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CRIMINAL INJURY COMPENSATION PROGRAMS: AN ANALYSIS OF THEIR DEVELOPMENT AND ADMINISTRATION

A DISSERTATION

SUBMITTED TO THE GRADUATE FACULTY

in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

BY

JIMMY ERVIN BROOKS

Norman, Oklahoma

1972

CRIMINAL INJURY COMPENSATION PROGRAMS: AN ANALYSIS OF THEIR DEVELOPMENT AND ADMINISTRATION

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INTRODUCTION

In 1963, the first modern day criminal injuries compensation program was created in New Zealand. Great Britain inaugurated its program in the following year. Subsequently, additional jurisdictions have introduced programs, including California, New York, Hawaii, Maryland, Massachusetts, and New Jersey. These programs have been created to provide compensation for bodily injury or death suffered by victims of crimes of violence. They represent an alternative to traditional civil remedies, recognizing that the latter have been most ineffective. The transition that has taken place in those jurisdictions that have created crime compensation programs, so far as the victim is concerned, is only one step removed from the transition that has been effected concerning the injured workman. In most jurisdictions today, however, the victim of crime finds himself in the same position as did the injured workman of yesterday.

These compensation schemes do not thus far apply to losses of property, for reasons that will be related and discussed herein.

There are many parallels between these criminal injuries compensation programs and other social insurance pro-

grams. Compensation to victims of crime is a new suggestion in the sense that it represents a recent and still current attempt to meet what is felt to be a societal need. There are the goals of maintaining and restoring the victim and/or his dependents and of achieving social stability. These have been recurring goals in considerations of other social insurance programs. They all represent an attempt to secure "mutual protection against a risk which is reasonably certain for the large group though uncertain for the individual, through the pooling of fixed contributions so that the cost of the average risk applies to each member of the group."[1] Crime compensation programs have been financed, for the most part, by group payment through taxation. The incidence of crime being what it is, this results in some income transfers among the socio-economic classes in society.[2] Further, the adoption of public programs to provide for the compensation of victims of crime has its roots in the kinds of social welfare legislation that have been generally adopted.[3]

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[1]I. S. Falk, Security Against Sickness: A Study of Health Insurance (Garden City, N. Y.: Doubleday, Doran & Co., 1936), p. 38.

[2]Henry Aaron, "Benefits Under the American Social Security System," Studies in the Economics of Income Maintenance, ed. by Otto Eckstein (Washington: The Brookings Institution, 1967), p. 61.

[3]Stephen Schafer illustrates this by noting that "legislation establishing classes of individuals to whom a responsibility is owed is already quite common: injured

The establishment of public programs to compensate victims of crime can be seen as an extension of those social insurance programs adopted earlier to enable people to better meet some of the hazards inherent in life.[4] Provision has not yet been made to extend public assistance to help meet all of these hazards. The programs here under consideration represent another step in that direction.

In considering the development of this subject, the literature that has stimulated modern day attention toward the consideration of compensating innocent victims of crimes

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workmen get workmen's compensation, disabled veterans get veterans' compensation, the aged get subsistence, and now hospital insurance from the Social Security program." in "Restitution to Victims of Crime--An Old Correctional Aim Modernized," Minnesota Law Review, L (1965), p. 256.

[4]Cf. B. J. Cameron, "Compensation for Victims of Crime: The New Zealand Experiment," Journal of Public Law, XII (1963), p. 374; B. J. Cameron, "The New Zealand Criminal Compensation Act, 1963," University of Toronto Law Journal, XVI (1966), p. 179; Robert E. Scott, "Compensation for Victims of Violent Crimes: An Analysis," William and Mary Law Review, VIII (1967), p. 284; "Compensation for the Victims of Criminal Violence," St. John's Law Review, XL (1965), p. 73; LeRoy G. Schultz, "The Violated: A Proposal to Compensate Victims of Violent Crime," St. Louis University Law Journal, X (1965), p. 242; "Compensation to Victims of Violent Crimes," Northwestern University Law Review, LXI (1966), p. 84; Robert D. Childres, "Compensation for Criminally Inflicted Personal Injury," New York University Law Review, XXXIX (1964), p. 447; Allen M. Linden, "Victims of Crime and Tort Law," Canadian Bar Journal, XII (1969), p. 26; "The Need for Compensating Victims of Violence," The Guild Practioner, XXIV (Fall 1965), p. 145; Frank W. Miller, "Compensation for Victims of Criminal Violence," Journal of Public Law, VIII (1959), p. 205.

of violence begins with the writings of Margery Fry.[5] She quite perceptibly defined the unenviable state in which the victim of crime might typically find himself without adequate recourse for compensation from any source.[6] The "solution" as she first saw it would be to provide for repayment or restitution by the offender to his victim. This reflected her concern, not only with the victim but with the offender. She hoped for a fundamental change in the existant offender-victim relationship. Restitution was to be the vehicle for achieving a more desirable state of affairs. "It is certainly only just that compensation should be made to the injured person; and repayment is the best first step towards reformation that a dishonest person can take. It is often the ideal solution."[7] Nothing followed these suggestions in terms of implementation and Miss Fry subsequently became disillusioned with restitution as a means of compensating crime victims. She moved toward embracing a public compensation program analogous to industrial insurance programs. Her new demands, for state compensation, appeared in 1957 in a news article that received favorable widespread publicity and review.[8] Present

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[5]Margery Fry, Arms of the Law (London: Victor Gollanez, 1951).

[6]Ibid., p. 125. [7]Ibid., p. 126.

[8]Margery Fry, "Justice for Victims," The Observer (London), July 7, 1957, p. 8, col. 2.

interest and attention directed toward crime compensation programs is generally acknowledged to stem directly from the appearance of this article. The attention of public officials, particularly in Great Britain and New Zealand, was drawn to Miss Fry's contentions and her efforts are given credit for those jurisdictions coming to create their crime compensation programs. "The logical way of providing for criminally inflicted injuries," said Miss Fry at this time, "would be to tax every adult citizen . . . to cover a risk to which each is exposed."[9] She expected that both economic and psychological advantages would prospectively accompany such a program. "The value of the proposed compensation would not be economic alone. There is a natural sense of outrage on the sufferer's part, which the milder aspect of our modern penal methods only exacerbates."[10] Although Miss Fry died in 1957, her proposals attained a momentum that led to their being thoroughly considered. They "produced an intense and continuing reaction in Britain . . . indicating clearly the fertile political and social climate into which these ideas had been placed."[11]

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[9]Ibid. [10]Ibid.

[11]Gilbert Geis, "State Compensation to Victims of Violent Crime," U. S., Task Force on Assessment: The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Crime and Its Impact--An Assessment, Appendix B (Washington, D. C.: Government Printing Office, 1967), p. 162.

Members of Parliament kept attention of the Government directed at this matter through questions addressed to the Home Secretary in Parliament. These questions brought forth the repeated comment that the matter was indeed under study by the Government.

Further impetus for focusing attention upon crime compensation programs was given by the publication in Great Britain in 1959 of a document dealing with penal reform.[12] The idea of restitution was emphasized in this report but Miss Fry's suggestions regarding compensation as being preferable were noted and it was announced that the Government would form a "working party" to examine her proposals in detail to see whether they might be made operable. This Working Party's report appeared in June, 1961.[13] The focus of attention in this report is upon the practical problems believed likely to emerge in the administration of the scheme. Potential difficulties and problems were emphasized to the extent that it has been suggested that "the report gave the impression of being more concerned with finding difficulties than with trying to overcome them."[14]

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[12]Great Britain, Penal Practice in A Changing Society, Cmnd. 645, 1959.

[13]Great Britain, Compensation for Victims of Crimes of Violence, Cmnd. 1406, 1961.

[14]B. J. Cameron, "Compensation for Victims of Crime: The New Zealand Experiment," Journal of Public Law, XII (1963), p. 369.

Nevertheless, the Working Party did set forth six criteria which it believed a crime compensation scheme must satisfy:

(a) it must be possible to justify it on grounds which do not postulate State liability for the consequences of all crimes, whether against the person or against property;
(b) it must provide an effective practical means, whether by definition or otherwise, of distinguishing the types of crime for which compensation is to be paid from those for which it is not;
(c) it must provide means of distinguishing the deserving claimant from the undeserving or fraudulent which will both be effective in operation and appear manifestly fair;
(d) it must not prejudice the work of the criminal courts or of the police;
(e) it must not have undesirable repercussions on the National Insurance or Industrial Injuries schemes;
(f) the cost of administration must not be disproportionately high.[15]

The Working Party concluded that the most difficult of these criteria to satisfy would be the third: "One of the disadvantages of a scheme of any kind would be its vulnerability to exploitation by fraudulent or undeserving claimants, with the consequent probability of its falling into disrepute."[16] This cautious and rather unenthusiastic appraisal was followed in turn by two additional British studies and reports which were "a good deal more sophisticated and less fretful."[17] The views of the Advisory Committee on Policy of the Conservative Party appeared in

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[15]Cmnd. 1406, op. cit., p. 7.

[16]Ibid., p. 41.

[17]Geis, op. cit., p. 163.

