 23 employees, and a \$400,000 budget. By fiscal 1975 the appropriation had grown to \$5.7 million for a staff of 194, which was used to review an estimated 3,000 cases in that year. On a somewhat smaller scale, the Indian Claims Commission, which hears and adjudicates the claims of Indians, grew from 22 employees in 1965 to 44 in 1975, while the budget increased from \$313,000 to \$1,333,000 in the same period. It was estimated that the Commission would review 611 claims during fiscal 1975. For both of these commissions, the total average cost per claim examined was approximately \$2,000. The National Labor Relations Board, which has had a nearly constant number of employees over the past decade, has had its budget more than double in that time to \$61.4 million in 1975. This was allocated to cover an estimated 45,800 unfair labor practices and representation cases.¹ This would be an average of \$1,341 per case examined during the year.

The average claim cost figures of these commissions are not necessarily comparable to the costs that would be incurred by compensation commissions, but the general administrative expense appears to be higher for other quasi-judicial bodies than one might guess based on the LEAA Staff Report, which concerned itself only with the administration of victim compensation. If the administrative expense per case were only

¹All figures from The Budget of the U.S. Government, various fiscal years (Washington, D.C.: U.S. Government Printing Office).

\$400, then 130,000 cases would cost \$52 million to administer nationally, as estimated previously. Although this figure may not be very accurate, it does not seem unreasonably high, based on the performance of other bureaus charged with investigating and settling claims cases.

State victim compensation programs are relatively new and few in number. The incentives that bureaus have to expand have been amply demonstrated by the theoretical models of bureaucracy and the empirical evidence that exists. Most have been able to expand rapidly in their first few years of operation, so that they have not had to resort to arguing for an expansion of functions to justify budget increases. The California program has increased in budget approximately by the amount of the original budget every year since inception in 1967. If federal subsidies are forthcoming, the growth of such state bureaus would be likely to accelerate.

After the programs are well established, the desire for continued growth may induce the bureaus to fight for expansion of responsibilities. If the crime rate continues to increase as it has in the past two decades the bureaus will experience a continued natural expansion. There are three other aspects of normal operation that will enable the bureaus to take full advantage of their positions, given existing conditions. First, unlike private insurance companies, the compensation boards have little reason to prevent all but the most blatant fraud. Second, given the positions of lawyers in the operation of these programs, there will be incentives to bring more and more cases to the boards for consideration and to work for the maximum restitution. Third, the public would require

a certain amount of time to become aware of the compensation program, so that information dissemination would yield increased claims.

Numerous articles by legal scholars have expressed concern that fraud would be a problem, the prevention of which would require vigilance by the compensation boards. Actually, fraud would not be a significant problem if it were made a serious felony and treated harshly when uncovered. However, the boards will experience better budgetary growth if they assume a passive role with respect to inflated claims. Moreover, since it is unpleasant and possibly politically dangerous to reject claims, administrators will be more likely to accept inflated claims than would be the case in private enterprise. In a public bureau a one dollar cut in compensation leads to a one dollar cut in the budget. In a private enterprise the administrators who prevent fraud and padding are more likely to benefit from such efforts.¹

It is possible that compensation boards may intentionally be blind to problems of fraud. As of the sixth full year of operation of compensation in England, the executive secretary of the British board reported: "No case has yet come to the board's notice in which compensation was obtained by fraud, and the safeguards therefore appear to be effective."² This is similar to the experience of the several American states' programs, which claim to have experienced little problem with fraud. In Massachusetts:

¹See Armen Alchian and Harold Demsetz, "Production, Information Costs, and Economic Organization," American Economic Review 62 (December 1972); and Ludwig von Mises, Bureaucracy (New Rochelle, N.Y.: Arlington House, 1969).

²Harrison, "Compensation in Britain," p. 479.

No action has been taken against claimants because of the subsequent discovery that they recovered payments from the offenders or from some other source that duplicated compensation received earlier under the compensation statute. There is no machinery in the attorney general's office that could be adapted to monitoring or policing such abuse.

Fraud does not appear to have been a problem in administering the Massachusetts crime victim compensation program. There have been no referrals for criminal investigation or prosecution.¹

The State of New York uses investigators in its compensation program to establish the validity of claims, and some fraudulent cases have been rejected on the basis of the investigation. But, as the chief investigator there noted, "as long as someone is actually the innocent victim of a crime and his claim is bona fide, padding is not looked at particularly harshly, but we must naturally eliminate all padding. ..." Similarly:

The Board appears to adopt an attitude of benevolent skepticism in such matters, based on the idea that the victims after all are the "good guys" and that they ought to be treated with kindness and compassion and not badgered about minor discrepancies in their claims.

The Board also takes pride in the fact that it has on occasion taken the initiative to develop a factual basis for a claim where the claimant was unable to do so.

In general the attitude is, as expressed by the chief investigator, "If we can make an award under the law, we make it."²

Although it is impossible and inefficient to ferret out all fraud and padded claims, the attitude of the compensation boards may be such as to encourage fraud and padding to some politically acceptable level. It may be comparable to welfare and food stamp fraud, which are significant, but are generally not prevented until they become so large as to irritate

¹Edelhertz and Geis, Public Compensation, p. 127.

²Edelhertz and Geis, Public Compensation, pp. 49-51.

voters and lead politicians to call for some action -- which, on occasion, has been taken.¹

The second feature of standard operating procedures that would help the boards to grow is the incentive presented to lawyers to bring numerous cases for compensation. One issue that has not been fully settled is whether the lawyers would receive some portion of their claimants' awards out of the awards, or whether the lawyers would be granted fees separately. The 1973 version of the Victims of Crime Act stated:

The Board shall publish regulations providing that an attorney may, at the conclusion of proceedings under this part, file with the Board an appropriate statement for a fee in connection with services rendered in such proceedings.

... the Board shall award a fee to such attorney on substantially similar terms and conditions as is provided for the payment of representation under Section 3006A of title 18 of the United States Code.²

Section 3006A of Title 18 of the United States Code states, concerning the amount to be awarded attorneys, that the "court determined that reasonable attorneys' fee for successful plaintiff was \$30 per in court hour and \$20 per out-of-court hour, plus miscellaneous expenses reasonably incurred."³ It will be at the discretion of the states whether lawyers

¹One of the most noted instances was the welfare reform program in California led by Governor Reagan, which 176,000 recipients from the relief rolls and saved an estimated \$300 million annually. The New York Times, February 2, 1972, p. 34; August 12, 1972, p. 24. More recently there has been considerable discussion about reducing fraud in food stamp procurement.

²U.S. Congress, Senate, Victims of Crime Act of 1973, 93rd Cong., 1st Sess., 3, 300, p. 19.

³United States Code Annotated, Title 18, Sec. 3006A, in Pamphlet No. 2, Part 1 (St. Paul, Minn.: West Publishing Co., 1975), p. 586.

will be paid fees by the board for bringing cases which do not result in restitution. If they are to receive fees only for successful cases, lawyers would serve as a screening service for many cases and prevent some bad cases from going to the boards for consideration.

If fees are set as a percent of the award, lawyers will be less willing to help process small claims. There would be some minimum expected level at which lawyers would be willing to assist victims, but the decision in each case would depend upon the time involved in the particular case, the value of the lawyer's time, and the expected value of the award. There would be an incentive to make the claim as large as would be reasonable in the eyes of the boards, so as to maximize the fee and to serve as an incentive for potential claimants to engage the services of a lawyer.

If fees are awarded by the board on the basis of the work performed in the case, lawyers would be willing to bring any size case for compensation, given the expected chance of success. They would have an incentive to induce victims to bring forward all potential claims that appear compensable. If attorneys are to receive fees from the boards for all cases, successful or not, they would encourage all victims to become award claimants, yielding a staggering volume of claims. If states operate under different guidelines for fees, there will be an interesting comparison available in the future for examining the effects of the different fee methods.

A third factor that will help the compensation programs to expand naturally, although the boards can assist in this area, is that

information about many compensation programs is not widespread. Hence, potential claimants could be ignorant of the possibilities of compensation, as they have been in states which currently have programs.

New York is overcoming this information problem by asking other agencies such as hospitals and police departments to refer victims to the compensation board. Lawyers can also be expected to serve as an information device for potential claimants. Furthermore, one would expect some lawyers to specialize in compensation proceedings once the program becomes large enough to encourage full-time devotion to that activity. Indeed, "there are indications in Massachusetts and New Jersey that the advent of no-fault automobile insurance may induce the bar to increase its attention to victim compensation practice."¹

As such natural inducements to expansion begin to diminish in impact on budgetary growth, the administrators of compensation programs can be expected to attempt to expand the functions of the boards in order to maintain bureaucratic growth. If not already allowed in the enacting legislation or in all states with programs, one obvious manner to encourage a larger volume of claims is to allow attorney fees to be paid by the boards, independent of the size of the claim and independent of the success of the claim. This is argued as logical by many legal scholars, as one would expect, because "claimants truly need them (lawyers), and (otherwise) the public will be deprived of monitors to help keep boards responsive and fair."² Since most legislators and judges

¹Edelhertz and Geis, Public Compensation, p. 278. The gradual expansion of advertising by lawyers would hasten this process.

²Edelhertz and Geis, Public Compensation, p. 278.

are lawyers, the logic and equity of this argument may be obvious to them, so that it would not be surprising to see it emerge.

Another change, which could emerge legislatively or judicially, is the removal of the upper and lower limits on payments to victims. Federal legislation would set the limits at \$100 and \$50,000, as written currently. However, in New York and Maryland there are no limits on the level of payments that may be made for medical purposes, and, given the tragic nature of some victims' injuries and the staggering medical costs these entail, it is easy to see that the \$50,000 limit will appear inadequate in a number of cases. Legislative or judicial sympathy may lead to a removal of the upper payment limit.¹ Removal of the \$100 lower claim limit, which is standard in all states' compensation programs, has been called for by a former commissioner in Maryland and by others sympathetic to the plight of those victims whose losses are less than \$100.² Such a move would expand the volume of claims received, which would increase the needed administrative staffs.

Since compensation programs are ex gratia, to the state they have the same status as a welfare payment. Individuals are not allowed to sue the state for compensation should the board reject a claim or be unable to accept it under existing guidelines. However, in most states

¹The current medical malpractice problem may encourage upper limits on payments. States are unlikely to allow multimillion dollar awards, but may be willing to allow the costs incurred to be compensated. A type of medical no-fault insurance similar in coverage to victim compensation has been proposed by Senators Kennedy and Inouye. See "The Doctors' New Dilemma," Newsweek, February 10, 1975, p. 41

²Edelhertz and Geis, Public Compensation, p. 278.

with programs, as well as in the proposed federal program, judicial review of awards would be allowed. Such review will cause the boards to spend a certain amount of time in the courts defending their decisions, which would expand the range of required functions. Boards would have to weigh the relative merits of granting larger claims versus contesting the claims in court. More importantly though, is the possibility that by judicial decree the courts may expand the range of compensation payments for victims, even if the legislature will not. By judicial interpretation judges rewrite the law. This area has no reason to be exempt from such actions. It is certain that lawyers will attempt to expand the programs by this method.

An obvious and logical possibility for long range expansion of compensation programs is in the area of non-pecuniary damages. Most rape victims incur small pecuniary damages, but may incur large pain and suffering costs. Only in the state of Hawaii can victims currently receive compensation for such psychic losses, even though they are a true cost of victimization. The proposed federal legislation does not include such awards and presumably would not reimburse the states for any such awards. It is likely that some program administrators, lawyers, and victims would push for expansion of compensation payments into this area. Whether it happens by legislative action or by judicial fiat, potentially it would add huge sums to compensation awards, as these costs are common and sizeable. In an era of "women's liberation" it would seem reasonable to expect support from women's interest groups for an extension to cover such psychic losses.

The expansion of victim compensation into non-criminal areas is a possibility for the future. If national medical care is instituted, much of the function of existing compensation programs could be eliminated. Administrators would have to find other victims to assist to keep their bureaus functioning. As noted previously, New Zealand now has a system designed "to provide benefits to all injured persons regardless of the cause of injury and irrespective of fault."¹ Existing systems of civil liability were seen as capricious and inequitable.

Further expansion of compensation commissions to cover all property losses is also under consideration in New Zealand, and was proposed in a bill before the New York legislature. This would be a possible extension of powers for a state compensation program, and further advocacy can be expected.

Such an act would do much to destroy private insurance, and would awaken that industry to the threat posed by governmental compensation. Existing legislation, which appears to be little more than a slight expansion of the small compensation programs that exist in several states, probably poses little direct threat to the territory now covered by private insurance. In the short run there may be some changes in the coverage of private insurance policies. Companies could offer lower rates on medical and income insurance by excluding losses that would be covered by public compensation. Much like the insurance policies that have arisen to cover losses not covered by Medicare, supplemental crime loss policies could be offered. This would, of course, place many people under the

¹Edelhertz and Geis, Public Compensation, p. 240.

public compensation program who would not qualify currently because they have private coverage for crime losses.

Like many governmental programs, surely victim compensation is designed with the best of intentions, and appears to cost relatively little to achieve a desirable goal. In reality, victim compensation threatens to emerge as another tentacle of leviathan, encompassing far more in territory and dollars than ever envisioned. Numerous similar stories have unfolded in recent years and victim compensation would seem likely to offer one additional instance of such bureaucratic growth.

CHAPTER IV

EQUITY ISSUES IN COMPENSATION

Introduction

For practical purposes it can be assumed that victims bear the costs of victimization. Given the small percentage of criminals captured for crimes committed, and the even smaller percentage that are convicted for crimes and would be capable of making restitution to their victims, it is currently believed to be unrealistic to try to impose a large portion of the costs of crime upon criminals. Because of this, many proponents of public compensation, such as ex-Justice Arthur Goldberg, believe that,

It is only right that society, through a program of public compensation, recognize its obligations toward these victims. As a practical matter also, society alone is able to assist the victims of crime.¹

Public responsibility for private costs incurred in criminal assaults is a collective community need according to supporters such as Senator Mike Mansfield, who considers compensation a basic social program. "Social security, medicare, aid to dependent children, assistance for the handicapped, the aged and the blind, ideas of no-fault insurance, and national health insurance all reflect a recognition of collective societal responsibility."² In the political setting such equity arguments

¹Goldberg, "Preface," p. 2.

²Mike Mansfield, "Justice for the Victims of Crime," Houston Law Review 9 (September 1971): 79.

are valid, and, as will be seen, must constitute the primary defense for public compensation as now proposed.

Rather than assume that Goldberg, Mansfield and scores of legal writers are objective sympathetic observers who have settled the equity justification for public compensation, this chapter develops more scientific, albeit normative, equity arguments. It considers public compensation at the constitutional and post-constitutional stages. The times of potential acceptance will be considered within the framework both of Rawls' contract theory and Bentham's utilitarianism.

Efficiency vs. Equity?

While one does not have to accept the conclusion of this study that public compensation, as currently proposed, is inefficient, it is necessary that one accept a simple trade-off that helps to generate this conclusion. When insurance premiums (taxes paid to support public compensation), whether regressive, proportional, or progressive in structure, are based on income levels, rather than on revealed preferences for risk averseness to criminal attack, individuals will consider insurance free at the margin. They will trade less self-protection for more public compensation for losses suffered in criminal attacks.