July, 1962.[18] This Committee presented a report most favorable to the adoption of a crime compensation scheme. In strong, compelling language it unequivocally endorsed the concept of a crime compensation program. It favored the principle of the Industrial Injuries Act as a base for a crime compensation scheme and suggested that the "question of compensation ought to be dealt with on its own merits."[19] An additional boost was given to crime compensation programs shortly afterwards when the Council of Justice, the British section of the International Commission of Jurists, which had set up its own working committee to propose a practical scheme, issued its report.[20] The suggestion that a compensation scheme should be adopted was accepted by this committee. Its concern was with the structuring of the scheme, with the emphasis being placed upon the avoidance and overcoming of potential difficulties and upon planning to facilitate the administration of the scheme.

Subsequently, these reports prepared in Britain led to Parliamentary debates[21] and ultimately to adoptions of crime

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[18]Conservative Political Centre, Victims of Violence (London: July 1962).

[19]Ibid., p. 17.

[20]Justice (Society), Compensation for Victims of Crimes of Violence (London: Stevens & Sons, 1962).

[21]Great Britain, "Crimes of Violence: Compensation for Victims," Parliamentary Debates, House of Lords, 245 (Dec. 5, 1962, cols. 245-319.

compensation programs in Great Britain and New Zealand. New Zealand closely followed the British investigations and reports and based its decisions upon them. No official documents, papers, or articles were published in New Zealand as a prelude to its adoption of a compensation scheme. "The New Zealand bill was prepared in the Advisory Section of the Department of Justice, drafted by the Parliamentary Law Draftsman, and introduced as a Government measure."[22]

Meanwhile, in the United States, the British agitation began to stimulate some, but not much, interest in crime compensation programs. The first serious academic consideration here consisted of the publication of a symposium in which five American criminal law professors responded in articles to Miss Fry's 1957 "Justice for Victims."[23] Of these articles, one is limited to discussing the difficulties that would likely arise were the proposal adopted; one presents a comparative study of victim compensation. The other three may be characterized as providing a release for hostile, subjective, "alarmist" conclusions.[24]

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[22]Cameron, loc. cit.

[23]"Compensation for Victims of Criminal Violence: A Round Table," Journal of Public Law, VIII (1959). In addition to Margery Fry's "Justice for Victims," which is reprinted here, "Comment on the Proposal," is made by Fred E. Inbau, Frank W. Miller, Henry Weihofen, Gerhard O. W. Mueller, and Helen Silving.

[24]Cf. the evaluation of Robert D. Childres, "Compensation for Criminally Inflicted Personal Injury," New York University Law Review, XXXIX (1964), pp. 452-455.

Although random articles began making their appearance in the United States in the early 1960's, it was not until crime compensation programs had been adopted in Great Britain and New Zealand that extensive treatment was afforded the subject here. The middle and late 1960's produced a vast literature in U. S. publications concerning the many facets of crime compensation programs: the ideological aspects, the social aspects, the legal aspects, the economic aspects, the administrative aspects, and varieties and combinations of these. The chief vehicle for the presentation of analyses of the subject became law school journals and legal reviews.[25] A major contribution was made to the literature on the subject by the publication of a second symposium in 1965.[26] Many of the gaps and omissions in the literature were being afforded attention and investigation. Several individuals began to make a specialty of the subject and

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[25]The reader is referred to the "Journals" section of the Bibliography of this paper for a comprehensive account of these articles.

[26]"Compensation to Victims of Crimes of Personal Violence: An Examination of the Scope of the Problem," Minnesota Law Review, L (Dec. 1965), 211-310: Gerhard O. W. Mueller, "Compensation for Victims of Crime: Thought Before Action," pp. 213-221; Marvin E. Wolfgang, "Victim Compensation in Crimes of Personal Violence, pp. 232-241; Stephen Schafer, "Restitution to Victims of Crime - An Old Correctional Aim Modernized," pp. 234-254; Ralph W. Yarborough, "S. 2155 of the 89th Congress - The Criminal Injuries Compensation Act," pp. 255-270; Robert Childres, "Compensation for Criminally Inflicted Personal Injury," pp. 271-283; James E. Starrs, "A Modest Proposal to Insure Justice for Victims of Crime," pp. 285-310.

authored multiple articles.[27] While many of the articles which appeared in this period added to the sum of knowledge regarding the subject, many simply reworked ground already covered. In particular, repetition became apparent in historical, descriptive, and ideological treatments. But there was a stopping short in some areas with little or no treatment resulting. This has been especially so respecting administrative aspects of the programs. In sum, much of the formal academic considerations of the subject has been introductory in nature and without stimulation toward comprehensiveness. There have been some noteworthy efforts made that have contributed to the literature, but these are exceptional treatments of only selected aspects of the subject.

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[27] Cf. Robert Childres, "The Victims," Harpers' Magazine, April, 1964, pp. 159-162; "Compensation for Criminally Inflicted Personal Injury," New York University Law Review XXXIX (1964), pp. 444-471; "Compensation for Criminally Inflicted Personal Injury," Minnesota Law Review, L (1965), pp. 271-283. Glenn E. Floyd, "Massachusetts' Plan to Aid Victims of Crime," Boston University Law Review, XLVIII (1968), pp. 360-371; "Victim Compensation Plans," American Bar Association Journal, LV (1969), pp. 159-161; "Compensation to Victims of Violent Crime," Tulsa Law Journal, VI (1970), pp. 100-145. Gilbert Geis, "Experimental Design and the Law: A Prospectus for Research on Victim-Compensation in California," California Western Law Review, II (1966), pp. 85-91; and Dorothy Zietz, "California's Program of Compensation to Crime Victims," The Legal Aid Briefcase, XXV (1966), pp. 66-69; "Who is Responsible for the Victim of Violent Crime?" Social Justice Review, 61 (April 1968), pp. 8-12; "Correction and Programs of Compensation to Victims of Violent Crime," American Journal of Correction, Jan.-Feb., 1968, pp. 19-21; "Compensation for Crime Victims and the Police," Police, May-June, 1969, pp. 55-59. Stephen Schafer, "Restitution to Victims of Crime - An Old Correctional Aim Modernized," Minnesota Law Review, L (1965), pp. 243-265; "Victim Compensation and Responsibility," Southern California Law Review, XLIII (1970), pp. 55-67.

Official public inquiries in the United States into crime compensation programs have been undertaken in a helter-skelter manner in comparison to official inquiries launched in Great Britain. "Some States have gone their way along singularly unique paths, in efforts inaugurated and impelled primarily by one or two persons; other States, usually the larger and more metropolitan ones, have undertaken legislative inquiry into victim compensation and often elicited views quite different from any put forward in either New Zealand or Great Britain."[28] Attention in these public investigations and hearings has focused for the most part upon the "philosophical" justification for a crime compensation program, the potential costs of such a program, and the consideration of "practical" problems likely to be encountered in the administration of the scheme. Conclusions following these appraisals have tended to be similar: (1) there is "justification" for such programs, (2) costs can be kept within "reasonable" limits, and (3) although there

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[28]Geis, "State Compensation to Victims of Violent Crime," op. cit., p. 167. For official state inquiries into the subject see Wisconsin, Compensation for Victims of Crime, Legislative Reference Bureau, Research Bulletin 66-1 (July, 1966), pp. 1-29; New Jersey, Senate Committee on Law and Public Safety, Public Hearing on Senate Bill No. 284 - providing for compensation for the innocent victims of crimes, (Nov. 30, 1966), pp. 1-51; New York, Governor Rockefeller's Conference on Crime, Astor Hotel, New York City, April 21-22, 1966, pp. 186-192 and Dec. 15, 1967, pp. 1-208; Illinois, Report of the Commission on Compensation to Victims of Crimes of Violence, 74 Gen. Assy. (Jan. 30, 1967), pp. 2-25; Massachusetts, The Special Commission on the Compensation of Victims of Violent Crimes, Report (July, 1967), pp. 7-32.

are numerous "practical" difficulties to be overcome in the administration of the scheme, these difficulties are not insoluble. The specifics do of course reflect variations in the suggested ways to proceed. "In the instance of victim compensation, the merits as well as the drawbacks of the federal nature of American society in regard to determination and establishment of the 'best' pattern of legislative procedure are clearly discernible."[29]

At present, the neglected areas of this subject that need attention are for the most part related to the operation and administration of existing programs. The time is ripe for additional investigation in these areas. Such investigation is undertaken here. Also, nothing has been done in other areas to draw together what has been attempted in terms of research and reporting for the purpose of permitting a broad overview. A major integrative effort is needed and is attempted here. There has now been sufficient experience with operating crime compensation programs and the literature has advanced to the state where evaluations and conclusions regarding program performance are warranted. But research in this area needs to go beyond what has been accomplished to date in terms of integration and administrative analysis. These are objectives which this paper attempts to achieve. Attention is directed here to areas

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[29]Geis, Ibid.

such as these that have not been thus far developed in the emerging literature of the field. A contribution to this literature is attempted which will both increase the understanding of that which has surfaced and add to it by contributing to the comprehensiveness with which the subject is treated. A number of areas within the administrative sphere of the subject receive attention here for the first time. Other areas are related in new ways. For example, in spite of ideological considerations having received so much attention in the literature and in legislative deliberations, there has been no attempt to comprehensively consider this area of the subject. This is undertaken here. The rationalizations and justifications that have been offered in favor of and against the creation of crime compensation programs are fully treated, for the first time.

The role of the opinion leaders who have supported crime compensation programs is analyzed along with their strategies, including their use of the individual case of misfortune to generate public sympathy and support for crime compensation plans. Their emphasis on doing something collectively to aid crime victims is explored.

The impact of crime statistics and the manner in which they are presented to the public are subjects given attention here. Their role in contributing to perceptions of danger and conceptions of need is evaluated. The manifestations of a general deterioration of the feeling of well-being are

described and evaluated from the perspective of one who is interested in the strengthening of society and the perpetuation of democratic values.

The realities of crime are also appraised. The relationship between one's chances of becoming a crime victim having increased greatly in recent years and the increased fear of crime is examined. The potential impact of accurate crime reporting, which would show that more crime occurs than is reported, is also given attention.

Despite so much apparent concern with the costs of operating crime compensation programs, little has been done to examine these costs. Here, for the first time, cost data for operating programs is comprehensively assembled and analyzed.

Emerging political considerations, including proposals for national grant-in-aid legislation which are currently being considered in Congress, are reviewed and their likely impact upon future program adoptions is evaluated.

While this study relates and analyzes the development of crime compensation programs, it will concentrate primarily upon policy issues and decisions related to the operation and administration of the programs. By specifying the objectives of a crime compensation program and studying the features of operational programs, this study will seek to formulate explicit criteria for such programs. An administrative analysis of this scope and nature has not been

undertaken before. Of particular interest is the incorporation here of opinions of program administrators regarding specific aspects of crime compensation programs. Part of the research effort has consisted of securing indications of preference from these administrators. Their opinions and conclusions are here comprehensively assembled and considered for the first time.

The objects of investigation here reflect the special interests of the political scientist in the theoretical place and role of criminal injury compensation programs. One aspect of this concern is the relationship between the state and the individual. Considerable attention is therefore devoted to a consideration of the reasons for the emerging conception that a problem exists, so far as the victim of crime is concerned. Some of the questions for which answers are sought here are: What has been the relationship between the state and the victim of crime? How and why has this relationship come to be what it is? Why has this relationship been criticized for failing to provide adequately for the victim of crime? Who have the critics been and what have their contentions been? What are the chief factors that have accounted for the receptivity given these critics and their persuasive efforts? Answers to these questions lead here to a further consideration which is the emergence of a <u>particular</u> suggested way to meet a felt problem: the creation of public criminal

injury compensation programs. There follows a review of the structuring and operation of these programs as a means of evaluating their effectiveness in meeting or being able to meet the felt needs of both the state and the individual in this area. Specific recommendations for improvement accompany these evaluations where improvement is thought to be desirable.

The above are the major areas that have been delineated for investigation here. In all of these areas, it is felt that treatment heretofore afforded has been inadequate, incomplete, or nonexistent. It is the goal and purpose of this study to contribute to the development of the subject by concentrating upon and increasing knowledge in these areas.

CRIMINAL INJURY COMPENSATION PROGRAMS: AN ANALYSIS OF THEIR DEVELOPMENT AND ADMINISTRATION

CHAPTER I

JUSTIFICATIONS OFFERED TO CREATE COMPENSATION PROGRAMS TO AID VICTIMS OF VIOLENT CRIMES & SOME REBUTTALS

A variety of rationalizations to support the creation of criminal injury compensation programs has appeared. Some rationalizations have also been offered in opposition to such programs. Here, attention is directed to these rationalizations, pro and con. They are categorized and given attention individually. There is inevitably some overlapping in the structuring of such categories and in attempts to differentiate completely, various allegations, statements of support, rebuttals, and counter contentions. The statements issued, the articles authored, and the recorded verbalizations are often composites of substantiations. Within these limitations, the themes and contentions offered by supporters and opponents of these programs will be scrutinized and evaluated.

Theoretical Rationalizations -- Affirmative

> Society prohibits the individual from effectively protecting himself and then defaults on its responsibility to protect him. It therefore has the duty to compensate the victim.

Probably the most common argument put forward to justify a compensation program of the scope of that considered here is that the state denies certain individual actions that might be thought to be self-protective and then fails to halt crimes of violence. According to Margery Fry, "the State which forbids our going armed in self-defence cannot disown all responsibility for its occasional failure to protect."[30] Since Miss Fry is generally given credit for being the originator of modern day compensation plans, her popularization of this rationale gave it a head start in claiming the attention of others sympathetic to her goals and hopes.

One of the first Americans, and certainly the most prestigeous of the early American supporters of compensation plans, to adopt Miss Fry's justification for compensation plans was Arthur J. Goldberg. He contends that "the victim of a robbery or an assault has been denied the 'protection' of the laws in a very real sense, and society should assume some responsibility for making him whole."[31]

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[30]Margery Fry, "Justice for Victims," in "Compensation for Victims of Criminal Violence," Journal of Public Law, VIII (1959), p. 193; printed originally in London Observer, Nov. 10, 1957.

[31]Arthur J. Goldberg, "Equality and Government," New York University Law Review, XXXIX (April, 1964), p. 224.

Probably the second most prestigeous American to espouse compensation plans has been former U. S. Senator Ralph Yarborough of Texas. In addition to being well-known and widely respected, he has had the advantage of having had access to the attention getting devices available to a United States Senator. He states that:

> We have told our people that they will be best protected if law enforcement is left to the Government, not to the private person. Having encouraged our people to go out into the streets unprotected, we cannot deny that this puts a special obligation upon us to see that these people are, in fact, protected from the consequences of crime.[32]

This rationalization has been a recurring theme in Senator Yarborough's efforts to gain public support for compensation plans.[33] As time has passed, Senator Yarborough has refined his rationalization somewhat but has maintained his attachment to the same argument. More recently, he stated that:

> Society's responsibility to the victims of crimes of violence is directly related to society's dereliction in fulfilling its responsibilities for preserving law and order within the society. Unlike an earlier time in our history when citizens bore arms and largely were responsible for their own protection, various laws, institutions, and mores within today's social structure exist as a pledge that society will provide protection. When society fails in its assumed duty to protect its citizens, society ought to have the responsibility of compensating the innocent victim for his personal pain and injury.[34]

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[32]U. S., Congressional Record, 89th Cong., 1st Sess., 1965, CXI, Part 10, 14031.

[33]Ralph W. Yarborough, "We Should Compensate The Victims of Crime," The Student Lawyer Journal, April, 1966, p. 7.

[34]U. S., Congressional Record, 91st Cong., 1st Sess., 1969, CXV, Part 1, 793.

Senator Yarborough has also taken the opportunity available to him to have the comments of others committed to the pages of the Congressional Record to support his own views. One such insertion includes the comments of Marshall McNeil, originally published in the Washington Daily News, May 4, 1967. Referring to the victim of crime, Mr. McNiel writes that:

> Once he might have carried a gun to protect himself from violence in the streets. He can do that no more. Instead, he is assured of protection by "society," which uses his tax money to create a police force to shield him from the mugger.
>
> HAS ALMOST NO RECOURSE
>
> When this protection for which he has paid and which he has been taught to expect fails, the victim has almost no recourse.[35]

Others have embraced this rationalization, including U. S. Representative Abner J. Mikva of Illinois. He recently supported legislation to create a compensation program in the District of Columbia on the basis that:

> . . . when a victim is injured by a criminal act, society has failed in its fundamental responsibility to that citizen. Society has failed to carry out the basic purpose for which governments are instituted among men and for which they are supported with taxes, political participation, and in other ways. It is this failure of the system to protect an individual citizen for which we seek to compensate victims of crime.[36]

There is the implication in this line of reasoning that, if left alone by the state, the individual could

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[35]U. S., Congressional Record, 90th Cong., 1st Sess., 1967, CXIII, Part 9, 11905.

[36]U. S., Congress, Senate, Committee on the District of Columbia, Hearings, Compensation of Victims of Crime, 91st Cong., 1st Sess., 1969, p. 68.

protect himself. That the individual was ever able to do this seems to be denied by the contentions above that governments were established, for one reason, to better protect the individual. Whether any government could do this absolutely seems doubtful. Whether being a victim necessarily depends upon government "defaulting" its obligations also seems doubtful, at least to many. Those who entertain such doubts, but who also support compensation programs, have usually preferred other rationalizations.

> By appropriating the fine to itself and incarcerating the convicted criminal the state effectively denies any remedy to the victim of crime.

There are a multitude of difficulties here, occasioned in part by changes in criminal and civil law never evolving to the point of adequately ministering to the needs of the victim of crime. The reality, almost universally, is that "one rarely finds an instance in which the victim of a crime can be certain to expect full restitution. . . . Where there is no system of state compensation, civil procedure and civil execution generally offer the victim insufficient compensation."[37] "There are crimes which are not torts, and vice versa, but it is impossible to imagine a crime of violence which is not also a tort."[38] Although the victim

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[37]Stephen Schafer, The Victim and His Criminal: A Study in Functional Responsibility (New York: Random House, 1968), p. 26.