There is, of course, a limit to this effect. Individuals are assumed not to like the physical and psychic suffering incurred in criminal attacks, which are generally not compensated, or are only partially compensated by an insurance scheme. However, public insurance will lead risk averse individuals to consume somewhat less self-protection, due to the coverage for pecuniary losses incurred in crimes.

As long as this simple trade-off is accepted and understood, the general inefficiency of the compensation program is not necessarily important when considering equity issues. Equity considerations can override efficiency considerations, and may do so for certain forms of victim of compensation.

Constitutional Considerations

Assume that a society is at the constitution-making stage, which is a contractual process where "the alternatives for choice are institutional arrangements that are presumed to remain in being over a succession of time period."¹ At the constitutional stage individuals are assumed to be ignorant of their future income, wealth, and personality position in the society for which they are considering institutional structures. By personality position is meant that each person is uncertain as to his future physical and psychological make-up, such factors as size, sex, color, intelligence, and preferences.² This is decision making in a Rawlsian veil of ignorance, which is akin to the situation posited by Buchanan and Tullock in The Calculus of Consent where, "The individual, at the time of constitutional choice, is uncertain as to his own role on particular issues in the future."³

¹James M. Buchanan and Winston Bush, "Political Constraints on Contractual Redistribution," American Economic Review 64 (May 1974): 153.

²John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971), pp. 136-42.

³James M. Buchanan and Gordon Tullock, The Calculus of Consent (Ann Arbor: Ann Arbor Press, 1962), p. 191.

It seems quite plausible that the individual members of a society would believe that criminal attacks would be unjust. Crime therefore would be considered a social and economic institution that creates varying degrees of injustice. The extent of injustice (victimization) suffered by any particular individual would vary with such factors as background (parentage), current economic status, and individual fear of or risk aversion to crime. Within such a setting, it seems reasonable to assume that all individuals would favor some controls on crime. That issues of criminal justice would be considered at the constitutional level is noted by Rawls, who said "the interest in the integrity of the person is another [fundamental interest] ... freedom from ... physical assault" is a concern there.¹

When considering the decision process at the constitutional stage, and later at the post-constitutional stage, it is important not to fall into the traditional trap of the benevolent dictator. Some scholars contend that Rawls' contract theory can be improved upon by the use of a perfectly sympathetic observer to help society achieve Social Excellence.² In the guise of Rawlsian fairness as justice, the sympathetic observer is nothing more than a return to the device of the benevolent dictator, which is inconsistent with the fundamental concepts of a democratic society. Sympathetic observers creating social welfare functions to

¹John Rawls, "Reply to Alexander and Musgrave," Quarterly Journal of Economics 88 (November 1974): 640.

²Sidney S. Alexander, "Social Evaluation Through Notional Choice," Quarterly Journal of Economics 88 (November 1974): 597-624.

determine the distribution of income are to be "all who are in this difficult business of social evaluation."¹ On the other hand, Rawls incorporates Wicksell's unanimity criterion for post-constitutional choices.² This displays the complete divergence of his contract theory from the device of the benevolent dictator, even if it is cloaked in the form of the sympathetic observer.

While it is easy to slip into the role of the sympathetic observer, one can avoid that by using a framework that is consistent with fundamental concepts of fairness. This analysis presumably will be close to that used by a person in the veil of ignorance, as he thinks about the society in which he will function. While normative in nature, as is any criterion for judgment, to date this foundation is the most consistent with democratic ideals that has been developed.

At the constitutional level it is likely that general rules regarding criminal actions would be formed. A specific public compensation program for crime victims would not be formulated, but the basic responsibility of all participants: the state, potential criminals, and potential victims, would be outlined. Rawls believes that men would agree that man in a democratic society should be free to protect himself and to lead a personal life style as he wishes. The role of self-respect enters here, as man is assumed to have integrity for himself and for others.

¹Alexander, "Social Evaluation," p. 619.

²Rawls, A Theory of Justice, pp. 282-84.

It could be advocated that fairness implies that the rights assigned to the individual shall not be violated by others, without redress to the offended individual. When one involuntarily surrenders some of his rights to another, the rights thief must be willing to accept whatever consequences have been stipulated by society. The offended individual, the victim, incurs costs in the involuntary loss of rights, for which he should be compensated by the offender, who has taken these rights without prior agreement. It seems that the offender, not the members of society, should make restitution to the offended.

Under the rule of our legal system, if a visitor were to fall down the steps of the host's house due to worn carpeting, the visitor would be more likely to receive compensation from the host than if an assailant had pushed him down a flight of steps and then stolen his wallet. The former case falls in the category of tort law. The latter case is unlikely to go beyond criminal law. The victim would be more likely to receive restitution in the accidental case. The price paid for the malicious act may be less than that paid for personal negligence. With the malicious act, although the cost borne by the victim may be greater than the costs incurred due to negligence, restitution by the criminal would be to society as a whole, probably as a period of probation and/or a small fine.¹

¹It should be noted that in the malicious incident the victim probably would have the right to sue for damages in tort, but the incident of this is so rare as to be unimportant in the operation of the criminal justice system. Linden discusses this point in "Victims of Crime and Tort Law," and considers some empirical evidence. One reason for this difference is that homeowners or some other form of liability insurance would assist the party being sued for negligence, so that a

From the view of society, there is a clear difference between the above two cases. In the negligence case, there was no specific attempt to injure anyone, while in the malicious incident there was. Society wishes to discourage such behavior by criminal justice procedures. The fairness of paying the victim for the costs he suffered due to negligence also seems clear. However, is it fair that the victim is less likely to recover for the costs he suffered when pushed down the stairs? It is likely that most would agree that this violates basic concepts of fairness.

Who should bear the costs incurred in criminal attacks? Fairness would dictate that the criminal bear the burden of his actions. If the criminal is unknown (as is true in most cases), then who should bear the burden, the victim or his fellow citizens? This is the critical question, which probably would not be resolved at the constitutional stage, as that process is likely to consider general liability for criminal acts. However, the constitutional process may make provisions for assistance for victims of criminal acts as part of an overall plan to assist some unfortunate members of society.

Individual freedom includes the ability to expose oneself to various levels of danger at different times and places. One should be free to walk the streets of Newark at night if one wishes, but who should bear the probable costs of such an act? In a society with some individual freedom, a certain amount of crime will exist, and is likely

suit would be more worthwhile than in the case of the criminal act, which insurance will not cover.

to exist in varying levels at different places. Hence, the individual right of self-protection is important. All individuals engage in some self-protection, but all have different attitudes toward the possibility of victimization.

In the veil of ignorance, the potential citizen recognizes that different attitudes will exist in society. While he would not impose severe restrictions on private actions, he may not desire to subsidize the actions of others or expect his own actions to be subsidized. However, realizing that some crime is nearly random in nature with respect to the victim, and that the victim could not reasonably have been expected to have prevented his misfortune, some assistance may be deemed desirable, as all citizens have some chance of incurring such misfortune. Random victimization is similar to natural disasters that no one could have been reasonably expected to foresee or prevent. Rawlsian justice may lead to assistance for such occurrences. All potential citizens would foresee identical probabilities of being struck by random misfortune, and may prefer to make provisions for such instances.

Most random disasters result in relatively small costs which can be borne by the victim. Individuals can either bear the full costs of the misfortune at the time of occurrence or spread the costs over time by purchasing insurance. However, few individuals can afford very costly tragedies, or could be expected to carry insurance sufficient to cover the costs of such incidents. Hence, it is possible that potential citizens would opt for assistance to victims of severe tragedies, because

it can be assumed that no one would voluntarily subject himself to such a position.¹

It is unlikely that state aid for victims of smaller tragedies would be adopted. Although some victimization at this level is also random, preferences play a more important role. It is predictable that some individuals will expose themselves to higher levels of low cost danger than will others. These victims would be expected to care for themselves, rely on private charity, or would be implicitly aided by the adoption of the difference principle of income distribution.² This principle, which Rawls believes would be agreed upon as just at the constitutional level, allows for the most unfortunate to be able to afford some self-protection and insurance. The difference principle of income distribution would insure that no one would be incapable of securing some self-assistance to cover losses to criminal assault and other unfortunate incidents.³

This income assurance would not mean that all individuals would purchase complete self-protection, but it would insure that all would be

¹It is also possible that potential citizens would favor no state assistance for victims of severe tragedies, believing themselves to be generous enough to provide for the needs of the unfortunate by private charity. However, individuals may not wish to chance the charitable instincts of their fellow citizens. See Gordon Tullock, "The Charity of the Uncharitable," Western Economic Journal 9 (December 1971): 379-92.

²See Rawls, A Theory of Justice, pp. 75-83 for a discussion of this principle and pp. 152-57 for an explanation of the maximin principle, which Rawls believes would emerge.

³For an exposition of this concept in more general terms, see James M. Buchanan, "A Hobbesian Interpretation of the Rawlsian Difference Principle," Kyklos 29 (1976): 5-25.

capable of normal self-protection. How individuals behaved beyond this basic ability to be secure would be at the discretion of each person. Some individuals in all income classes will be relatively less risk averse than the general populace, so that, in the eyes of their fellow citizens, they will be foolish with their own safety.

At the constitutional stage the citizen would realize that in the future he may be a foolish individual, who will expose himself to "too much" danger. Rather than encourage such behavior by offering payments to cover the costs incurred by himself and others, one is likely to prefer that the foolish individual, even if that be himself, bear the costs of his actions. Knowing that there is a chance that he may be foolish, he may wish to constrain such behavior in advance.

Just as the citizen may believe that he would be better off in the long run if he is forced to contribute to a fund for his old age, rather than be allowed the ability to spend all his income prior to retirement, he may support constraints on individual behavior with respect to potential danger from crime. This could be partially accomplished by requiring individuals to purchase insurance that would cover some of the costs incurred in criminal attacks. This would prevent him from being able to pass the costs of his foolish actions on to charitable individuals or to the state. This would also make foolish actions more costly because, to a certain extent, private insurance premiums are tied to preferences for risk aversion. The foolish individual will pay a penalty in high premiums for his actions eventually, which would provide an incentive for him to limit such behavior. Beyond that, if an

individual is so foolish as to wish to purposely expose himself to grave danger, then probably little would be done, except that the state may provide compensation if high costs were incurred.

Postconstitutional Considerations

Whatever evolves in the postconstitutional state is reality and must be accepted. Wishing for what might have been is of little value. In the postconstitutional consideration of public payments to the victims of crime, it should be noted that as the justice system now exists, most of the costs of victimization are borne by the victims. The constitutional process placed the liability on the criminal, but as the system evolved the burden has fallen largely on the victims. For policy analysis, equity issues require consideration of particular proposals within a defined institutional framework that happens to exist at that time. In this framework are various redistribution models based on utility interdependence or rational selfishness.

There are pure self-interest motives which would lead some individuals to believe that a public compensation program would be just. First there is the insurance motive. This motive is applied partially in a veil of ignorance, in that one may think, "What if I become more susceptible to crime in the future?" Individuals may support compensation now even though it will not benefit them presently but may in the future. This motive probably would not be strong for victim compensation as private insurance is available. If one assumes that public compensation

would be more costly than private provision of the same service, then private insurance would be preferred.¹

Secondly, there is a self-protection motive. This has been applied to welfare payments and other transfer programs, which some contend may exist in order to "buy-off" those who otherwise may rebel due to their positions in the income distribution. Given the relative smallness of public compensation, it is difficult to imagine this rationale playing a role here. However, criminals would probably support public compensation for this reason. If citizens are compensated when victimized they are likely to make less effort to prevent crimes from occurring.

There is a producer self-interest motive. That is, those who will directly benefit from the adoption of the program because they will be involved in producing the service will advocate the program. This will not cause a large number of individuals to favor any one program, but in the case of victim compensation the benefits perceived have led lawyers, bureaucrats, and other interest groups to support the program, as discussed previously.

The final motive in this category is that the public program may be a substitute for private programs. If one is covered by public insurance then there is less reason to purchase private insurance, especially insurance that would cover the same costs. This rationale is likely to generate support only from those who believe they will receive a net transfer from the program, which would probably be a minority of

¹The empirical evidence that exists tends to confirm the hypothesis that publically provided goods cost more than private alternatives. See Budgets and Bureaucrats: The Origins of Government Growth, Thomas Borcharding, ed. (Durham: Duke University Press, 1976).

the citizens in this case. As long as the median voter does not perceive net transfers from the program it will be defeated.

Such motives of narrow self-interest cannot be considered equity arguments, with the possible exception of the insurance motive. While they may explain the support for victim compensation from some group of individuals, they do not constitute fairness arguments, as can the utility interdependence explanations of equity.

The primary grounds for consideration of post-constitutional transfers within existing institutions are provided by Pareto-optimal redistribution models based on utility interdependence.¹ In such models it is assumed that some individuals receive positive utility from transferring portions of their income or wealth to another individual or group of individuals, who may or may not be specified. Here, the concern is with the specific utility interdependence of compensation to crime victims, where the increment to the utility of the benefactors depends upon the consumption of that specific service.

Most individuals probably do have sympathy for the victims of criminal assaults. Two polls in the mid-1960s indicated about 60 percent of the respondents favored state assistance for the victims of serious criminal acts.² An even greater number might have sympathized with the situation faced by the victims, but happened to oppose state assistance.

¹See Harold Hochman and James D. Rodgers, "Pareto Optimal Redistribution," American Economic Review 59 (September 1969): 542-57.

²Hindelang, et al., Sourcebook of Criminal Justice Statistics 1973, pp. 346-47; Edelhertz and Geis, Public Compensation, p. 289.

Individuals may decide that reducing the burden of victimization by reducing the crime rate may not be worth the investment, so that they would be willing to aid members of society who become innocent victims of crime. Traditionally it was believed that a compensation program would be almost strictly for low income individuals. The LEAA Staff Report in 1972 claimed that "97 percent of violent crimes are inflicted on people whose income is less than \$10,000 per year." The 1970 census displayed 49.1 percent of the population to have family incomes over \$10,000.¹ The belief in greater rates of victimization of low income individuals is not supported by the findings of the 1973 victimization survey taken by the LEAA. It reported that for total crimes against persons, whites and blacks, the victimization rate was higher for individuals with family incomes over \$10,000.²

Since higher income individuals do have more health and income insurance, the incidence of their usage of state compensation might well be lower than that of low income individuals, especially if a needs test is applied to claimants. However, if insurance purchasers were to buy policies excluding the costs incurred in criminal attacks, the usage by higher income individuals would rise. Hence, it is not possible to tell if a public compensation program would constitute a subsidy for low

¹U.S. Congress, Senate, Committee on the Judiciary, Victims of Crime, p. 737, citing Staff Study, "Victims of Crime Act of 1972."

²National Crime Panel Survey Report, "Criminal Victimization in the United States," pp. 24-26.

income individuals as claimed by most proponents. With compensation, the burden of crime with respect to the income position of the victims may not change significantly.