[38]K. T. Watson, "Law of Tort: Criminal Injuries Compensation - Mens Rea Misapplied," The New Law Journal, CXVI (April 14, 1966), p. 685.

of tort has recourse to a civil suit from which can issue an award for damages, practically speaking, this affords no effective remedy. There are several reasons for this. First there is the chance that the tort-feasor will not be apprehended. The victim of crime is dependant upon the state to apprehend the criminal. In many cases there is no apprehension. If there is apprehension, there are other problems that make recovery almost as unlikely as when there is no apprehension of the criminal. One aspect of the general problem is that, "unhappily, those who have a propensity for violence, all too often turn out to be men of straw [without funds]."[39] Another difficulty is that "not only does the state fail to help financially the victims of crime, it actually makes it harder for them to secure reparation by incarcerating the offender, making it virtually impossible for him to honour any civil judgment that might be rendered against him."[40] Before even this civil judgment of questionable value is rendered there is yet another problem for the victim of crime and perhaps for the community as well:

> . . . it has long been a shortcoming of our system that the victim of tort in his action against the tortfeasor frequently is not even entitled to rely

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[39] Ibid.

[40] Allen M. Linden, The Report of the Osgoode Hall Study on Compensation for Victims of Crime (Toronto: Osgoode Hall Law School, 1968), p. 5.

> on the probative value of the tortfeasor's prior criminal conviction for the same conduct, so that the victim incurs the full expense of a complete civil suit, unless he can sue in forma pauperis, or with legal aid, in which case the community at large bears an unnecessary expense.[41]

In addition to the above-mentioned expense, the victim "will have to go through all the anxiety of two processes: the criminal case, where he must appear as a witness, but whence the fine will go to the State, and a civil court, to which he must take his claim for damages."[42] Similar reasons have prompted Page Keeton, Dean, University of Texas School of Law to support compensation programs: "Even in the rare case where a person is injured by a solvent criminal, the government's dealing with the offender often forecloses or interferes with the possibility of civil recovery. The government's interest in arresting and imprisoning him prevents him from earning money that could compensate the victim."[43] Another reason for the convicted or acquitted person not having funds to pay a civil judgment is that if he has had funds there is a good chance of their being exhausted in his waging his own defense in the crimi-

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[41]Gerhard O. W. Mueller, "Compensation for Victims of Criminal Violence: A Round Table," Journal of Public Law, VIII (1959), p. 234.

[42]Margery Fry, Arms of the Law (London: Victor Gollancz, 1951), p. 125.

[43]U. S., Congress, Senate, Committee on the District of Columbia, Hearings, Compensation of Victims of Crime, 91st Cong., 1st Sess., 1969, p. 75.

nal case. Thus it seems that with any combination of realities that might face an individual who has been a victim of crime, his chances for recovery from the offender make it practically impossible for him to gain compensation from the offender.

"The premise that either the government assists the victims of crime or they suffer the consequences alone,"[44] seems to be substantiated if reliance is placed upon existing civil remedies.

> The state has focused its attention and relief on the criminal to the effective exclusion of the victim of crime. Expenditures have been directed toward the criminal and not the victim.

There are several different reasons advanced for tying compensation programs to this justification. Some arguments reflect a general awareness of modern day penal theories; all reflect a conception of public monies being spent for various aspects of penal programs. Those who advance this rationalization are for the most part seeking what they perceive to be a balancing of concern shown by the state to the criminal and to the victim as well. "A committee appointed by Governor Rockefeller to help draft recommendations on this subject contends that compensating the victims of crime is a corollary to providing rehabilitation and other social services to the perpetrators of

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[44] Wisconsin, Legislative Reference Bureau, Compensation for Victims of Crime, Research Bulletin 66-1, July 1966, p. 7.

crime."[45] A similar indication of this attitude is found in the remarks of Aaron J. Broder, President of the New York State Association of Trial Lawyers, directed to a New York study committee.[46] Most of the pleas founded upon this sort of reasoning are neutral in the sense that an effort is being made to get what is perceived to be fair treatment by the state for the victim of crime. Thus U. S. Senator Mike Mansfield of Montana, on introducing S. 750 to provide compensation for persons injured by certain criminal acts, defended his bill by suggesting that "this is a time for Congress to demonstrate to the people of America that it is as interested in the problems and suffering of victims of criminal acts as it is in protecting rights of accused criminals."[47] The same position has been taken by Senator Ralph Yarborough.[48] This simplistic argument for affording what is thought to be more equitable treatment by the state for the victims of crime appeals to the instinct for justness. It certainly emphasizes the unevenness of the practices and procedures that have evolved in terms of criminal and civil procedures and which now are available to the criminal on the one hand and to the victim on the other hand.

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[45] New York Times, Jan. 18, 1966, 36:1.

[46] New York Times, Jan. 15, 1966, 17:3.

[47] U. S., Daily Congressional Record, 92d Cong., 1st Sess., 1971, CXVII, No. 16, S1359.

[48] U. S., Congressional Record, 89th Cong., 1st Sess., 1965, CXI, Part 10, 14031.

U. S. Representative Edith Green of Oregon alleges that:

> . . . the victim of a crime is in a very real sense a double victim. He is attacked by the assailant, often brutally beaten, left senseless by the criminal, stripped of his possessions, his body battered and torn. At times, there is only death or permanent injury to one who supports a family or is responsible for the care of children.
>
> The assault victim also loses in another way. Society, which takes upon itself the responsibility of repressing crime and prosecuting those who violate its laws, at present shows little concern for the victim of the mugger, the rapist, or the murderer. Where the accused is provided the important constitutional guarantees of a fair trial and free legal assistance, if necessary, the only interest in the victim on many occasions is that he is in good enough condition to be a possible witness in a prosecution. He is afforded little, even though it is he that has suffered the most.[49]

In some instances, relating or supporting compensation programs in this equalization context seems to reflect a bitterness that what is considered to be so much, has been provided by the state to the criminal. It seems that except for the existance of state assistance or programs for the criminal there would probably be little interest in the fate of the victim, at least so far as sponsoring government programs for his benefit are concerned. Consider, for example, the following:

> Pity the poor victim of a mugging. He could be you.
>
> If a suspect is caught, the fellow is instantly enveloped in new protections fabricated out of the Constitution by the Supreme Court.
>
> The police must treat him with care. They cannot question him unless his lawyer is present. If

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[49]U. S., Congressional Record, 89th Cong., 1st Sess., 1965, CXI, Part 21, 28754.

> he hasn't got a lawyer, they'll get him one. He needn't say a word. But if he confesses, chances are his admissions cannot be used against him.
>
> He is guaranteed a fair trial in which his attorney employs all his skills to cast reasonable doubt on the tale of violence told by the victim.
>
> If the defendant is convicted, a reasonable effort most often is made to treat him humanely and to see that he is adequately housed, clothed and fed while he pays his "debt to society." With the help of experts hired with tax funds, an attempt is made to "rehabilitate" him so that he may rejoin this society cured of whatever ailed him.
>
> But his victim? That's another story.[50]

This seems to contain the underlying criticism that too much is being done for the suspect and the criminal. There are those who contend otherwise.[51] That public expenditures to support penal programs actually benefit criminals is also a contention that has been challenged.[52]

It is interesting that some support for victim compensation programs is being generated by a desire to improve the state of penal reform. Lord Longford who chaired the Justice Society Committee, whose early study and report[53] on compensation to victims of crime attracted much attention, has taken this position. "He believes that

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[50] U. S., Congressional Record, 90th Cong., 1st Sess., 1967, CXIII, Part 9, 11905, remarks of Marshall McNeil originally published in the Washington Daily News, May 4, 1967.

[51] Cf. Robert Ostermann, Crime in America (Silver Spring, Md.: The National Observer, 1966).

[52] Cf. "The Shame of the Prisons," Time, Jan. 18, 1971, pp. 48-50; 53-55.

[53] Justice (Society), Compensation for Victims of Crimes of Violence (London: Stevens & Sons, 1962), 31pp.

the general public will not be ready for adequate treatment for criminals until they are satisfied that victims are receiving proper care. 'We must defeat the idea that penal reformers are putting criminals before the victims.'"[54] This is somewhat akin to the recommendations of the British administrative outline of a compensation plan which became known as the White Paper:

> These proposals are put forward as a practical method of meeting what is now an acknowledged need simply and quickly, and of ensuring that, in all the consideration which is being given to new and more effective methods of treating offenders, the sufferings of innocent victims of violent crime do not go unregarded.[55]

It can be seen that we have a strange amalgam of support which focuses its attention on the relative expenditures directed toward the criminal and the victim. The emphases and ultimate goals or desires within this group or among these supporters are different but all are concerned with realizing through state compensation programs what is felt to be more equitable public consideration for the criminal and the victim.

> The state has a moral obligation to aid the innocent victim of violent crime. It is "right" that the state attempt to minister to the needs of the victim.

Does the state have a moral obligation to aid the innocent victim of violent crime? Many people seem to

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[54] The Times (London), Jan. 6, 1970, p. 8e.