If it is true that there is a collective desire to provide assistance for the victims of crime, the group providing the subsidy might desire to give the aid in a manner different from the program now proposed. If the primary purpose of the program is to insure that all citizens are covered for some of the losses incurred due to crime, the most efficient transfer may be a direct dollar transfer based on some form of a negative income tax scale, with a mandatory insurance requirement. The income recipients may prefer to receive a cash transfer and not purchase insurance, or at least spend only a fraction of the transfer on insurance. However, the utility interdependence is based on the recipients' consumption of a specific service, insurance.

Most discussion of equity has been in terms of vertical equity. Horizontal equity has been discussed much less, but seems to be of importance in this issue. Two individuals of the same income level are not equal if one has suffered a major crime attack during the year. Because they are not the same they should not be treated the same. In the context of horizontal equity, the rich man who has been injured by a crime has the same right to compensation as does the poor man. This consideration raises questions about the equity of needs tests for victims of crime. If victim compensation is to be insurance, then the rich man, who has paid his share of taxes to support the program, should benefit like the poor man when he suffers losses in criminal attacks.

If a public compensation program were believed preferable to a subsidized private plan, then equity and efficiency would require alterations in the proposed program. A program with a \$100 deductible and free legal assistance insures that individuals who are relatively less risk averse, and therefore incur the most amount of crime, will benefit disproportionately from the program. For the same tax payment as a person of equal income, the person who is less risk averse will receive greater benefits.¹ There is no way to prevent this from occurring in such a program as this one. To a certain extent the efficiency considerations are to be overridden by the fairness issue. However, it is possible to construct a program such that excessive usage of the benefits would be discouraged.

First, the deduction could be made larger, so that a victim who suffers large numbers of attacks would incur heavy costs per attack, which would give him an incentive to be more risk averse to crime. Second, co-insurance could be adopted so that victims pay a percentage of the total cost beyond the deduction. If the pecuniary loss was estimated to be \$1,000 beyond the deductible, then the state may pay 90 percent or some other portion of the costs, so that victims would have incentives to hold down the size of possible losses. Third, payments could decline in size due to an increasing deductible and smaller state co-insurance percentages with each claim filed within a certain time period. Given these provisions, victim-prone individuals would find

¹To a certain extent the same criticism can be made of private insurance.

victimization incidents more and more costly, but individuals who are more risk averse would be likely to receive a fuller portion of the costs.

While these policy suggestions are normative and are based on efficiency grounds, they are also consistent with what may be considered traditional norms of fairness. The effect of the program would be to assist deserving victims, but would not encourage behavior which leads to more victimization.

CHAPTER V

MORAL HAZARD AND VICTIM COMPENSATION

To this point the study of public compensation for crime victims has not included a formal economic analysis, in the sense of a traditional microeconomic examination of the major variables. This chapter will complete the consideration of victim compensation from the various perspectives which an economist would be likely to consider a public policy problem. This chapter is intended to help construct a method of considering public insurance, a topic which has not been extensively developed.

The model developed here examines, from a utility maximizing framework, the process by which individuals rationally trade hazard for other goods. The limits to hazard and the rate at which it will be traded for other goods are determined by legal institutions, customs, and individual preferences. Assuming such environmental variables as given, this analysis considers how individuals react to changes in institutional frameworks concerning the costs of victimization.

The moral hazard problem plays an important role here. Moral hazard is the effect of insurance on incentives. While it would be desirable for insurance to have no effect on the probability of an insured event, in general that is not possible.¹ For instance, the

¹See Kenneth J. Arrow, "Uncertainty and the Welfare Economics of

probability that one's house will be burglarized depends in part upon the extent of one's insurance against losses to burglary. The term moral hazard can be misleading. The word moral has a normative connotation about the actions that are in question. That is of no interest to the problem being considered here, the interest is in the hazard as it manifests itself toward economic phenomena, but not in the ethical evaluation of individual behavior in situations involving risk.¹

The model initially considers a utility maximizing individual who can purchase private insurance to cover some of the costs of victimization and can buy private goods and services which will help prevent criminal attacks upon himself. Public insurance will then be introduced, so that the two basic positions of a representative individual can be considered, first, in a regime of private insurance, and second, in a regime of public and private insurance. The model is then extended to a multi-person world to display the impact of insurance as a public good. Public insurance for the victims of crime is considered under two sets of extreme assumptions for the representative individuals: equal preferences and different incomes, and different preferences and equal incomes. This allows for an analysis of collective insurance under the full range of possible circumstances. This presentation provides a study of the logical reactions of utility maximizing individuals to a program

Medical Care," *American Economic Review* 53 (1963), pp. 941-73; reprinted in Arrow, *Essays in the Theory of Risk-Bearing* (Chicago: Markham Publishing Co., 1971).

¹However, moral hazard does refer to a situation in which the actions of one person influence the price paid by other parties to the insurance contract.

of publically provided victim compensation under standard assumptions about individual behavior.

Basic Model

Assume a world of individuals faced with the same institutional constraints: the existence of crime, the availability of private crime insurance, and the ability to purchase private goods and services which will reduce the likelihood of crime. The utility maximizing individual considered here has neither special nor uniform tastes, he has "normal" or "rational" tastes. All goods considered here are normal goods to the individual, in his current budget range. That is, this individual does not like to suffer the costs of crime. If the prices allow, he will purchase insurance to spread-out the monetary burdens of victimization and will engage in activities which will reduce the probability of criminal assault.

For simplicity, assume that the individual has a set income or endowment, B , which is his budget per time period. All income is spent in the current time period. The goods that can be purchased by the individual are C , an all purpose consumption good, and A , all private goods and services designed to reduce the probability of crime and private insurance for losses to crime. The other expense which enters the individual's budget is his expected loss from crime per period not covered by private insurance.

An individual faces an array of possible crimes, each of which has an array of possible costs. For simplicity, assume the individual has enough information about crimes and their costs that he estimates a

net probability for the occurrence of all crimes, p , and a net average loss per occurrence, L . Then in any one time period the individual would expect to lose pL to crime in monetary expenses. That is, if he expects a \$1,000 loss with a 0.1 probability, he expects to lose an average of \$100 per time period to criminal attacks. This loss can be altered in manner of time distribution by purchasing private insurance. Depending on the amount of private insurance purchased, the individual will receive a payment of some value, V , should he be the victim of a criminal attack. When the individual purchases insurance the monetary value of his expected loss to crime is reduced by the value of the expected payment from the insurance company, so that net expected loss to crime would be $p(V - L)$. This sum must always be negative, so that expected losses to crime are positive. No one can expect to make money by being a victim. This assumption is realistic because insurance policies almost always have deductibles and/or co-insurance features, so that the loss to crime, L , will always exceed the value of the insurance payment, V .

Figure 4 displays the utility maximizing position of the individual with respect to the trade-off that exists between the all purpose consumption good and preventive activity, given his budget.

Introducing Public Insurance

Having established the individual's equilibrium that would exist in the simplified world constructed here, a complication can be added to display the impact of public crime insurance on the individual.

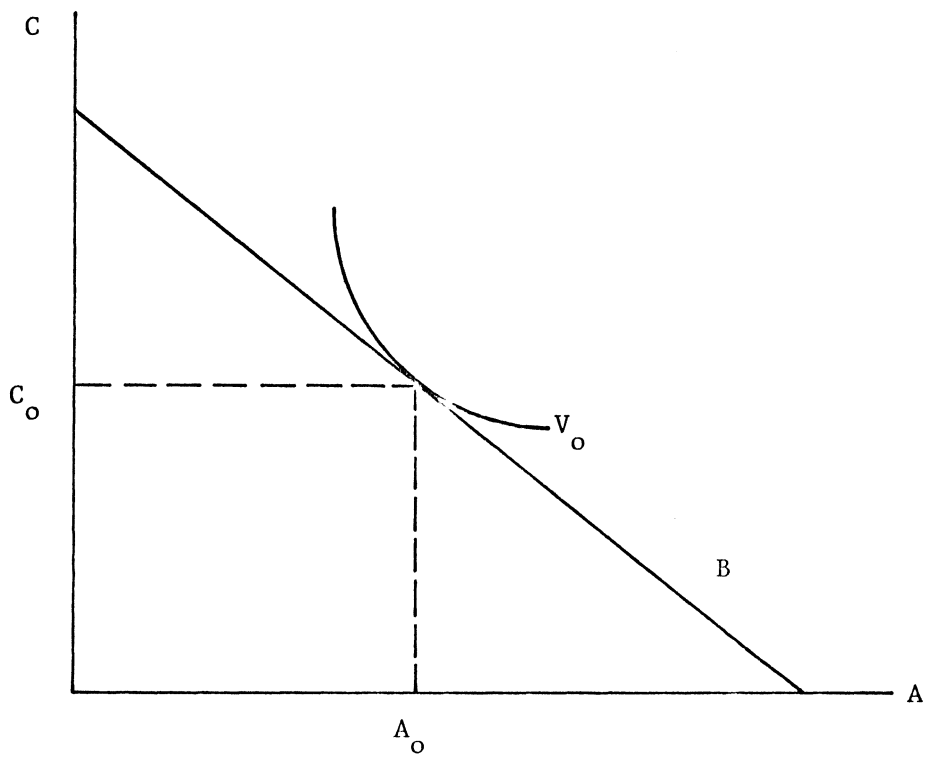


Figure 4: Utility Maximizing Position of the Individual

This will be a simplified version of the victim compensation program examined in this thesis, but it will not differ in its basic effect.

Assume that at the beginning of a time period, in which an individual is about to decide upon the composition of his budget, that a public insurance program is instituted. Public insurance would cover some of the same area covered by existing private insurance, for individuals who happened to own such insurance. For the public insurance, just as for private insurance, the individual will have an expected insurance payment per crime suffered, R . For simplicity it is assumed that the individual faces a constant rate proportional income tax imposed to pay for the public insurance program. Given the tax rate, t , the individual faces a tax bill of tB .

The particulars of the tax structure used here are unimportant because the tax bill is assumed to be insignificant in its income effect on all the variables in the individual's budget, and because the tax bill the individual pays for the public insurance he receives is unrelated to any other action he takes. There are no substitution effects between tB and any variable. All decisions made regarding quantities of various commodities to consume will not be affected by tB . This assumption, that price for public insurance is unrelated to preference for the insurance and consumption of the insurance, is central to the problem raised by public insurance.¹

¹It should be noted that there has been assumed to be no inter-relationship between private insurance and private goods and services designed to prevent criminal activity. Since they are lumped together as A here, substitution effects can be ignored. Individuals who engage in more preventive activities may pay lower insurance premiums than do

The new equilibrium position of the individual yields different quantities consumed of the goods, due to the addition of the new public service. He can use any quantity of the public insurance and the tax price he pays will not be affected (actually it would be affected, but as one of tens of millions of taxpayers the change would be imperceptible). The individual will spend more of his budget on the public insurance tax and the consumption good. Because public insurance is a substitute for both private insurance and goods and services designed to reduce the probability of crime, the individual will spend less on A.¹ Figure 5 shows the effect on the individual's utility maximizing position due to the introduction of public insurance.

The budget constraint is shifted downward to account for the tax payment made to support public insurance. For simplicity, although this assumption will be relaxed later, it will be assumed that this individual expects to receive benefits from the program equal to his tax payments. Hence, although he pays tB in taxes, he receives that

individuals who purchase less preventive activity. With respect to crime insurance this effect may not be significant, as claimed by Pauly, but since that effect plays no role here it does not give any unfair advantage to private insurance. See Mark V. Pauly, "Overinsurance and Public Provision of Insurance: The Roles of Moral Hazard and Adverse Selection," Quarterly Journal of Economics 88 (February 1974): 48.

¹For any one individual the effect of public insurance on private insurance is not certain. It is possible that they may be complements. If an individual purchased no private insurance prior to the institution of the public insurance, he may now purchase some private insurance to supplement the public insurance. This would probably be the case only for a minority and, in such cases, the insurance may serve as a substitute for the goods and services that reduce the probability of criminal attack, which is the primary trade-off this analysis considers.

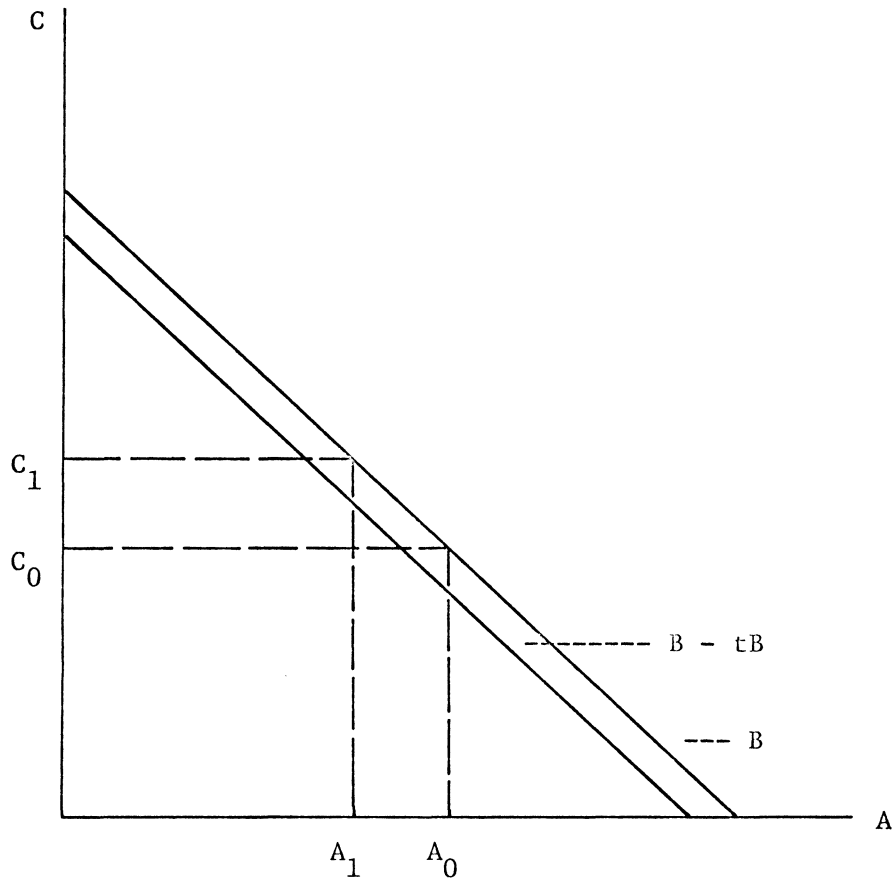


Figure 5: Public Insurance Effect on Equilibrium Position

amount in benefits from public insurance payments over time, so that his budget remains B. Whether the individual is made better-off or worse-off by the program depends on the shape of his indifference function. That is not of concern at this point. The primary effect to be noted is the substitution of public insurance for A. This is the moral hazard effect.

Expanded Model

Considering the cost of crime to the individual there are two variables to regard: the probability of attack per period and the expected loss per time per period to criminal attack. The probability of crime depends upon the level of protection chosen by the individual. Since the expected loss per period to assault is an environmental constant, once the level of preventive activity is chosen and the probability of attack determined, then the expected loss per period to crime is determined.

In Figure 6, Panel A repeats the commodity space of Figures 3 and 4, where the equilibrium values of the all purpose commodity and preventive activity are represented. In Panel B the relationship between the quantity of preventive activity and the probability of criminal attack is carried over to Panel C, which displays the indifference curve for the individual between the two bads he faces, the probability of criminal attack and the expected loss per time period to crime. The individual is indifferent among all positions along curve I. He happens to have p probability of suffering $V - L$ loss in the current time period, but would be willing to trade for more expected loss per period if the probability of criminal attack were reduced. The value of L is

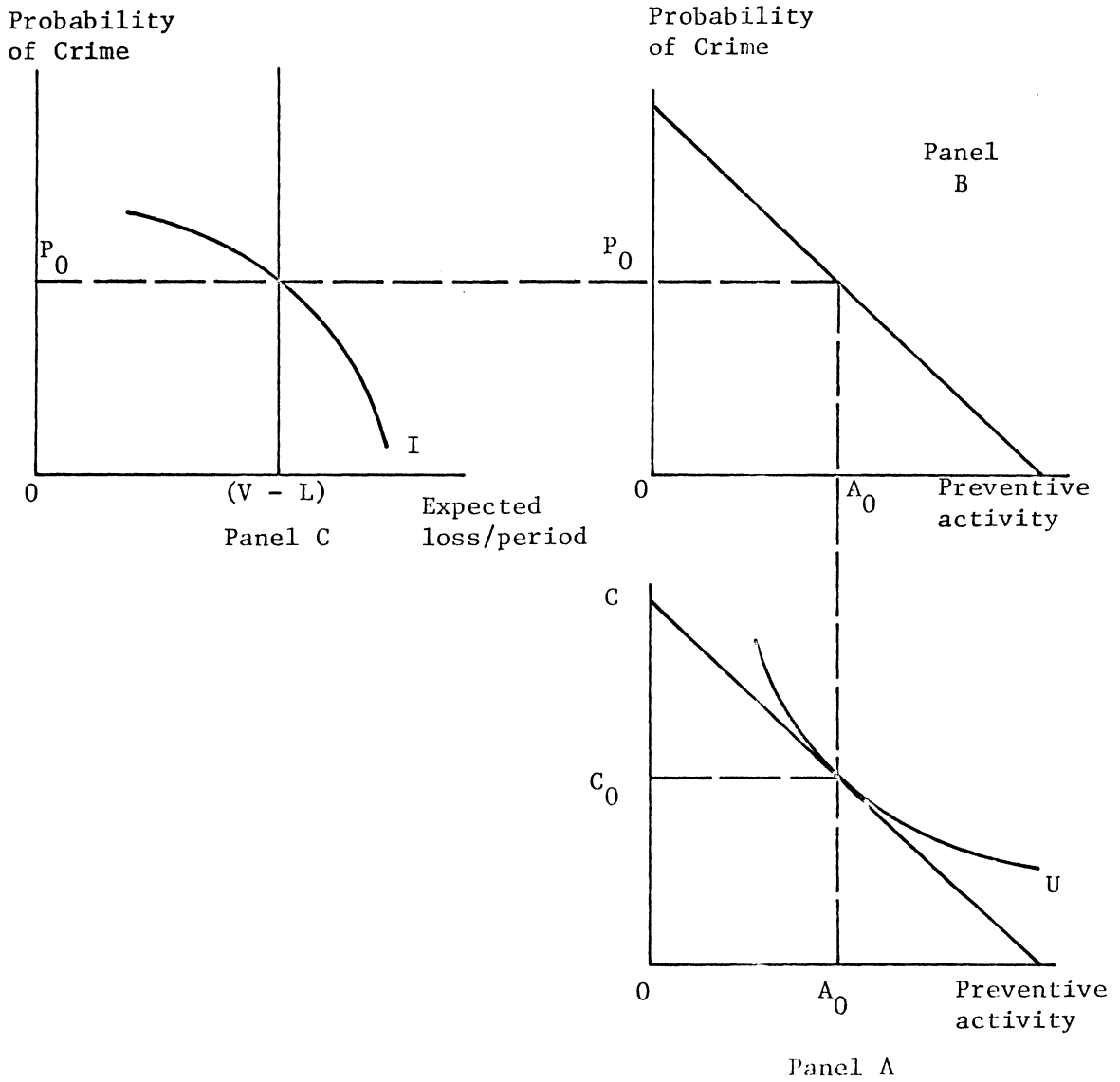


Figure 6: Equilibrium Prior to Public Insurance

exogenous to the individual, but he chooses the values of V and p as best he can given his budget constraint and preferences.

The positions shown in Figure 6 are assumed to be the equilibrium values of the variables facing the individual prior to the introduction of public insurance. To understand the impact of public compensation the model has been expanded, as seen in Figure 7. In this diagram the top two panels have been added to those of Figure 6. Panel E displays the relationship between the level of public insurance provided to the individual and the expected loss per period to crime. Clearly, the more insurance provided by the state, the lower the expected loss per period for the individual. Panel D illustrates the trade-off between public crime insurance and private activities that is possible when public compensation is available.

The basic change that occurs when the individual moves from his equilibrium position established prior to the introduction of public compensation, as diagrammed in Figure 6, to the new equilibrium he established when he adjusts to the existence of the public insurance is shown in Figure 8. In Figure 7, the individual was suddenly faced with a new good to use, public insurance. In Figure 8 he adjusts to the existence of this new good. The shift that occurs in Panel A is the same as was discussed for Figure 5, the substitution of public insurance for private preventive activities, the moral hazard effect.

The decline in equilibrium A causes the probability of criminal attack to increase. This would cause expected losses per period to increase, but the existence of restitution drops the expected loss per

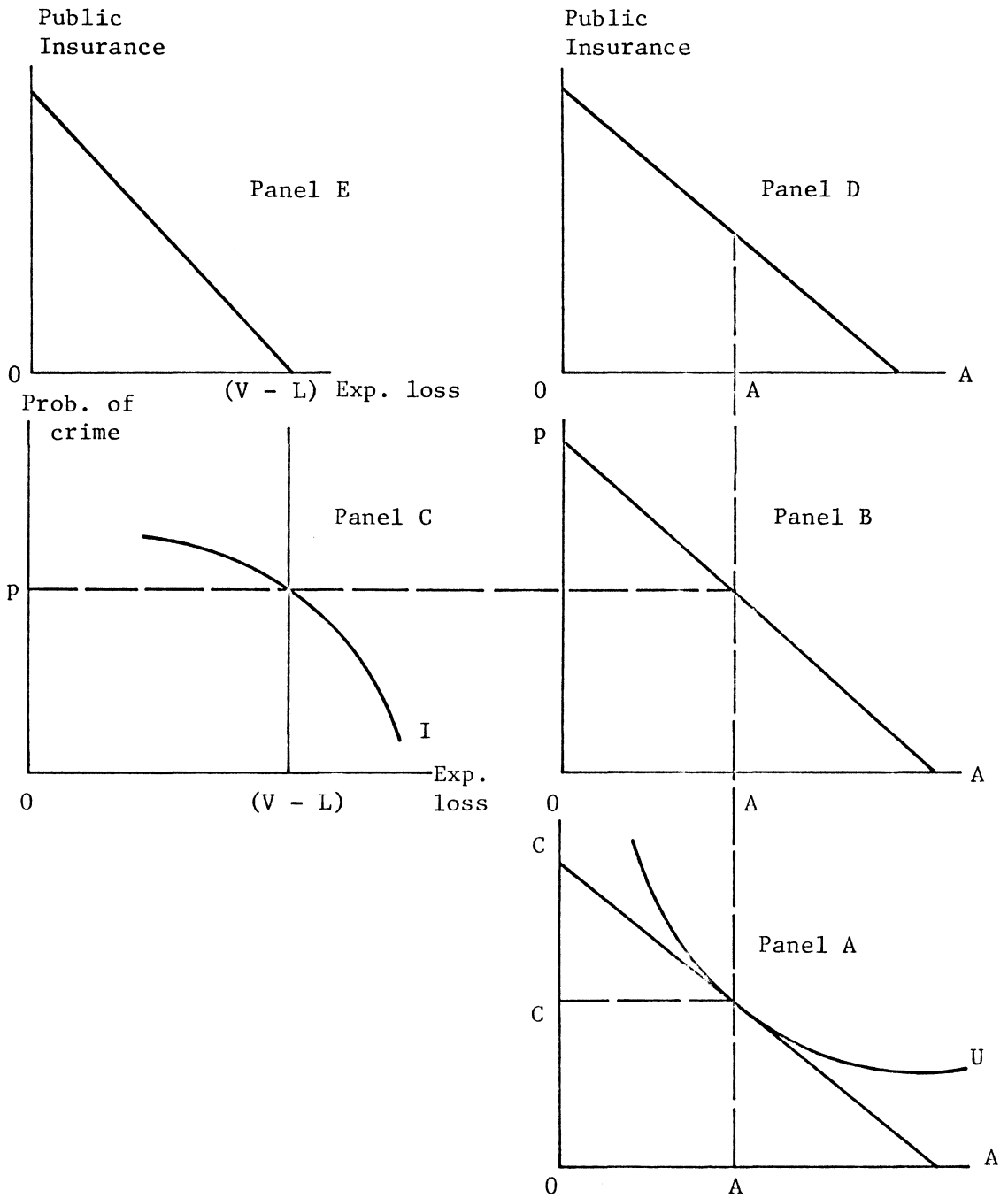


Figure 7: Equilibrium Position and Public Insurance

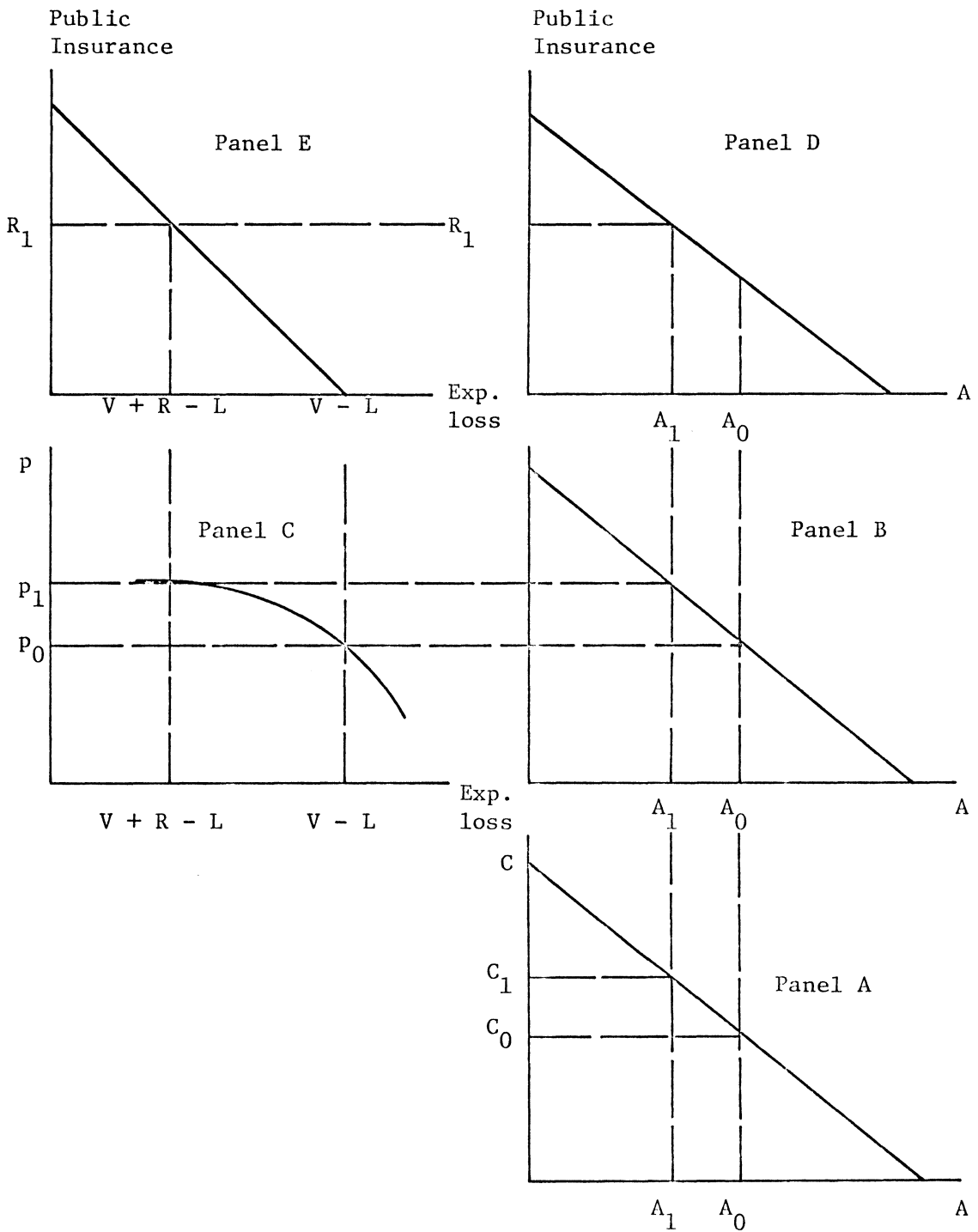


Figure 8: Equilibrium Position with Public Insurance

period from $V - L$ to $V + R - L$, so that the new position on the indifference curve I may very well leave the individual no worse off than he was before the public insurance program existed. As seen in Panel D, the existence of public restitution enables the individual to trade preventive activity for restitution payments. Actually the individual is "forced" to use restitution because he cannot choose to not purchase it if he does not like it, all citizens must pay their taxes. He could refuse to accept payments, but it is assumed here that most individuals will use the program as entitled.

This simple model displays the primary problem presented by public insurance for losses to crime. The problem is the moral hazard problem, the perverse effects on incentives produced by the existence of insurance. Each individual has the incentive to use public insurance as if the price was zero, because his tax "premiums" are unrelated to the benefits he receives from the insurance program. By reducing the amount of preventive activity he purchases, the individual can compensate for the additional losses he will suffer due to criminal attacks with the restitution payments he will receive. As shown in Figure 8 the individual has adjusted so that he is no worse off than before the program existed. However, the number of criminal attacks has increased.

When the increase in crime and its associated resource loss is aggregated for society, the problem becomes more significant. Rather than devoting resources to preventive activity the resources are diverted to pay for the losses caused by the existence of more crime, which is actually a subsidy for criminal activity. As with most public programs some individuals will be net beneficiaries and others will be net

losers, as will be considered shortly. While it is hypothesized here that the public insurance program would cause a net loss, this cannot be certain unless the hypothesis could be tested.

In some instances collective provision of goods and services is preferable to private provision.¹ It is possible that such is the case for public insurance. An empirical test may become available based on the New Zealand experience with public insurance, which was discussed in Chapter II. In accord with the hypothesis here that public insurance would be inefficient, two examples are posited under extremely different assumptions. These situations make extensive use of ceteris paribus but may provide some insight into the possible effects of public insurance.

Equal Incomes, Different Preferences

Consider a community divided into three groups of equal sizes, which differ only in preferences for protection. These three groups are represented by three individuals: Cautious, Daring and Neutral. Daring, at his present level of income has no desire to purchase protection but is very much willing to support a public insurance program for crime victims. The program proposed by Daring will have all individuals pay identical tax shares, because all receive equal incomes, and receive full monetary compensation from the public treasury for losses incurred in criminal attacks. Neutral, because he is a sympathetic individual,

¹See James M. Buchanan and Milton Z. Kafoglis, "A Note on Public Goods Supply," American Economic Review 53 (June 1963): 403-14.

and because he will receive benefits equal to his tax share, joins Daring in support of the program. It is passed into law by a two-thirds vote over the objection of Cautious, who purchases more preventive activity than either of the other two individuals.