[55] Great Britain, Compensation for Victims of Crimes of Violence, Cmnd. 2323, March, 1964, p. 8.

think that it does. For some of these people, compensation as a prescriptive necessity stems from their inclining toward a certain philosophical disposition. They perceive a "wrong." Compensation by the state is the curative "right." An exemplification of this attitude is found in the remarks of the Earl of Longford, speaking in support of a compensation program for Great Britain:

> Why are we so sure by now that the State ought to accept special responsibility for the victims of violence? One answer, if there were time, would be to take a whole string of individual cases and challenge anyone to deny that in these cases the community ought to provide some compensation where it is not provided at all or, at any rate, to provide much more generous compensation.[56]

The utterly gruesome case history is of course not the exclusive ploy of the "moral obligationist." But it can be used with telling effect by him and it is difficult to counter. Urging state concern for the "Good Samaritan," it has also been suggested that the state ought to compensate him due to its moral obligation to do so. "The moral concept involved . . . may be simply stated: If a man is asked to be his brother's keeper, the community, too, owes him some brotherliness."[57]

There are many people who support compensation programs due to this genuine, sincere feeling or attachment to the

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[56]Great Britain, "Crimes of Violence: Compensation for Victims," Parliamentary Debates (Lords), 245 (Dec. 5, 1962), col. 247.

[57]Editorial, New York Times, Nov. 20, 1965, 34:2.

conception of moral obligation. There are others who no doubt align themselves with this rationalization simply as a matter of convenience. They support state compensation programs perhaps without having articulated their reasons in their own minds. They are aware of what they feel to be a need. They accept the proposition that the state should somehow offer its resources to remedy these needs. Speaking of these needs, Governor Nelson Rockefeller of New York, has said: "Crimes of violence and the terrible tragedies which these crimes inflict upon innocent persons and their families highlight the need for developing appropriate methods to give assistance to the unfortunate victims and their families."[58] For some it is a short step from having this concern for the victim to accepting the thesis that the state has a moral obligation to compensate the innocent sufferer of criminal attack.

There is another plane of support for the moral obligation justification. For the most part, this group apparently is seeking to avoid making compensation from the state to victims of crime a legal right which the victims could then demand. So long as compensation is a moral right, it remains something that the state ought to do but not something that the state has to do. Thus the state can create a compensation program because it should. The base

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[58] New York Times, Oct. 24, 1965, 1:5.

upon which a compensation plan is founded also has administrative ramifications. If compensation payments are awarded as a matter of grace as contrasted to the victim having a legal claim upon the state for compensation, administrative procedures, especially appeals procedures, can be quite different.

When consideration of a compensation plan was introduced for discussion and consideration in the House of Commons and House of Lords, Labor took the stand that the victim should have a legal right to compensation from the state. The Conservatives supported the position that the state should not have a legal liability but that the state does have a moral obligation to compensate victims of crime. The result was that Great Britain's compensation program does not make payments on a legal but on an ex gratia basis.[59] Because of the advantages that accrue to the state as a result of having more flexibility in determining administrative handling and disposition of claims from crime victims under an ex gratia scheme, Great Britain's lead has been followed by some other jurisdictions in the creation of their compensation plans. After holding hearings throughout the state of New York, Attorney General Louis Lefkowitz stated:

> We concluded after a good deal of research, study, and argument that the overriding consideration is the

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[59] New York Times, Feb. 21, 1965, VI, p. 20.

> moral obligation that is involved. And on this basis the State is on its most solid ground in seeking to enact legislation to compensate victims of crime and their families. In other words, we felt that the innocent victim of crime was the forgotten person of society, and something should be done for him.[60]

This point of view came later to be translated into a statutory declaration of legislative intent when the state of New York adopted its compensation program. "The legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly, it is the legislature's intent that aid, care and support be provided by the state, as a matter of grace, for such victims of crime."[61] Similarly, in Maryland, the legislative finding and determination was "that there is a need for government financial assistance for such victims of crime. Accordingly, it is the legislature's intent that aid, care and support be provided by the State, as a matter of moral responsibility, for such victims of crime."[62]

There may be a moral responsibility involved. There most certainly is a conception that there is a moral obligation for the state to compensate victims of crime. Also, there may be decided administrative advantages, which will

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[60] Governor Rockefeller's Conference on Crime, Astor Hotel, New York City - April 21-22, 1966, p. 188.

[61] New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, art. 22, sec. 620.

[62] Maryland, Annotated Code of Maryland (1968), art. 26A, ch. 455, sec. 1.

be evaluated later, for a legislature to conclude that "moral obligation" is the appropriate base for a state-financed compensation program.

> In a democracy, no theoretical justification of absolute "rightness" is necessary to adopt a compensation program. A demand for a service from the state needs no theoretical rationalization for the state to assume a new role. This might be called the "no justification" theory.

In this area of compensation to victims of crime there is also a striving to achieve something of benefit to the public interest. There is general agreement that a program to compensate victims of crime would be in the public interest. Is it sufficient justification then to establish such a program because it is felt to be advantageous to the public interest? Does not such a program require sound theoretical support to justify it as being substantively sound? No, say many people who wholeheartedly support such compensation programs. For them it is sufficient that a need exists and that the state has the capacity to meet it. This need will simply have to compete with other needs in the political process through which resources are allocated. Some needs will be met; others will not. Thus, there will be many forces moving the state to act in a particular way at a particular time and what the state comes finally to do will depend upon the competition and success of these competing forces.

> Make what seems to be a fair assumption: nobody has a pipeline to truth; no single person or agency has

> special knowledge of what public action is in the public interest. . . . Similarly, the best approximation of the public interest is the outcome of the "free and open encounter" of the colliding ideas and pressures as translated into public policies and actions by the constitutional branches of American government. . . . The public interest is what comes out of the competition of the open market. The test is procedural, not substantive.[63]

This means that what is deemed to be in the public interest will change as the fortune or success of competing demands change:

> Always one of the most accurate predictions that could be made about the state of firearms regulation--or any other regulatory or nonregulatory bureaucratic action--is that in time things will be different as events happen (murders, drought, monopoly, expansion of the franchise, depression), as new inventions and technology emerge, and as new patterns and groupings of political and other power and influence are formed. It is a process full of sound and fury signifying the closest approximation we have to the public interest. It is a procedure whose basic assumptions are that nobody knows what duties ought to be assigned to what public agencies, that the best way of making a determination is to latch the decision onto the competition of clashing arguments and pressures.[64]

There are those, including some of the most articulate supporters of compensation plans, who base their support on this thesis. Among them is Rupert Cross, one of the early advocates of compensation to victims of crime:

> Speaking for myself, I am content to do without theoretical justifications for compensation of victims of violence. After all, these are questions of public welfare and they should be determined by public opinion.

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[63]Norman John Powell, Responsible Public Bureaucracy in the United States (Boston: Allyn and Bacon, 1967), pp. 152-153.

[64]Ibid., pp. 158-159.

> Human needs account for the most of the Welfare State, and its evolution has nothing to do with tortuous lines of reasoning such as those I have mentioned. If there is a widely recognized hardship, and if that hardship can be cheaply remedied by state compensation, I should have thought that the case for such a remedy was made out, provided the practical difficulties are not too great.[65]

Complementary to this conception of the democratic process working out solutions to problems as they emerge or as a public feeling that there is a need for solutions emerges, are the remarks of Lord Shawcross:

> I do not think that it is necessary or useful to attempt to-day to justify the case for a reform of this kind by any elaborate theoretical or philosophical speculation as to why the State should intervene in a matter of this kind. Exactly the same kind of speculation might have been raised, and indeed many people did raise it, at the time when many of the provisions of the Welfare State which are now taken for granted were first introduced. The noble Earl has referred to public instinct in this matter, and I would venture to say that very often in a matter of this kind public instinct is sound, and should not be disregarded. There certainly is now a public instinct that the Welfare State ought to make provision for these cases. The public do feel, as the Conservative Party's Committee very well pointed out, that the State has a special kind of responsibility, and that they, as members of the public, have a very special kind of responsibility, for the victims of crimes of violence.[66]

A generally shared public perception of need, the acceptance of using the state as the means to alleviate this need, engaging in the competition of the political process for an allocation of revenue, being successful in

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[65]"Compensating Victims of Violence," The Listener, May 16, 1963, p. 816.

[66]Great Britain, "Crimes of Violence: Compensation for the Victim," Parliamentary Debates (Lords), 245 (Dec. 5, 1962), col. 263.

this struggle--these are the things that should matter. In the democratic context of these actions and decisions there will be sufficient "rightness" attaching to the outcome, whatever that might be.

On the other hand, without a prescriptive theoretical foundation, other decisions that will have to be reached if a compensation plan is adopted may be more worrisome. Will payments be made as a matter of legal right or on an ex gratia basis? This can become very meaningful because of the necessity to accommodate the bureaucracy to a new function. It may make it more difficult to rationalize, except on grounds of expediency, the allowance or denial of appeals, for example. In other words, the lack of a theoretical justification still leaves one with difficult questions to answer whereas a theoretical justification pretty well carries with it a mandate for handling subsequent considerations.

Theoretical Rationalizations--Negative

> It is impossible to justify directing state attention to this narrow need. It is theoretically impossible to single out the victims of violent crime to the exclusion of other hapless victims of misfortune in society.