Since the major impacts of the program are on Daring and Cautious, this will consider only what happens to them once the program is implemented. The simple numerical example in Table 3 will help to illustrate the adjustment process that occurs with the initiation of the public program.

Daring has no use for A at the present price, so he spends his entire income on the all purpose consumption good. Because of this, Daring has a greater probability of criminal assault each period than does Cautious, who spends 25 units of his income on A. This expenditure reduces the expected loss per period to 10 units for Cautious, compared to 20 units loss for Daring. These initial private equilibrium positions are displayed in Figure 9, which also shows the changes in C and A that occur for both individuals once the public insurance is in effect.

Tax shares for the public insurance program are the sum of the total losses suffered (which equals restitution) divided by two (ignoring the existence of Neutral who pays the same as he receives). In the lower part of Table 3, Daring, who continues to purchase no preventive activity, still loses an average of 20 units per period as before, while Cautious loses an average of 12 units per period to crime, because he purchases less preventive activity than before. The total losses are: $20 + 12 = 32$, for a tax share of 16 each, assuming administrative costs

TABLE 3

Equal Incomes, Different Preferences

| Time Period | Variable | Value per Period | |
|--|------------------------------|------------------|----------|
| | | Daring | Cautious |
| Pre-public insurance | Gross income | 100 | 100 |
| | Expenditure on A | 0 | 25 |
| | Expected loss to crime | 20 | 10 |
| | Consumption of C | 80 | 65 |
| With public insurance (includes increased crime) | Gross income | 100 | 100 |
| | Expenditure on A | 0 | 20 |
| | Public insurance tax share | 16 | 16 |
| | Expected loss (=restitution) | 20 | 12 |
| | Net value of restitution | +4 | -4 |
| | Consumption of C | 84 | 64 |

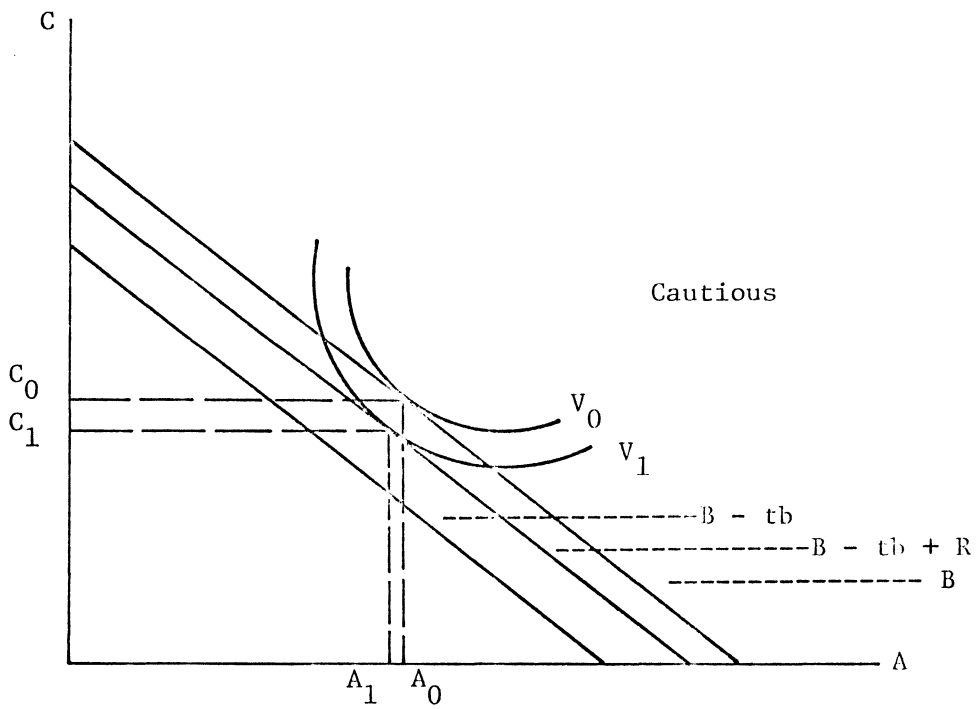
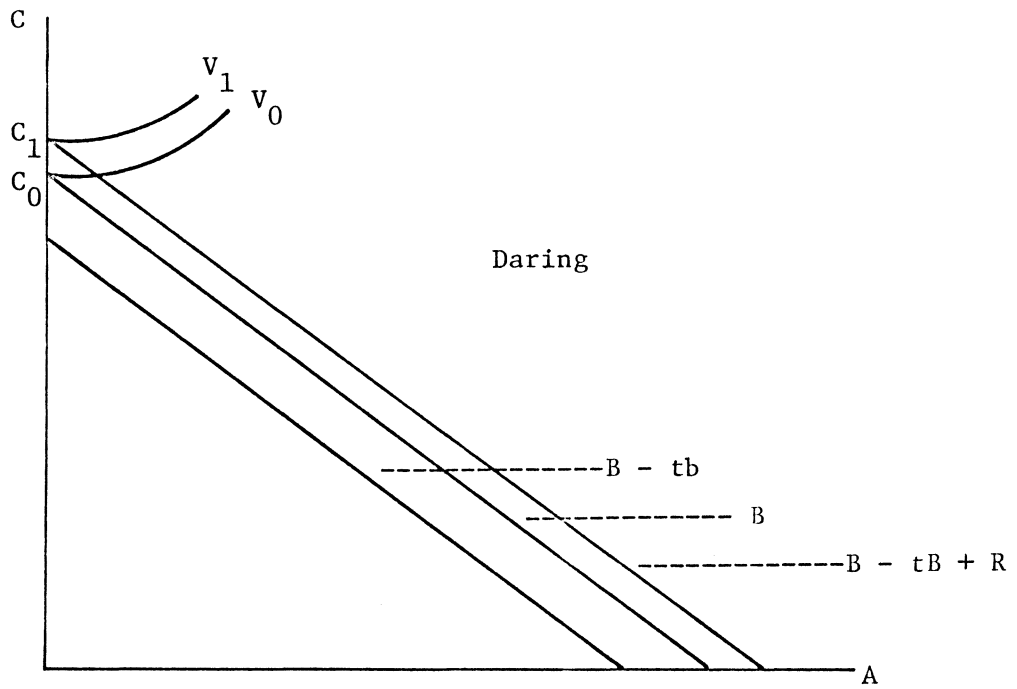


Figure 9: Public Insurance and Risk Preferences

to be zero. Cautious incurs higher expected losses to crime because he purchases less A for two reasons: first, he can substitute public insurance for preventive activity, and second, he has suffered a drop in real income because his tax share is larger than his benefits. Daring has incurred an increase in real income at the expense of Cautious. The net impacts of the program are: a subsidy for Daring's consumption of C at the expense of Cautious, and a subsidy for increased criminal activity. Since Daring has been made better off and Cautious has been made worse off by the program (Neutral remains the same) and there has been a net increase in crime, the overall effect of the program is inefficient.

The inefficient aspects of the public compensation program in a world of individuals with equal incomes but different preferences is best illustrated in Figure 8. It displays what happens to Neutral and can be used to consider what happens to Cautious. Both individuals make the same basic shifts in all the quadrants, but Cautious suffers a decline in real income so that for him Panel A would be like it is in Figure 9. The new equilibrium values note the decline in A, which effectively is traded for public insurance. This leads to an increased probability of criminal attack.

Although Cautious expects to lose more to crime, 12 units versus 10 previously, he will be paid for the 12 units he loses by the restitution program, hence his loss falls from $V - L$ to $V + R - L$. His loss does not fall further because he is not compensated for his non-monetary losses, such as pain and suffering. The increase in the probability of criminal attack reflects the increase in general criminal

activity, which means that more of the society's total resources are being lost to crime.

The program seems to violate fairness in this setting. The initial income equality of the individuals has been destroyed by the subsidy from Cautious to Daring. Cautious has been forced to pay for the losses incurred by a citizen of equal wealth, who happens to have different risk preferences with respect to crime.

Different Incomes, Identical Preferences

Now consider a community composed of three equal size groups, represented by Rich, Middle, and Poor, who come from three different income level groups. However, all individuals have identical preference mappings. Much as in the previous example, assume that Poor convinces Middle that a public insurance program is desirable and will cost him nothing, all income transfers will be from Rich to Poor.

This model is closer to the situation envisioned by many proponents of public compensation. They contend that the poor suffer a disproportionately large amount of crime, are least able to protect themselves from crime, and can least afford to cover the costs crime imposes. The Rich's in our society are to subsidize the insurance program for the Poor's. This example will indeed be constructed so that Rich does subsidize Poor, so that the good aspect of the program, as advocated by some, can be examined.

For ease of exposition, Figure 10 places Poor and Rich in commodity spaces drawn to the same scale for comparison purposes. This diagram displays the real income transfer from Rich to Poor via the

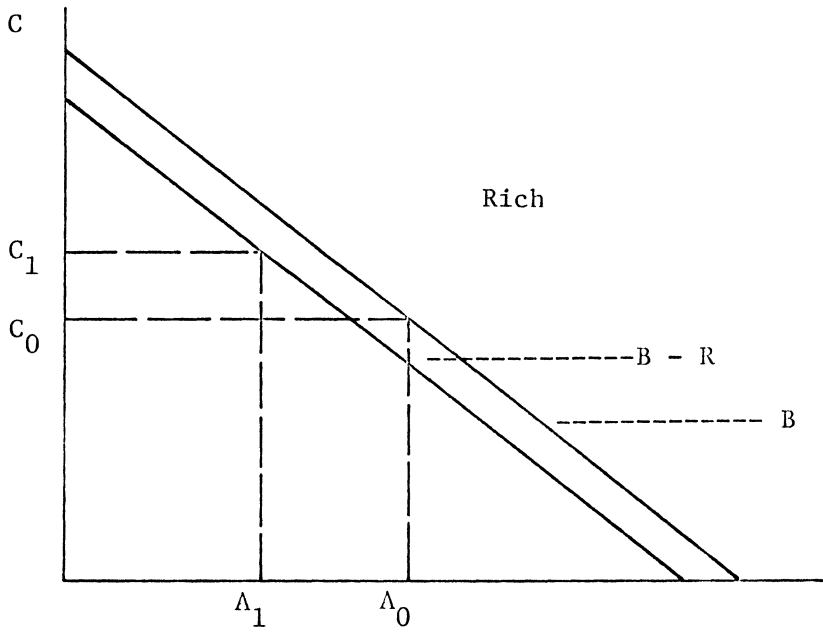
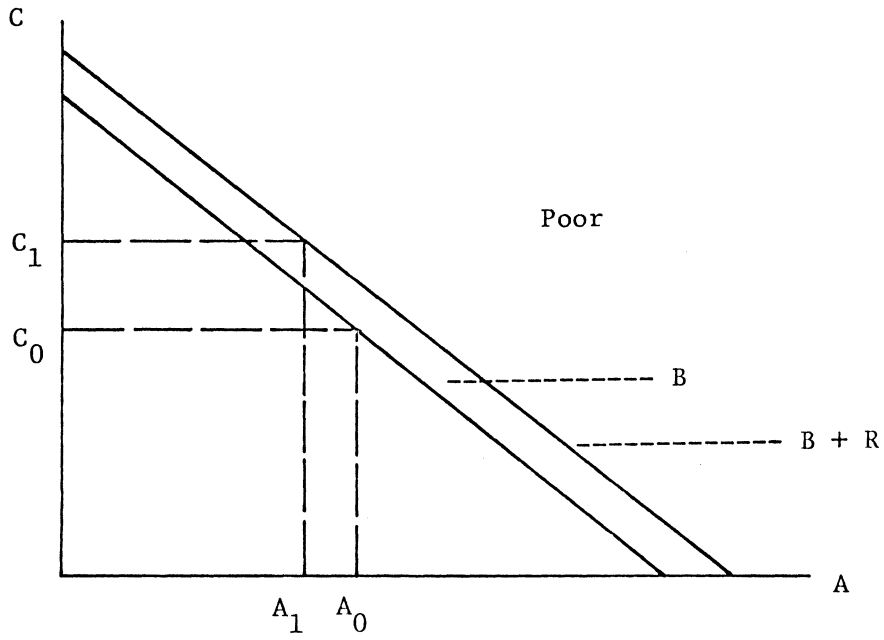


Figure 10: Public Insurance and Income Transfers

public insurance program. Since Poor receives a subsidy, his real income is increased and he attains a higher level of consumption than before. Rich incurs a loss of real income and consumption.

The final effect of the program here is unclear.¹ The income transfer is accomplished but, due to the substitution of public insurance for A, both may suffer more criminal assaults than in the past. The impact for both would be as in Figure 8 (except for Panel A in Figure 8). The net effect of the program may be as follows: Rich is left worse off because he loses real income and suffers from more crime; Middle feels no different because the increased crime he suffers is compensated by the public insurance; and Poor is better off because his real income is higher, but he does suffer more criminal attacks. The aggregate impact of the program is to subsidize criminal assaults on individuals of all income levels. This leads to a net loss of resources and is, therefore, inefficient.²

The increase in real income received by Poor, the only good or equitable part of the program, for those who view that as a desirable policy goal, could have been accomplished more efficiently, without the side effects on criminal activity. By simply taxing cash from Rich and giving it to Poor, as shown in Figure 11, the moral hazard problem is avoided. There is no substitution of public insurance for

¹If Rich is victimized more than Poor, there could in fact be a subsidy from Poor to Rich, but here the opposite is assumed.

²All diagrams have ignored the loss of real income to society as a whole, which would make all individuals considered somewhat worse off than shown.