This position does not represent opposition to compensating victims of crime because it is thought to be an undesirable or unneeded undertaking. In fact, such action is highly desired. The opposition stems from the objection to singling out compensation to victims of crime and neglecting

other objects of concern. There is a demand for a comprehensive effort to relieve misfortune in general. But, unless such general treatment is forthcoming, there is opposition to partial relief. This attitude is typified by the following remarks:

> Why the victims of crimes of violence should be considered more deserving of compensation by the state than those who are injured in some other misfortune is not at all clear, although a gallant attempt has been made to find reasons.
>
> The adoption of particular compensation schemes has not proceeded very rapidly, and for this there are several explanations. One is that workmen's compensation was always partial compensation and the amounts paid were inadequate. Hence any proposal for a particular compensation scheme which might be likened to workmen's compensation tends to be identified with this inadequacy. Another difficulty is the strain of seeking to justify the different treatment for various categories of misfortune. Particularly from the point of view of the victim, the nature and consequences of his condition are infinitely more important than the classification of its cause. For example, in the case of an industrial worker, what difference would it make whether he is disabled at work, on the highway, or in the home? The needs of his family are the same.[67]

These contentions seem to be quite true. There is no arguing with the correctness that the victim of misfortune has needs that are not dependent upon the particular cause of his misfortune. The resolution of the dilemma is bewildering to those who are sympathetic to general suffering and misfortune and who desire to have public programs to encompass and provide for all such cases. Consider the following:

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[67]Terence G. Ison, The Forensic Lottery: A Critique on Tort Liability As A System of Personal Injury Compensation (London: Staples Press, 1967), pp. 34-35.

> When one first confronts a proposal to alleviate the suffering of victims of crimes of violence, all his humanitarian instincts are aroused. Reflection, however, forces him to ask: "Why alleviate the suffering of victims of crimes of violence and not, for instance, that of the farmer who while working in his field, is struck by lightening and rendered a helpless invalid?" The question is not an easy one to answer. It is not enough to say: "First things first," or "One thing at a time." By what criterion may we justify the priority implicit in such a response?[68]

For the most part, those who at first find themselves frustrated by such propositions as this are able to rationalize themselves out of their perplexity. Others never conceive of their efforts to secure compensation programs only for victims of crimes of violence as representing contradictions. It depends upon the disposition of the individual and his conception of the problems and alternative solutions as to whether or not he will be discomfited in urging what others view as being inadequate. It would seem that the objections raised above have been effectively countered through rebuttals based upon several premises. One is that,

> . . . to some considerable extent we as members of society make possible the conditions under which crimes are committed. Failure to deal properly with neglected children, unwillingness to provide adequate funds for rehabilitation procedures, are but two of the relevant choices we more or less consciously make as a society. Perhaps then it is fairest that we should all bear the losses inevitably suffered by some of us as a result of ordering a society in this way.[69]

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[68]Frank W. Miller, "Compensation for Victims of Criminal Violence: A Round Table," Journal of Public Law, VIII (1959), pp. 203-204.

[69]Ibid., p. 208.

While a conception of perfect consistency is demanded by some in this area, others contend that its absence does not amount to a fundamental defect. In fact, consistency in this one area would amount, it is suggested, to a departure from usual practice. Speaking to this point, Lord Shawcross counters:

> My Lords, I am always a little frightened when I hear it said that this proposal or that proposal will produce difficulties or anomalies. That is almost always the refuge of the little man who is too timid or too lazy to do something new. Of course a scheme of this kind will produce anomalies. What of it? It is an anomaly now that if I go home to-night and my house is destroyed by rioters I shall be able to obtain compensation for it. But if, at the same time, they knock me on the head and injure me for life, I shall not be able to secure a penny. Nor do anomalies of this kind, or practical difficulties in administration, assume any greater importance because somebody elevates them into the category of matters of principle. This again is, of course, a favourite device; but when it is said that something is a matter of principle, nine times out of ten it is nothing of the kind.[70]

And speaking further, he expresses the belief that it is not "useful to take time in any over-nice reconciliation of the provisions of any particular scheme in this field with existing arrangements for different classes of case. . . . That is, of course, not the way that we normally proceed in this country."[71] It might be added that that is not the way we normally proceed in the United States either.

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[70]Great Britain, "Crimes of Violence: Compensation for the Victim," Parliamentary Debates (Lords), 245 (Dec. 5, 1962), col. 264.

[71]Ibid., col. 263.

On compensation to victims of crimes of violence, there are those who want to keep the door shut. Some want to keep it shut until it can be opened all the way to admit all classes and cases of need. Others want to keep it shut because if opened part-way to admit at present only victims of crimes of violence, it may be opened wider in the future. Others want to open it part-way now so that it may be opened wider in the future. Compensation to victims of crimes of violence has thus been referred to by some as the thin edge of the wedge. Referring to this probable wider opening of the door, should a compensation program for crime victims win approval, Lord Airedale remarked that:

> One cannot help feeling that, as time goes on, in the case of a disabled person who has been injured some years previously he and his friends, and society generally, are going to come to take the view: "Does it matter so much how the injury was sustained? It did not happen from any fault of his. Is it right that the amount or quesion [sic] of his compensation generally should depend upon how he sustained his injury? The important thing is that he sustained it through no fault of his own." That being so, I should have thought that where an interval elapses and the question of how the original injury was sustained ceases to matter, the position is reached when these particular victims are going to say: "If a victim of criminal violence is to be compensated, why not us?" As a result, the door is going to be opened wider (at any rate, it is going to be pushed very hard to be opened much wider), than purely on the question of compensating victims of crimes of violence.[72]

There is, as well, some sociological support for not having to choose between all or nothing. It is suggested that a

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[72] Ibid., cols. 299-300.

middle ground can just as logically be chosen.

> The concept of objective justice, no less than the concept of truth, finds its intermediate state, which leads toward the objective sense of "justice," in social behavior. In the field of criminal law, as well as in all other regulations of life, the correlation between guilt and expiation, merit and reward, service and counter-service, is first, evidently, a matter of social expediency or of social impulses.[73]

By proceeding from this rationalization, there is no inconsistency in advancing along what might be criticized as a piecemeal approach. From this reasoning, in fact, it is only going to be through partial solutions later complemented with other partial solutions that a point will be ultimately reached when social needs will have been comprehensively met. According to the Lord Bishop of Chester,

> the argument will no doubt be put forward that this is not the only form of injustice which has to be borne by certain citizens; that there are other injustices equally pressing; and that we ought not to do anything about the one without remedying the other. I am not myself impressed by this form of argument. I believe that society must progress by dealing piecemeal with each occasion as it presents itself. We have here a clear case of injustice and we ought to do our best to remove it.[74]

There is also the pragmatic view to beginning with a compensation plan limited to victims of violent crime. If it is thought desirable to enter this area by showing public concern for sufferers of misfortune in general, be

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[73]Georg Simmel, The Sociology of Georg Simmel, trans. and ed. by Kurt H. Wolff (New York: Free Press, 1950), p. 259.

[74]Great Britain, "Crimes of Violence: Compensation for the Victim," Parliamentary Debates (Lords), 245 (Dec. 5, 1962), col. 271.

realistic; begin where you can, and expand where you can, as it is expedient to do so. Compensation only for victims of violent crime has, according to the Earl of Longford,

> no necessary implications for victims generally; but we shall be making a start--if you like, an experimental start--in a sphere where the problem is limited in size, where private insurance is much less feasible than elsewhere, and where the public, by a true instinct, is sure that the need and distress are greatest.[75]

Another point of view, similar to the above, yet different, is that if one is interested in realizing comprehensive public consideration of social needs it would be best to make a beginning with a compensation program of the scope being considered here. Alternatively, if one is interested immediately in attaining compensation for victims of violent crimes, urging, initially, too ambitious a program may lead to the defeat of a modest program that might achieve passage on its own. Arguing thusly, it is not compromising one's principles to push first for what critics view as too restricted a program. One who urged initial passage of a crime compensation program and eventual expansion into other areas holds this view. Mr. Alan Fitch, speaking in favor of such a strategy has said:

> I hope that this will be only a pilot scheme and that it will eventually give way to a far more fundamental and comprehensive system of compensation. But I feel that at this stage--possibly some of my hon. Friends will disagree--to have introduced a more comprehensive and fundamental scheme would have been too

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[75] Ibid., col. 251.

> risky, because if it had failed the whole idea of compensation for the victims of violent crime would have been prejudiced for the future. I do not suggest that this is a simple scheme after what we have heard today, but I think that it is far better to start with a scheme which I might describe as elementary in the best sense and that we can certainly move on from there.[76]

There is one other component to be considered: public opinion. Some do not feel that public opinion would support, initially at least, a compensation program that would encompass more than public aid for the victim of violent crime. "While I am convinced," said Ian Percival, "that public opinion supports this scheme in relation to personal injuries, I do not think that it would be prepared to see the scheme extended to claims in respect of damage to property, however logical a case one might be able to make out for such an extension."[77] In proceeding to create a compensation program for victims of violent crime, "the real basis," according to Sir F. Soskice, "is that as society evolves new situations are uncovered on which strong public feeling works. . . . In view of the increase in crimes of violence recently and the emergence of cases in which, obviously, there is a strong claim to sympathy, . . . public sympathy is with the victims of those assaults."[78] This is the conclusion also reached by the Earl of Longford

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[76]Great Britain, "Crimes of Violence (Compensation for Victims)," Parliamentary Debates (Commons), 694 (May 5, 1964), cols. 1173-1174.