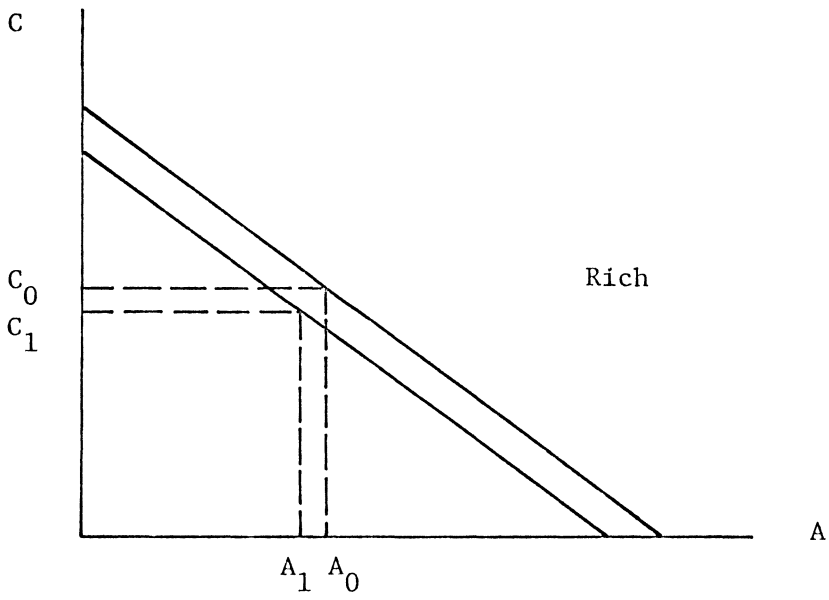
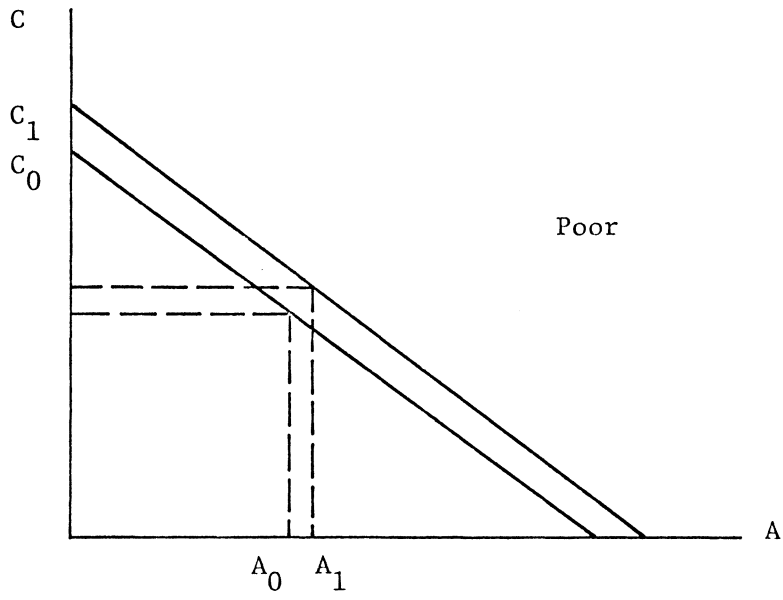


Figure 11: Simple Income Transfer

A. Since C and A are normal goods, as Poor gets more income he will purchase more of both, reducing his chance of criminal assault. Rich would not reduce his consumption of A as much in the case of a cash grant to Poor as when public insurance was the vehicle of the transfer.

Conclusion

Under two sets of extreme assumptions it has been demonstrated that public insurance for the victims of crime is inefficient compared to existing private alternatives. To achieve these results the necessary assumptions had to be strong. The two situations posited would not be easy to test empirically, they are presented as possibilities that may be intuitively plausible. The purpose of the analysis has been to bring forth some considerations about the proposed public insurance program that have been completely overlooked in all writings on victim compensation.

If the model presented here has validity, then public compensation for pecuniary losses to crime may not generate the benefits intended by the proponents. Economic efficiency is not necessarily the test for a public program. However, if equity is the primary concern that could lead to the adoption of such a program, then the relative efficiency of alternative methods of providing the desired end should be considered.

CHAPTER VI

A NOTE ON THE RELATIONSHIP OF CRIME AND PUNISHMENT AND A CONCLUDING SUMMARY

The status of the victims of crime in this country deserves the attention that it is beginning to receive from legislators and scholars. As legal institutions have developed over the past centuries the position of the victim has clearly worsened, in that victims have been made almost solely liable for any costs they might incur. By itself, victim liability would not yield the tragic results we are experiencing today. The legal position of the victim is little different now from that of 70 years ago. The primary change has been in the status of the criminal, which has led to continual increases in victimization.

Crime is big business in the United States, so the extent of victimization is massive. In 1973 there were approximately 37 million victimizations of persons age 12 and over, households and businesses. This included 20 million crimes against persons and 15 million crimes against households.¹ Hence, individual citizens suffered the immediate costs of over 35 million crimes (not counting the costs of "victimless

¹National Criminal Justice Information and Statistics Service, Criminal Victimization in the United States, a National Crime Panel Survey Report, No. SC-NCP-N-2 (Washington, D.C.: Government Printing Office, 1975), p. 1.

crimes," crimes against public property and order, and crimes which occur in relatively small numbers). All categories of crimes have been growing steadily and rapidly, at least doubling in the past decade.¹ There is no evidence of any basic change in this trend.

This should not surprise anyone who believes that punishment deters crime.² Over the last three decades fewer and fewer criminals per capita have been sent to prison for committing more and more crime. On a per capita basis, between 1940 and 1970 there was a 30-percent fall in the number of persons sent to prison annually and a similar decline in prison population.³ Since the cost of committing a crime has declined, the number of profitable crimes has risen. The increase in victimization can be expected as long as this trend continues.⁴

In 1973 there were 204,349 prisoners in state and federal prisons. There were 127,686 commitments from court, parole or conditional release violators returned, and escapees returned under old sentence.

¹According to the estimates and figures provided in the FBI's annual Uniform Crime Reports.

²After a long period of disfavor by intellectuals, the belief that punishment does deter crime is being revived in academia. See Marc F. Plattner, "The Rehabilitation of Punishment," Public Interest (No. 44, Summer 1976): 104-14.

³National Criminal Justice Information and Statistics Service, Sourcebook of Criminal Justice Statistics -- 1973, Michael J. Hindelang et al., ed. (Washington, D.C.: Government Printing Office, 1974), pp. 346, 350.

⁴For the fundamental analysis of crime activity, see Gordon Tullock, The Logic of the Law (New York: Basic Books, 1971); and Gary S. Becker, "Crime and Punishment: An Economic Approach," Journal of Political Economy 76 (March 1968): 169-218.

There were 113,771 releases, deaths and escapes from prison.¹ This means there was an annual turnover of about 120,000 prisoners that year, so that the average sentence served per prisoner was 1.7 years or 600 days.² Hence, there were 72 million days served in prison for 1973. Since there were 37 million victimizations in 1973, the average prison time served per crime was about 2 days.³ The average time served for murder is much higher than the average time served for burglary and larceny, but it is clear that the expected punishment per crime is low.

According to the data that exist, the punishment per crime has been declining over the past few decades. The recent surveys of

¹National Criminal Justice Information and Statistics Service, Prisoners in State and Federal Institutions on December 31, 1971, 1972, 1973, National Prisoner Statistics Bulletin No. SD-NPS-PSF-1 (Washington, D.C.: Government Printing Office, 1975), pp. 12, 19, 25.

²This estimate is backed by several other sources. See Sourcebook of Criminal Justice Statistics -- 1973, pp. 381-419.

³This figure may be contested but is believed by the author to be accurate. The prison man-days is biased upward by time served for homicide, drug law violations, and other crimes not counted in the victimizations. These crimes appear to comprise over 10 percent of the violations for which time in prison is served. The population of the nation's local jails was about 140,000 in 1973. This figure was excluded because most jail inmates are awaiting legal action. Those serving time are often there for offenses not included in the victimization totals. In 1973 there were 1.6 million arrests for drunkenness, 1.0 million arrests for driving under the influence, 0.7 million arrests for disorderly conduct, 0.6 million arrests for drug law violations, 0.4 million arrests for simple assault, and arrests for prostitution and other non-victim offenses. See National Criminal Justice Information and Statistics Service, The Nation's Jails, Report No. SD-J-4 (Washington, D.C.: Government Printing Office, 1975), p. 23; Federal Bureau of Investigation, Crime in the United States, Uniform Crime Reports 1973 (Washington, D.C.: Government Printing Office, 1974), p. 121; Sourcebook of Criminal Justice Statistics -- 1973, pp. 363, 381-415.

victimization sponsored by the Law Enforcement Assistance Administration reveal that the Uniform Crime Reports grossly understate the amount of crime that actually occurs.¹ Figures since 1940 from the Uniform Crime Reports are used here because there are no alternative sources, and because it is assumed that the bias in reporting crime during the time in question did not change, so that the magnitudes of the changes in crime over time are useful.²

Table 4 displays the traditional Uniform Crime Reports index with larceny excluded. Because the dollar definition of larceny has changed over time and because inflation biases upward the number of \$50 minimum larcenies over time, that crime is excluded from the index here.³

Table 5 displays the percentage increase in crime during the last several decades. The inflationary bias to the index caused by the nominal dollar definition of larceny is illustrated there.⁴

¹For many years the FBI's Uniform Crime Reports were the best sources of information, and often the only sources, for many topics in the area of criminal activity.

²There are arguments on both sides of the incentive to deflate or inflate reported crime, but no convincing argument has been made, except for the immediate past, as to which trend predominated.

³The crimes included in the index are: murder, rape, aggravated assault, burglary, robbery, and auto theft.

⁴It is possible, of course, that larceny has increased at a greater rate than the rest of the crimes in the index, but inflation has undoubtedly biased the counting of larceny. Using the consumer price index, with 1957 as the base for \$50, the nominal dollar values are: 1940, \$24.9; 1950, \$42.8; 1960, \$52.6; 1970, \$68.9; and 1973, \$78.9.

TABLE 4

Reported Crime in the United States^a

| Year | Number | | Index ^b | |
|------|-----------|-------------|--------------------|-------------|
| | All | All Larceny | All | All Larceny |
| 1940 | 677,844 | 620,464 | 514.8 | 471.2 |
| 1950 | 988,114 | 745,869 | 655.7 | 494.9 |
| 1960 | 2,019,600 | 1,512,300 | 1,126.2 | 843.9 |
| 1970 | 5,581,200 | 3,831,400 | 2,746.9 | 1,885.7 |
| 1973 | 8,666,200 | 4,347,100 | 4,129.7 | 2,071.5 |

^aIncludes homicide, rape, robbery, burglary, larceny and motor vehicle theft.

^bPer 10,000 population.

Source: Uniform Crime Reports

TABLE 5

Percent Increase in Reported Crime Index

| Time Period | All | All Larceny |
|-------------|--------|-------------|
| 1940-50 | 27.37 | 5.03 |
| 1950-60 | 71.76 | 70.40 |
| 1960-70 | 143.91 | 123.61 |
| 1970-73 | 50.34 | 9.85 |
| 1940-70 | 433.59 | 300.19 |
| 1940-73 | 702.02 | 339.62 |

The estimate of the magnitude of crime and the rate of increase in crime can now be compared to one estimate of the punishment for crime in the same time period. Table 6 shows the per capita crime index less larceny and the number of individuals received by the prisons from the courts per 100,000 civilian population. The crime index is then divided by the prisoner index to display the number of crimes reported in each year per individual sentenced to prison.

The change in the magnitude of the number of crimes committed for every criminal sent to prison is the factor to be noted. By 1973 there were six times as many crimes committed for every one person sentenced to prison than in 1940. Since the length of sentences served has not changed significantly over the years, the 1973 figure could be viewed as a reduction in punishment for crimes to one-sixth of the 1940 level.¹

The actual ratio of crimes committed per individual sentenced can be estimated for 1973. For all 37 million victimizations, which excludes millions of victimless crimes, approximately 120,000 persons were sentenced to prison or returned to prison for violating parole or conditional release.² This means there were about 300 victimization

¹Remember that the crimes included in the crime index comprise only a fraction of the crimes committed while the prisoner index includes all individuals sentenced by state and federal courts.

²Approximately 15 or 20 percent of those in prisons in 1973 were there for victimless crimes, such as: drug offenses, weapons offense, drunk or drugged driving, escape or flight, and jail offense. These prisoners are left in the total number admitted to prison because the total cannot be accurately broken down by reason for admission in 1973. In any event the basic result is not changed. See National Criminal Justice Information and Statistics Service, Survey of Inmates

TABLE 6

Crimes per Sentenced Prisoner

| Year | Crime Index | Prisoner Index | Crimes/Prisoner |
|------|-------------|----------------|-----------------|
| 1940 | 471.2 | 55.5 | 8.49 |
| 1950 | 494.9 | 46.1 | 10.74 |
| 1960 | 843.3 | 49.3 | 17.11 |
| 1970 | 1,885.7 | 39.0 | 48.35 |
| 1973 | 2,071.5 | 40.4 | 51.27 |

Source: Prisoner data from Sourcebook of Criminal Justice Statistics 1973, pp. 346, 359; Prisoners in State and Federal Institutions on December 31, 1971, 1972, and 1973, p. 19. The 1973 prisoner index is an estimate based on an extrapolation of 1970 court commitments as a percent of prison admissions.

incidents for every one person admitted to prison that year. For the violent crimes of rape, robbery, and aggravated assault there were approximately 82 crimes for every one criminal admitted to prison for those offenses. For burglary the ratio of crimes committed per prisoner admitted was about 315 to 1. For property crimes the ratios are even larger, but are not accurate due to the number of individuals who serve short jail terms for those crimes, for which data are not available.¹

There are two conclusions that can be drawn from the numbers presented here. First, the punishment per crime is low. Second, the odds of a criminal being sent to prison for any one criminal act are low. These factors are often listed as two of the major deterrents to crime. Yet, for crimes that often inflict large monetary, physical, and psychological costs on victims, the punishment appears, to this observer, to be very low.

The chance of punishment and the extent of punishment are only two of the factors to be considered by a criminal. The income from crime is another factor. Evidence about the income of criminals from crime is scarce. However, given the large number of crimes, it clearly

of State Correctional Facilities -- 1974 Annual Report, National Prisoner Statistics Special Report No. SD-NPS-SR-2 (Washington, D.C.: Government Printing Office, March 1976), p. 28

¹For motor vehicle thefts the ratio was 278 to 1, for larceny the ratio was almost 3,000 to 1. These ratios would be affected by jail sentences, but the larceny ratio would still be very large. These ratios were based on the assumption that 60 percent of the prisoners in prison in January 1974 were there for crimes committed in 1973, based on the annual admission and departure rate. The ratios shown are not accurate but appear to be generally correct.

is an activity that has become more desirable to more individuals.

Table 7 reproduces the estimated annual gross income of several successful criminals as reported by one researcher. These figures are not necessarily representative of the income earned by criminals, but give some evidence of how criminals can live by crime. Since the benefits from criminal activity appears to be substantial, at least for some individuals, and the expected punishment per crime committed is quite low, it does not seem surprising that there is a large amount of criminal activity.

Two interesting points concerning crime have arisen from the data gathered in the victimization surveys. First, the extent of crime is much greater than was known from other reports. Second, the recent increase in crime is not as rapid as has been reported. The number of crimes reported to the police, estimated by the Uniform Crime Reports, has been widely used as the measure of crime in the United States. As shown in Table 8, reported crimes are only a fraction of the crimes that occur, according to the victimization surveys.

Although the number of crimes that occur is much higher than the numbers usually publicized, the annual increase in crime, at least for 1973 to 1974, is not as high as reported. Why the number of reported crimes should have increased so much more than the actual number of victimizations is not clear. Several explanations have been offered for this occurrence, which is illustrated by Table 9. It is possible that the publication of the victimization surveys pressured police departments to increase reported crimes so there would not be as large a difference

TABLE 7

Annual Gross Income of Several Criminals

| Specialty | Location | Income |
|----------------------|------------------|-----------|
| Hotel burglar | East Coast | \$ 75,000 |
| Pickpocket | Miami | 20,000 |
| House burglar | Long Island | 25,000 |
| Industrial burglar | Westchester Co. | 75,000 |
| Bank robber | East Coast | 24,000 |
| Shoplifter | Washington, D.C. | 15,000 |
| "Hitman" by contract | Chicago | 75,000 |
| Securities thief | East Coast | 100,000 |

Source: "Cime's Big Payoff," U.S. News & World Report, February 9, 1976, p. 51, citing Thomas Plate, Crime Pays!.

TABLE 8

Reported Crimes as a Percent of Actual Crimes (1973)

| Category | Actual Crimes | Reported Crimes | Report/Actual |
|------------------------|---------------|-----------------|---------------|
| <u>Violent Crimes</u> | 3,232,758 | 871,450 | .27 |
| Aggravated Assault | 1,687,254 | 417,430 | .25 |
| Robbery | 1,383,268 | 383,260 | .28 |
| Rape | 162,236 | 51,230 | .32 |
| <u>Property Crimes</u> | 31,894,148 | 7,794,800 | .24 |
| Burglary | 7,820,579 | 2,549,900 | .33 |
| Larceny | 22,740,667 | 4,319,100 | .19 |
| Motor Vehicle Theft | 1,332,902 | 925,700 | .69 |

Source: Reported crimes from Uniform Crime Reports -- 1974, p. 55, are based on a 1973 population of 209,851,000. Murder and manslaughter were excluded here because they were not covered by the victimization survey (19,350 were reported). Actual crimes from Criminal Victimization in the United States -- 1973 Advance Report, pp. 12, 19, 23, are based on a 1973 population of 162,236,000 (persons age 12 and over), a household population of 69,442,000, and a business establishment population of 6,800,000. The figures are not completely comparable due to a small difference in the population base and due to possible differences in the understanding of what constituted a particular crime, but this does not appear to have been a major problem.

TABLE 9

Per Capita Percent Change in Reported and Actual Crimes
1973-74

| Category | Reported Crimes | Actual Crimes | Reported/Actual |
|---------------------|-----------------|---------------|-----------------|
| Aggravated Assault | +8.0 | +3.3 | 4.7 |
| Robbery | +14.5 | +6.1 | 8.4 |
| Rape | +7.4 | +4.3 | 3.1 |
| Burglary | +18.0 | +2.1 | 15.9 |
| Larceny | +20.6 | +7.7 | 12.9 |
| Motor Vehicle Theft | +4.7 | -1.7 | 6.4 |

Source: Uniform Crime Reports -- 1973, 1974, pp. 58 and 55, respectively; National Criminal Justice Information and Statistics Service, Criminal Victimization in the United States -- A Comparison of 1973 and 1974 Findings, A National Crime Panel Survey Report No. SD-NCP-N-3 (Washington, D.C.: Government Printing Office, May 1976), pp. 11, 24, and 33. For actual crimes: Robbery, Burglary, and Larceny, figures are weighted averages of the averages reported for personal crimes, household crimes, and business crimes, where appropriate.

between reported and actual crime. It is also possible that large increases are reported to make an effective case for continued budget increases for police departments. at a time when many governments were not experiencing revenue increases as large as in prior years. Neither of the arguments may be entirely correct, but it has not been demonstrated why individual victims would have had a greater incentive to report crimes in 1974 than 1973.

Given the lack of will on the part of the political and the judicial system to deal more severely with criminals, victimization will continue to be a tragic problem, so long as the punishment per crime is as low as it is at present.¹ It now costs victims tens of billions of dollars annually, and will grow worse as the value of crime increases.² There appears to be no judicial or political move to lessen the costs of victimization by instituting actions that would reduce the number of crimes committed.

Victim compensation is an attempt to lighten some of the immediate costs of victimization suffered by some individuals. It would, of course, do nothing to reduce the gross costs of victimization. Indeed, the point of this analysis has been to demonstrate that, at the very least, it would result in more resources being devoted to the area

¹Some judicial experts, including Mr. Chief Justice Burger, contend that criminals would be handled more efficiently if there were more judges. There may be some merit to this claim, but as the Appendix shows, it is not clear that the workload of judges has suddenly become heavier.

²According to one estimate, the cost of crime for 1975 was \$97 billion. The costs incurred directly by victims of crime was about \$35 billion. "Crime's Big Payoff," p. 50.

of victimization, even if the volume of crime were unaffected. As now designed, victim compensation could make the number of victimizations increase. Certainly the opposite of the result desired by anyone other than a professional criminal.

The only way that the costs of victimization can be reduced, and the plight of the victims of crime significantly bettered, is for the root of the problem to be attacked, not by masking the problem with political placebos, which could burgeon into tax burdens in the future. Charitably, victim compensation as now proposed, can be viewed as a misguided humanitarian attempt to do something beneficial for truly unfortunate people. At worst it can be viewed as a massive subsidy for lawyers and an attempt to sooth public ire toward public officials and members of the judiciary who did much to create the massive problem we have today. Such masking may retard the day when the pressures for strong actions against criminals builds to the point where politicians are forced to pass measures designed to stop criminals. In the meantime the position of individuals as victims would have continued to worsen.

In Chapter II, a review of historical evidence indicated that as organized society developed and people created legal institutions, criminals came to be punished more severely. In some cases, when the criminal did not compensate his victims, the neighbors of the victim were forced to pay for the damages done. This served as a form of insurance, and as an incentive for individuals to provide protection via vigilance in their own community. All of these different forms of legal organizations provided various incentives to reduce crime. The

type of compensation employed today in many jurisdictions, and proposed for the entire nation, provides no incentives to prevent crime. Since the compensation is made from a tax paid by tens of millions, no one individual will feel any incentive to be more vigilant in preventing crimes in hopes of reducing his compensation contribution. Some scholars have said that we should look to history for examples of "enlightened" societies which provided for the victims of crime. Indeed we should. The lesson learned is that no society ever employed a compensation system like the one proposed now. One would not expect developing societies to allow irrational institutions to emerge and exist, if the society were to be successful.

The reason that irrational institutions emerge and persist today is due to the nature of existing political institutions. As discussed in Chapter III, the primary forces pushing for adoption of public compensation are special interest groups which will benefit from the existence of such a program. There is no lobby of past or potential victims arguing for implementation of public restitution. The direct pressure is from lawyers, bureaucrats, and other groups which perceive benefits from the legislation. There is little evidence that humanitarian interests have ever generated such programs.

Political gains to politicians from special interests and some general popular interest in public compensation may lead to adoption of the program. Bureaucratic interests would cause the program to expand in size and function. The use of a 75-percent matching grant to finance the state programs would insure growth of the program, much more than if

states had to finance the programs individually or if it were only a federal program. Since the decision cost to the states is only one-quarter of what they spend, and since the federal government will be bound to pay for whatever the states spend, the program would seem likely to grow rapidly. Program administrators and lawyers are given a good opportunity to expand the program beyond its present intent, and it is to be expected that they will take advantage of their opportunities.

Individuals favoring state sponsored restitution may see nothing wrong with the expansion of the program to the size estimated in Chapter III. However, if justice for victims is truly desired, and humanitarian notions are to prevail, then the proposed program should be equitable. In a democratic setting, Rawlsian notions of justice appear to provide a proper perspective. However, as discussed in Chapter IV, the application of such a paradigm of justice does not appear to generate a compensation program of the nature of the one considered here. In a constitutional setting, fairness would dictate that the criminal be liable for the costs suffered by victims. In an operational contractual setting, where many victims continue to suffer despite the liability of the criminals, justice may dictate aid for victims. Basic justice would dictate that equal victims be treated as equals. Vertical and horizontal equity is called for, not some notion of justice according to income at the time of victimization.

A program designed to be just and to provide equal treatment for equal victims would also be based on some criterion of efficiency. Chapter V points out that if two potential programs are of equal justice, one would rationally choose the program with greater economic

efficiency. The current programs and the proposed national program meet neither tests of equity or efficiency. Even if the current program were changed to treat equals as equals, it would fail on the grounds of economic efficiency, in comparison to the alternatives discussed previously, which would make use of co-insurance and other features which help to reduce the moral hazard problem.

It may be that this society has fallen into what James Buchanan has called the samaritan's dilemma. There may have been basic changes in behavioral standards. If there has been a collective loss of will to enforce the laws and punish those who break the laws, the situation may never be reversed. Victim compensation seems to be a part of the perverse collective response to the ogre of crime, with which we seem unable to deal despite general agreement on the basic solution.

LITERATURE CITED

Articles

- Alchian, Armen and Demsetz, Harold. "Production, Information Costs, and Economic Organization." American Economic Review 62 (December 1972): 777-95.
- Alexander, Sidney S. "Social Evaluation Through Notional Choice." Quarterly Journal of Economics 88 (November 1974): 597-624.
- Arrow, Kenneth J. "Uncertainty and the Welfare Economics of Medical Care." American Economic Review 53 (1963): 941-73.
- Becker, Gary S. "Crime and Punishment: An Economic Approach." Journal of Political Economy 76 (March 1968): 169-218.
- _____ and Ehrlich, Isaac. "Market Insurance, Self-Insurance, and Self-Protection." Journal of Political Economy 80 (July 1972): 623-48.
- Breton, Albert and Wintrobe, Ronald. "The Equilibrium Size of a Budget-Maximizing Bureau." Journal of Political Economy 83 (February 1975): 195-207.
- Brett, Peter. "Compensation for the Victims of Crime: New Zealand's Pioneering Statute." Australian Law Journal 5 (1964): 21-27.
- Buchanan, James M. "A Hobbesian Interpretation of the Rawlsian Difference Principle." Kyklos 29 (1976): 5-25.
- _____. "The Inconsistencies of the National Health Service." Institute of Economic Affairs, Occasional Papers, No. 7 (November 1965).
- _____. "The Samaritan's Dilemma." In Altruism, Morality, and Economic Theory. Ed. by Edmund S. Phelps. New York: Russell Sage Foundation, 1975, pp. 71-86.
- _____ and Bush, Winston. "Political Constraints on Contractual Redistribution." American Economic Review 64 (May 1974): 153-57.
- _____ and Kafoglis, Milton Z. "A Note on Public Goods Supply." American Economic Review 53 (June 1963): 403-14.

- Burns, Peter and Ross, Alan M. "A Comparative Study of Victims of Crime Indemnification in Canada." University of British Columbia Law Review 8 (1973): 105-35.
- Chappell, Duncan. "Compensating Australian Victims of Violent Crime." Australian Law Journal 41 (1967): 3-11.
- _____. "The Emergence of Australian Schemes to Compensate Victims of Crime." Southern California Law Review 43 (1970): 69-83.
- Childress, Robert D. "Compensation for Criminally Inflicted Personal Injury." New York University Law Review 39 (1964): 444-71.
- Cosway, Richard. "Crime Compensation." Washington Law Review 49 (1974): 551-70.
- Covey, Joan M. "Alternatives to a Compensation Plan for Victims of Physical Violence." Dickinson Law Review 69 (1965): 391-405.
- Culhane, James E. "California Enacts Legislation to Aid Victims of Criminal Violence." Stanford Law Review 43 (1965): 266-73.
- Edelhertz, Herbert, et al. "Part I -- Public Compensation of Victims of Crime: A Survey of the New York Experience." Criminal Law Bulletin 9 (1973): 5-47.
- _____. "Part II -- Public Compensation of Victims of Crime: A Survey of the New York Experience." Criminal Law Bulletin 9 (1973): 101-23.
- Ehrlich, Isaac. "The Deterrent Effect of Capital Punishment." American Economic Review 65 (June 1975): 397-417.
- Eremko, James. "Compensation of Criminal Injuries in Saskatchewan." University of Toronto Law Journal 19 (1969): 263-76.
- Fahy, J. L. "The Administration of the Accident Compensation Act 1972." Economic Bulletin. Canterbury Chamber of Commerce, No. 592 (1975).
- Garner, J. F. "The Criminal Injuries Compensation Board." Public Law (1967): 323-29.
- Goldberg, Arthur J. "Preface." Southern California Law Review 43 (1970): 1-3.
- Harris, Duane G. "Compensating Victims of Crime: Blunting the Blow." Business Review. Federal Reserve Bank of Philadelphia (June 1972): 14-20.

- Harrison, David H. "Criminal Injuries Compensation in Britain." American Bar Association Journal 57 (1971): 476-81.
- Harvard Law Review. "Recent Legislative Action." Volume 78 (1965): 1683-86.
- Hochman, Harold and Rodgers, James D. "Pareto Optimal Redistribution." American Economic Review 59 (September 1969): 542-47.
- Jacob, Bruce R. "Reparation or Restitution by the Criminal Offender to his Victim." Journal of Criminal Law, Criminology and Police Science 61 (1970): 152-67.
- Lamborn, LeRoy L. "Propriety of Governmental Compensation of Victims of Crime." George Washington University Law Review 41 (1973): 446-70.
- _____. "Remedies for the Victims of Crime." Southern California Law Review 43 (1970): 22-53.
- _____. "Toward a Victim Orientation in Criminal Theory." Rutgers Law Review 22 (1968): 733-68.
- Laster, Richard E. "Criminal Restitution." University of Richmond Law Review 5 (1970): 71-98.
- Linden, Allen M. "Victims of Crime and Tort Law." Canadian Bar Journal 12 (1969): 17-33.
- Mansfield, Mike. "Justice for Victims of Crime." Houston Law Review 9 (1971): 75-80.
- Miami Herald. 1975.
- Miers, D. R. "Compensation for Victims of Crimes of Violence: The Northern Ireland Model." Criminal Law Review (1969): 576-86.
- _____. "Paying for Malicious Injuries Claims." The Irish Jurist 5 (1970): 50-69.
- Mueller, G. O. W. "Compensation for Victims of Crime." Minnesota Law Review 50 (1965): 213-21.
- Newsweek. "The Doctors' New Dilemma." February 10, 1975.
- New York Times. 1971-1975.
- Novack, Michael J. "Crime Victim Compensation: The New York Solution." Albany Law Review 35 (1971): 717-33.

- Pauly, Mark V. "Overinsurance and Public Provision of Insurance: The Role of Moral Hazard and Adverse Selection." Quarterly Journal of Economics 88 (February 1974): 44-62.
- Plattner, Marc F. "The Rehabilitation of Punishment." Public Interest (No. 44, 1976): 104-14.
- Prime, Terence. "Reparation from the Offender." The Solicitors' Journal 115 (November 19, 26, 1971): 859-61; 880-82.
- Rawls, John. "Reply to Alexander and Musgrave." Quarterly Journal of Economics 88 (November 1974): 633-55.
- Samuels, Alec. "Criminal Injuries Compensation Board." Criminal Law Review (1973): 418-31.
- Shank, William. "Aid to Victims of Violent Crimes in California." Southern California Law Review 43 (1970): 85-92.
- The Times. "£2m Paid to Victims of Violent Crime." November 12, 1971.
- Tullock, Gordon. "The Charity of the Uncharitable." Western Economic Journal 9 (December 1971): 379-92.
- _____. "Does Punishment Deter Crime?" The Public Interest (No. 36, Summer 1974): 103-11.
- U.S. News & World Report. "Crime's Big Payoff." February 9, 1976.
- Vitali, Samuel A. "A Year's Experience with the Massachusetts Compensation of Victims of Violent Crime Law, 1968 to 1969." Suffolk University Law Review 4 (1970): 237-66.
- Wall Street Journal. "New Zealand Offers the Balm of Money." September 16, 1975.