[77]Ibid., cols. 1229-1230. [78]Ibid., col. 1141.

who was Chairman of the Justice Committee that early considered compensation to victims of crime. He suggests that crimes of violence, in particular, have more impact upon public opinion than other types of crimes or other misfortunes that might befall one. "I suggest," he said, "that the strong popular feeling which we in our different ways seem to share, the emotion behind this reform, is a mixture of sympathy for the victim and indignation concerning the outrage. . . . crimes of violence . . . tend to arouse more sympathy and indignation than other crimes do."[79]

Since one is dependent upon a favorable public opinion when attempting a new public undertaking, it would seem difficult to justify withholding support due to the objection that a limited initial effort that encompasses only compensation to victims of violent crime is philosophically without merit. This kind of objection, while one can be sympathetic with the position, seems most likely to delay eventual programs of the type those who hold this view proclaim to desire. They may hold their "principles" intact, but it would seem less likely that they will ever see the kinds of programs they desire materialize.

> It is "wrong" to foster creeping paternalism and therefore weaken individualism by having the state aid victims of violent crimes from public funds.

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[79]Great Britain, "Compensation for Victims of Crimes of Violence," Parliamentary Debates (Lords), 257 (May 7, 1964), col. 1390.

There is a theoretical objection by some people to creating a program to compensate victims of crimes of violence based upon a general objection to what they might call the expansion of the welfare state. This does not represent a specific objection to a crime compensation program but considers such a program as another adjunct of undesirable expansion of governmental activities. This objection stems from a particular conception of individual-government relations and from what it is believed will foster self-help, rugged individualism, and strengthen one's "moral fiber." A crime compensation program, it is held, will not only not make any positive contribution to the development of these qualities but will be an impediment to their development and realization. At this date, since numerous public programs of a welfare nature already exist and since it does not seem likely that there will be a wholesale repeal of them, this objection largely becomes a "hold the line" plea.

> To say that since we have cared for or compensated the other groups we should therefore proceed to compensate victims of violent crimes is to indulge in the kind of thinking that could lead us into an abandonment of all notions of individual responsibility and a resort to complete dependence upon governmental paternalism. The sociological decadence that could come from that kind of thinking might be far worse than the economic consequences.[80]

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[80] Fred E. Inbau, "Compensation for Victims of Criminal Violence," Journal of Public Law, VIII (1959), p. 202.

This seems to be a suggestion that it is better that the crime victim should suffer alone his economic losses than risk general social decadence resulting from a compensation program. By suffering such consequences he would appearantly be making a contribution to the general welfare despite those consequences possibly being personally disastrous to him. That the general welfare would be served in this way seems doubtful. It is because the economic consequences of being a victim of crime most always must be borne by the victim that "programs granting public compensation to victims for physical injuries from violent crimes have aroused increased interest in recent years. . . . In the absence of such programs victims generally suffer losses that are not compensated in any way."[81] It is suggested that it is in society's interest to strengthen the individual. Can this always be done by ignoring the individual and letting him fall back upon whatever personal resources he can muster? The President's Commission on Law Enforcement and Administration of Justice thinks not: "The Commission believes that the general principle of victim compensation, especially to persons who suffer injury in violent crime, is sound and that the experiments now being conducted with different types of compensation programs are valuable."[82]

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[81] U. S., President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in A Free Society (Washington: Government Printing Office, 1967), p. 41.

[82] Ibid.

> Restitution is a preferred action. By involving the criminal, he too can be restored and made an asset of society.

Restitution and compensation are alike in that they both have as an objective the re-establishment of the victim of crime to a state he enjoyed prior to becoming a victim of crime. They differ primarily in the allocation of responsibility for achieving this re-establishment of the victim.

> Restitution differs in that it allocates the responsibility to the offender. The restoration or reparation of the victim's position and rights that were damaged or destroyed by the criminal attack become, in effect, a part of the offender's sentence. It is a claim for restitutive action to be taken by the criminal and is, in essence, penal in character and thus represents a correctional goal in a criminal process. Finally, the procedure of compensation calls for application by the victim for payment by society; restitution calls for the decision of a criminal court and payment or action by the offender.[83]

The emphasis of restitution is thus markedly different from compensation in that it stresses correctional goals probably more than making the victim whole again. Compensation is viewed by those who favor restitution as offering fewer total societal benefits than restitution. They also realize that society's concern and sympathy lies more with the victim. This concern and sympathy for the victim, if met through a compensation program, could well neutralize

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[83]Stephen Schafer, Compensation and Restitution to Victims of Crime (2nd ed., Montclair, N. J.: Patterson Smith, 1970), p. x.

effective efforts to restore the offender. Restitution is thus viewed more as a total curative package than compensation. It seeks to make the victim whole again through state-enforced efforts on the part of the offender. As might be expected, those who favor restitution and its correctional emphasis are pretty much forced to become opponents of compensation since compensation does not focus its interest upon the offender. In considering the pros and cons of restitution versus compensation, it has been noted that:

> A rather more subtle argument against victim-compensation is that it intervenes between the offender and the victim, and that a sound policy of criminal rehabilitation would demand that the criminal and not the state should bear the burden of restoring the victim as best as possible to the condition he was in prior to the criminal event. Persons holding this view usually demand vastly increased prison vocational programs, with inmates receiving wages equivalent to those prevailing in regular society. From these wages they would pay for their own room and board, and would pay for all other services associated with their incarceration. They could also furnish support for their dependents on the outside. In addition, those expenses reasonably related to their criminal behavior would be deducted from their earnings and forwarded to the victim for his use. In this way, it is believed, the offender would come to a better and deeper understanding of the consequences of his behavior as these have been visited upon other human beings.[84]

The goals of those who favor restitution are certainly laudable. There seems to be some doubt, however, whether these goals could or would be realized through a program of restitution. The detractors suggest that the contentions

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[84]Gilbert Geis, "Who Is Responsible For the Victim of Violent Crime?" Social Justice Review, April, 1968, p. 11.

made by those who favor restitution depend upon a lot of things happening that are not likely to happen and even if they should happen are not likely to produce the state of affairs that would yield the results desired.

> The critical flaw of restitution proposals lies in the assumption that certain prerequisites, which must occur to make restitution an effective program, will in fact occur; the offender must be found, arrested, and convicted before he can be forced to pay. Even assuming accomplishment of the first three, offenders usually do not possess the assets necessary to make a satisfactory restitution. Thus, while such proposals might be very effective in a few cases, in most instances they will amount to nothing more than paper tigers.[85]

The potential ability of a restitution program to meet the needs of the offender and the victim is in addition affected by other factors. One of these factors is the attitude of the offender toward restitution. It has been suggested that "parolees who have served a part of their sentence in confinement are very resistant to paying restitution; they make the same mistake as the rest of society does by inferring the offense was against the collective whole and not against the individual victim. Convicts often speak of paying 'their debt to society.'"[86] Whether this attitude, which is a reflection of the society and its attitudes, can be

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[85]Michael P. Smodish, "But What About the Victim? The Foresaken Man In American Criminal Law," University of Florida Law Review, XXII (Summer 1969), p. 5.

[86]LeRoy G. Schultz, "The Violated: A Proposal to Compensate Victims of Violent Crime," St. Louis University Law Journal, X (1965), p. 244.

changed so that restitution might work or be changed through participating in a restitution program, seems open to question. But there are other difficulties that make the likelihood of achieving a successful restitution program doubtful. These include the realities of the work schemes available to prisoners and the obstacles that lie in the path of being able to make them such that restitution would be possible.

> All prison industry has failed as a profit-making wage plan for prisoners due to competition and resistance by labor and business, plus inadequate equipment and capital. Indeed, no country has been able to resolve the question of prison wages satisfactorily. Before prison wages can be considered as a practical source for victim restitution, there must be a vast improvement and updating of prison industries with "equal pay for equal work." Even so, no prison in the United States has been able to employ more than half its population, and the time will probably never come in this country when a prisoner will be able to earn a wage comparable to that of free labor.[87]

These difficulties and the almost insuperable problems in resolving them have caused some of those who were at first attached to restitution to abandon it to support compensation.[88]

There are those who still champion restitution as representing a more desirable alternative than compensation, but they do not constitute the mainstream of those who now

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[87] Ibid., p. 245.

[88] Cf. the early support of restitution by Margery Fry in Margery Fry, Arms of the Law (London: Victor Gollancz, 1951), p. 126, with her support of compensation in London Observer, Nov. 10, 1957, reprinted in Journal of Public Law, VIII (1959), p. 193.

support efforts to restore the victim of crime. They also recognize the drift of former support away from restitution programs toward compensation plans:

> The present general view and the American trend is toward compensation: no matter what the cause of the loss or the injury may be, the claim (for compensation), even if it was caused by crime, is considered a civil matter only and is not to be connected with the disposition of the criminal case and correctional action against the criminal.[89]

The attachment to restitution has not altogether died. Restitution retains many supporters and is occasionally embraced unexpectedly. In Great Britain, which has an operating compensation program, it was somewhat surprising to find that the Bar Council sub-committee on the penal system recently recommended that:

> The powers of criminal courts to order compensation for the victims of crime should be extended and used more frequently.
>
> The need for reparation by the offender should be recognized "as an integral part of the sentencing function."
>
> When awards of compensation were made, they should be enforced in the same way as fines, and if both were ordered the award should be part of the fine. The council recommends that the victim should get priority, so that the first part of the fine to be recovered would be allocated as compensation. In a few cases the whole fine might go to compensate the injured party.[90]

But most such criminals have no funds and reparation or restitution by the criminal is made virtually impossible

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[89]Stephen Schafer, The Victim and His Criminal: A Study in Functional Responsibility, op. cit., p. 113.