Books

- Borcherding, Thomas (ed.). Budgets and Bureaucrats: The Origins of Government Growth. Durham: Duke University Press, 1976.
- Buchanan, James M. Cost and Choice. Chicago: Markham Publishing Co., 1969.
- _____. The Limits of Liberty. Chicago: University of Chicago Press, 1975.
- _____. Public Finance in Democratic Process. Chapel Hill: University of North Carolina Press, 1967.

- _____ and Tullock, Gordon. The Calculus of Consent. Ann Arbor: Ann Arbor Press, 1962.
- Chappell, Duncan and Wilson, Paul (eds.). The Australian Criminal Justice System. Australia: Buttersworth, 1972.
- Downs, Anthony. Inside Bureaucracy. Boston: Little, Brown and Co., 1967.
- Edelhertz, Herbert and Geis, Gilbert. Public Compensation to Victims of Crime. New York: Praeger Publishers, Inc., 1974.
- Garofalo, Raffaele. Criminology. Montclair, N.J.: Patterson Smith, 1958. (1905 edition)
- Hibbert, Christopher. The Roots of Evil. U.S.A.: Minerva Press, 1963.
- Knight, Frank H. Risk, Uncertainty, and Profit. Chicago: University of Chicago Press, 1971.
- Leoni, Bruno. Freedom and the Law. Los Angeles: Nash Publishing, 1972.
- Niskanen, William. Bureaucracy and Representative Government. Chicago: Aldine, 1971.
- Oates, Wallace E. Fiscal Federalism. New York: Harcourt Brace Jovanovich, Inc., 1972.
- Powers, Edwin. Crime and Punishment in Early Massachusetts, 1620-1692. Boston: Beacon Press, 1966.
- Rawls, John. A Theory of Justice. Cambridge: Harvard University Press, 1971.
- Schafer, Stephen. The Victim and His Criminal. New York: Random House, 1968.
- Tullock, Gordon. The Logic of the Law. New York: Basic Books, 1971.
- _____. The Politics of Bureaucracy. Washington, D.C.: Public Affairs Press, 1965.
- _____. The Social Dilemma. Blacksburg, Va.: University Publications, 1974.
- United States Code Annotated. St. Paul: West Publishing Co., 1975.

Von Mises, Ludwig. Bureaucracy. New Rochelle, N.Y.: Arlington House, 1969.

Wagner, Richard E. The Public Economy. Chicago: Markham Publishing Co., 1973.

Public Documents

Federal Reserve Bank of St. Louis. National Economic Trends. St. Louis, Missouri, monthly.

Maryland. Criminal Injuries Compensation Board. Fifth Annual Report. Baltimore, 1974.

New York. Crime Victims Compensation Board. Seventh Annual Report. Legislative Document No. 94, 1974.

U.S. Administrative Office of the United States Courts. 1976 Semi-Annual Report of the Director. Washington, D.C., 1976.

U.S. Federal Bureau of Investigation. Crime in the United States. Uniform Crime Reports, Washington, D.C., annual.

U.S. House of Representatives. Victims of Crime Act of 1973. S. 300, 93rd Cong., 1st Sess., 1973.

U.S. National Criminal Justice Information and Statistics Service. Crime in Eight American Cities. A National Crime Panel Survey Report, Washington, D.C., July 1974.

_____. Crime in the Nation's Five Largest Cities. A National Crime Panel Survey Report, Washington, D.C., April 1974.

_____. Criminal Victimization in the United States -- A Comparison of 1973 and 1974 Findings. A National Crime Panel Survey Report, No. SD-NCP-N-3. Washington, D.C., May 1976.

_____. Criminal Victimization in the United States: 1973 Advance Report. A National Crime Panel Survey Report, No. SD-NCP-N-2. Washington, D.C., May 1975.

_____. The Nation's Jails. Report No. SD-J-4. Washington, D.C., 1975.

_____. Prisoners in State and Federal Institutions on December 31, 1971, 1972, 1973. National Prisoner Statistics Bulletin No. SD-NPS-PSF-1. Washington, D.C., 1975.

_____. Sourcebook of Criminal Justice Statistics -- 1973. Ed. by Michael J. Hindelang, et al. Washington, D.C., 1974.

_____. Survey of Inmates of State Correctional Facilities -- 1974 Annual Report. National Prisoner Statistics Special Report No. SD-NPS-SR-2. Washington, D.C., March 1976.

U.S. National Institute of Law Enforcement and Criminal Justice. Exemplary Projects: Prosecution of Economic Crimes. Washington, D.C., 1975.

U.S. Office of Management and Budget. The Budget of the U.S. Government. Washington, D.C., annual.

U.S. Senate. Committee on the Judiciary. Hearings on S. 16, S. 33, S. 750, S. 1946, S. 2087, S. 2426, S. 2748, S. 2856, S. 2994, and S. 2995, Victims of Crime. 92nd Cong., 1971 and 1972.

Other Sources

Department of the Attorney General, Boston, Massachusetts. Correspondence concerning Victims of Violent Crime Legislation in Massachusetts, October, 1974.

Executive Secretary, Criminal Injuries Compensation Commission, Honolulu, Hawaii. Correspondence concerning Hawaii's Criminal Injuries Compensation, October, 1974.

Office of the Administrator, Crime Victims Act, Olympia, Washington. Letter concerning Washington's Crime Victims Act, October, 1974.

Office of the Attorney General, Carson City, Nevada. Correspondence concerning Nevada's Good Samaritan program, October, 1974.

State Board of Control, Sacramento, California. Correspondence concerning California's Victim of Violent Crime Program, November, 1974.

APPENDIX A

NISKANEN'S MODEL OF BUREAUCRACY

Niskanen's model of bureaucratic supply of public output assumes the relation between a bureau and its sponsor is that of a bilateral monopoly. A federal bureau is the sole supplier of a certain set of activities to a single sponsor, usually Congress. Given the relative incentives and available information, the bureau has dominant monopoly power. To maximize utility and to survive the competition for funds, Niskanen hypothesizes that bureaucrats seek to maximize the size of the budget under their control.

The marginal valuation (demand) curve, CE, in Figure 12 represents the sponsor's preferences. If the preferences of the sponsors reflect the preferences of all citizens, CE portrays the sum of the citizens' marginal valuations of the bureau's services. The constraint on the bureau is that the total costs of supplying the service must not be greater than the available budget. The equilibrium rate of output is the point where the marginal valuation of output is zero, point E. The equilibrium budget equals the area under the marginal valuation curve, unless the minimum cost of that output is greater than the maximum budget (OCE). If so, the bureau is budget-constrained. Then the equilibrium rate of output is where total cost (the area under the marginal cost curve, AM) and total budget are equal. As shown in Figure 12, the equilibrium budget is Q_B . The budget is $OAMQ_B (= OCDQ_B)$.

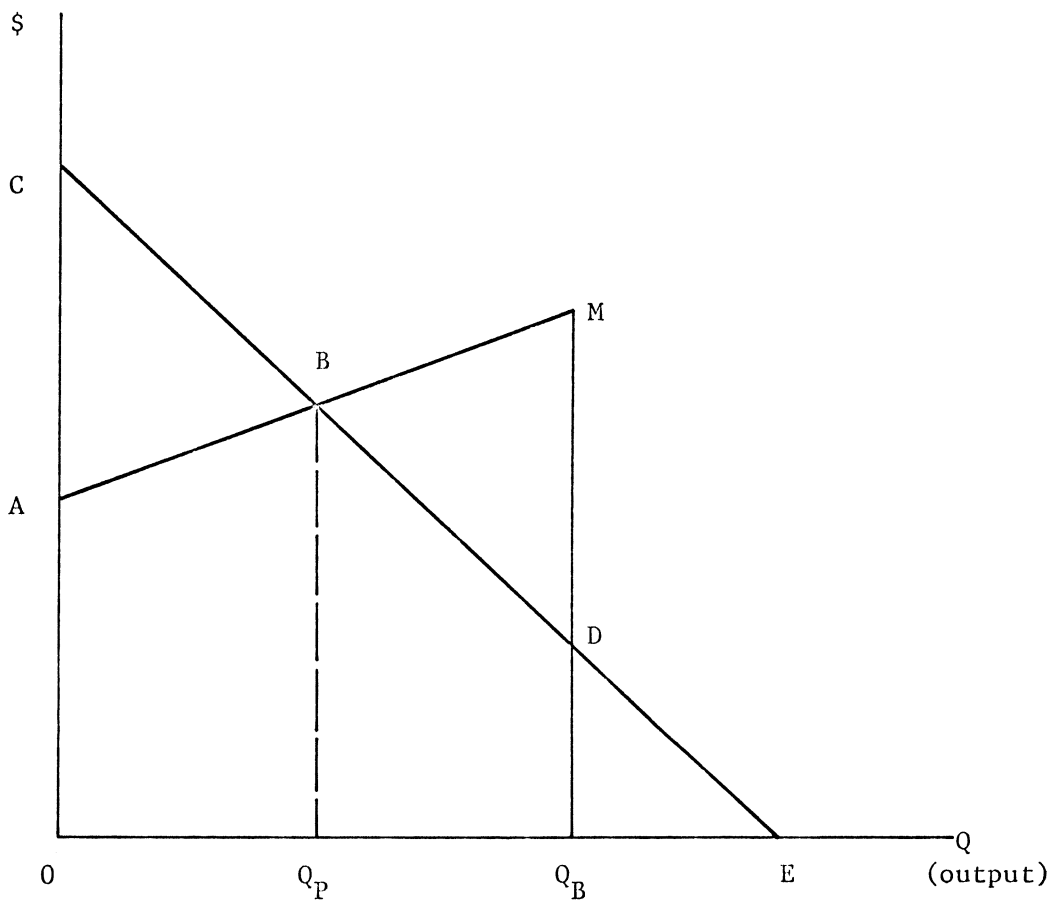


Figure 12: Niskanen's Basic Model of Bureaucracy

Breton and Wintrobe contend that the output that will emerge will lie somewhere between Q_p and Q_B . The bureau will strive to achieve Q_B with budget $OCDQ_B$. The sponsoring politicians are motivated to supply public goods to where the sum of the marginal benefits to the citizens equals the marginal cost of supplying that good. Hence, the politicians desire Q_p supplied at minimum cost, yielding budget $OABQ_p$. The difference between the two budgets (ACB) is the amount of consumers' surplus appropriated by the bureau.

Under this modified Niskanen model, politicians will use control devices, which are costly, to help reduce excess budgets of bureaus. The sponsors will incur control expenditures up to the point at which the marginal benefits of such controls are equal to the marginal costs of the controls. The output and budget that emerges will depend upon the costliness of the control devices. The greater the costs in comparison to the benefits, the higher the budget.¹

¹This summary is drawn from Breton and Wintrobe, "The Equilibrium of a Budget-Maximizing Bureau," and Niskanen, Bureaucracy and Representative Government, Chapter 3.

APPENDIX B

THE WORKLOAD OF FEDERAL DISTRICT JUDGES

Some observers have contended that court calendars have become overloaded, so that judges are unable to handle cases with care. Because trials are frequently delayed for months, the courts are unable to process criminal cases as quickly as is thought to be desirable. Chief Justice Burger has called for an expansion of the federal judiciary, so that cases will be disposed of more efficiently. There may be some merit to this proposal, but, at least for the federal judiciary, it is not obvious that the workloads of the judges has worsened.

Table 10 illustrates the fact that the total number of cases filed in U.S. District Courts has more than doubled in the past 35 years. Table 11 illustrates the fact that the total number of cases on a per-judge basis was only 6.2 percent higher in 1975 than it was in 1940, and was 6.5 percent lower in 1975 than it was in 1950. The change in the workload has been a shift from an almost equal number of civil and criminal cases in 1940 to a 3 to 1 majority for civil cases in 1975. There has been a 44 percent decline in the number of criminal cases handled per judge over that time.¹

¹It is the opinion of several legal scholars that criminal cases consume more court time than civil cases. If so, the court time of federal judges may have decreased.

TABLE 10

Caseloads of Federal District Judges

| Fiscal Year | Number of District Judges | Total Number of Cases Filed | Number of Civil Cases | Number of Criminal Cases |
|-------------|---------------------------|-----------------------------|-----------------------|--------------------------|
| 1940 | 183 | 68,235 | 34,734 | 33,401 |
| 1950 | 218 | 92,342 | 54,622 | 37,720 |
| 1960 | 245 | 89,112 | 59,284 | 29,828 |
| 1970 | 401 | 127,280 | 87,321 | 39,959 |
| 1975 | 400 | 158,428 | 117,320 | 41,108 |

Source: Sourcebook of Criminal Justice Statistics -- 1973, p. 296; U.S. Administrative Office of the United States Courts, 1976 Semi-Annual Report of the Director (Washington, D.C.: Government Printing Office, 1976), p. 10.

TABLE 11

Caseloads per Federal District Judge

| Year | Number of Cases | Number of Civil Cases | Number of Criminal Cases |
|------|--------------------|--------------------------|-----------------------------|
| 1940 | 372.9 | 189.8 | 182.5 |
| 1950 | 423.6 | 25.6 | 173.0 |
| 1960 | 363.7 | 242.0 | 121.7 |
| 1970 | 317.4 | 217.8 | 99.6 |
| 1975 | 396.1 | 292.3 | 102.8 |

The federal courts produce only about 10 percent of the total number of prisoners, so the scope of the problem of criminal courts may not be well represented by this example.¹

¹Federal district court judges have increased their workloads in one respect. In 1955 there was approximately 35 pages of decisions published in the Federal Supplement court reporter for every judge. This had increased to about 70 pages per judge in 1975. The reason for this is not certain. In the opinion of several law professors it may be because district court opinions have come to be treated as precedent much more so than in the past.

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THE ECONOMICS OF VICTIM COMPENSATION

by

Roger E. Meiners

(ABSTRACT)

Congress has considered adopting a program to provide a 75 percent subsidy for the costs of state programs which would give payments to the victims of criminal attacks. All victims, in state and federal jurisdictions, would be compensated for their losses, should they not have sufficient private insurance.

The traditional arguments made for victim compensation are reviewed and criticized. An institutional history of the victim's role in society discusses the various forms of compensation that existed in different jurisdictions. The distinction between civil law and criminal law appeared to lead to the demise of compensation by the criminal. The various forms of public compensation adopted in most Anglo-Saxon countries since the early 1960s are reviewed.

After deriving an estimate of the possible costs of public victim compensation in the United States, the theory of public choice is applied to explain the origins of the political pressures for the compensation program. The theory of bureaucracy produces predictions as to the impact of the federal subsidy to state programs and with respect to the motives of the administrators of such programs.

Rawlsian notions of justice provide a proper perspective for a consideration of equity in a democratic setting. The application of such a paradigm of justice does not, contrary to the traditional views on equity, generate a compensation program of the nature of the one considered here.

A program designed to be just and to provide equal treatment for equal victims would also be based on some criterion of efficiency. The moral hazard problem is discussed with respect to public compensation. A simple economic model is developed to display the possible inefficiency of the compensation program as currently proposed.

Finally, the growth of crime and the decline in punishment over the last three decades are explored. If there has been a collective loss of will to enforce the laws and punish the law-breakers, victim compensation may be nothing more than a perverse response to the problems generated by a change in behavioral standards with respect to crime.