[90]The Times (London), Nov. 30, 1968, p. 2e.

by the type of work programs and wages afforded the criminal in the usual prison setting. Work-release programs that would enable the prisoner to earn an income equivalent to what he could earn if he were not a prisoner are not yet a reality in many instances. Accounts of the usual situation have been reported in the news media recently, accompanying reports of prison disturbances. In New Jersey's newest and most modern prison "the budget allows only 45 to 58 cents a day, depending on the job."[91] Striking prisoners at the New Mexico State Penetentiary recently included in their list of demands the "payment of the minimum wage ($1.60 an hour) for all work done in the prison."[92] This demand may seem low, but the reality that these prisoners face is the "inmates who work on the grounds or in the prison industries of data processing, Key punch and furniture refinishing are paid 15 cents an hour."[93] The inadequacy of resources makes it highly improbable that the criminal can be made to compensate his victim through either the civil or criminal processes. Practically, the victim has small chance of ever receiving compensation from his attacker.

It may be that the present difficulties that seem to

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[91]Jonathan Kwitny, "Prison Reform: A Missed Opportunity," The Wall Street Journal, Nov. 17, 1971, p. 14.

[92]Robert Locke, "N. M. Warden Replies to Attica Demands," Albuquerque Journal, Oct. 9, 1971, p. B-9.

[93]Ibid.

preclude restitution's being successful or even inaugurated will someday be overcome. But, at present, it would seem that one who is interested in alleviating the oftentimes miserable condition of the victim of crime must turn elsewhere for a solution.

"Practical" Rationalizations -- Affirmative

> Compensation programs will result in a greater public awareness of the costs of crime and will stimulate increased public support for law enforcement to reduce these costs.

Some members of the public who are not particularly moved by theoretical considerations of the obligation of the state to the victims of crime nevertheless support compensation programs. This support allegedly rests upon "practical" results that are anticipated to accrue from a compensation program. There is also a different kind of "thin edge of the wedge" consideration to be taken into account here. It was mentioned above that a compensation program of the scope that would encompass or provide initially only for victims of violent crimes is supported by some who favor general compensation for a wider variety of sufferers of misfortune. They view a compensation program that would apply only to victims of crimes of violence as a prelude to an expanded program. Here, compensation programs to aid victims of crimes of violence are supported due to the desire to open the door to broad-fronted attacks on the root causes of crime. This group of supporters is

deeply concerned with correcting and abolishing the "social cesspools" that are believed to foster criminal behavior. "Perhaps most important," says Representative Abner J. Mikva, "emphasizing society's responsibility to compensate victims of crime puts the problem of criminal conduct in proper perspective; it shows it as a social problem which all citizens have a stake in solving rather than a problem of 'bad guys' or 'congenital criminals' who are the worry of the policy [sic] and no one else."[94]

It is felt that one way in which to enlist general public support for fundamental reforms designed to remove the basic causes of crime is to make the public aware of the costs of crime and to have the public share these costs. "Perhaps if the crime load were distributed generally throughout society, its cost would be more generally felt and the attention this problem deserves would be forthcoming."[95] This thrust against crime derives from the incorrect belief that crime can be stemmed by emphasizing law enforcement, conviction, and punishment. The more correct approach would be, it is said, to emphasize the prevention of crime by attacking the social maladies that generate crime. The benefits produced by a crime compen-

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[94]U. S., Congress, Senate, Committee on the District of Columbia, Hearings, Compensation of Victims of Crime, op. cit., p. 68.

[95]Roy G. Francis and Arthur L. Johnson, "Some Theories of Penology," Sociology of Crime, ed. Joseph S. Roucek (New York: Philosophical Library, 1961), p. 268.

sation program "include the fact that they make more obvious to the public the financial cost of criminal activity, and for this reason may lead to greater support for programs of prevention and enforcement."[96] It is felt that short-run economies in this problem area can only lead to long-run diseconomies and perhaps to the destruction of society itself. It is suggested that it is in society's self-interest to give its attention and its financial support to effacing social blights that bear civil noxiousness.

> Compensation programs will benefit the police by bringing to their attention the commission of more crimes. Also, the victims will be more cooperative in assisting the police.

Regardless of what one might think about the validity of the law and order emphasis heard today and the place of the law enforcement establishment in the scheme of things in general, there is no denying the fact that the job of the police is made more difficult as a result of public uncooperativeness. Those who are sensitive to the needs of the police for more cooperation from the public have given their support to compensation programs partly due to their faith that such programs will tend to foster better public-police working relationships. "One possible by-product of a compensation scheme is better co-operation

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[96]Gilbert Geis, "Compensation for Crime Victims and the Police," Police, May-June, 1969, p. 55.

with law enforcement officials in apprehending the offenders. They can be aided by an early report of the offense, . . . "[97] Not only is an early report helpful, it is essential that there be a report. It appears that in more instances than one might imagine, there is never a reporting of major or minor crime today.[98] This widespread failure to even report crimes to the police becomes serious when it becomes the rule rather than the exception. The way that a compensation program might remedy this problem is that "compensation of a victim is invariably tied closely by legislation to the victim's cooperation in reporting the criminal offense promptly and contributing to the fullest possible extent in arriving at a solution."[99] In many instances, the victim, even though he may have been seriously injured in a criminal attack, feels that he has more to lose than he could possibly gain in reporting the crime to the police. By getting involved by going to the police, not only will the victim be faced with the near

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[97]Glenn E. Floyd, "Victim Compensation Plans," American Bar Association Journal, LV (Feb., 1969), p. 160.

[98]Cf. the findings of Philip H. Ennis that "at least twice as much major crime as is reported occurs" in Criminal Victimization in the United States: A Report of A National Survey. A report of a research study submitted to the President's Commission on Law Enforcement and Administration of Justice. Prepared by the National Opinion Research Center, University of Chicago. Washington: Government Printing Office, 1967, p. 13.

[99]Geis, "Compensation for Crime Victims and the Police," loc. cit.

certainty of not getting any compensation regardless of whether or not the offender is ever apprehended, he will also face the probability of losing whatever time the state thinks necessary should it need him to testify if the offender is apprehended and brought to trial. As things now stand, there is often insufficient incentive for the victim to come forward and make his injury officially known. In fact, if some sort of public-spirited feeling or personal desire to see vengeance wrought prompts the victim to deliver himself and his complaint to the police, the chances are good that he will regret this decision should he become entwined in the interminable judicial process that will most likely leave him where it found him, minus whatever time and anguish may have resulted in the state's search for "justice." "Why bother?" Why, indeed? While such a response might be tied to dereliction of social or civil duty, for the individual who may have already suffered loss of income as a result of not being able to work following a criminal attack, it is simply more realistic not to risk losing more time off the job by pressing a grievance. To correct this problem, there would have to be better incentives than now usually exist, to cause the victim to want to report his case to the police. "If the victim of a crime had the opportunity of receiving financial aid from the state, he might report a crime that otherwise he might not have.

Consequently, the profit motive might operate here, as it does elsewhere in society, to stimulate better law enforcement."[100] The most recent adoption in the United States of a "citizenship" type compensation program, in which compensation is awarded only where injury or death results while the victim is endeavoring to prevent the commission of a crime or is assisting in law enforcement, was by a state that has declared that its policy is "to encourage the cooperation and assistance of the public in law enforcement and to promote the public welfare."[101] Perhaps it was on the basis of the rationalization mentioned above that this compensation program was adopted. At any rate, it would appear to be advantageous to the state to consider the needs of the victim of crime as well as the needs of the state, particularly in criminal prosecutions, if the state desires the cooperation of the victim. For the reasons considered, programs to compensate crime victims would seem to favor the development of this cooperation.

> Democracy will be strengthened by restoring victims of violent crime to their former state. This represents a logical extention of the welfare state's interest in the well-being of its people.

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[100]Allen M. Linden, The Report of the Osgoode Hall Study on Compensation for Victims of Crime, op. cit., p. 4.

[101]Nevada, Compensation for Victims of Criminal Acts, Nevada Revised Statutes (1969), Chapt. 217, sec. 217.010.

There is considerable concern about the possible consequences for society in neglecting its members who are the innocent victims of crimes of violence. Those who are anxious about the health of democracy fear that a societal indifference to the individual's pain and suffering can only be damaging. It cannot be known for sure but considerable speculation is taking place as to just what kinds of societal defaults might collectively undermine public confidence in America's public institutions. In this respect, compensation programs to aid victims of crime are seen as a constructive effort to exhibit responsibility. As such, these programs are a complement to other similarly motivated efforts.

> Social legislation such as veterans compensation, workmen's compensation, and the whole range of public welfare programs are the culmination of a democracy's conviction regarding responsibility for human welfare. Certainly common sense calls for grouping together for mutual protection through a system of shared risk in the area of victims of criminal violence.[102]

Making the victim whole again as "an object of public good" was also stressed early by Jeremy Bentham.[103] It has also been suggested that one of the chief advantages of a crime compensation plan is "the psychological effect on the community produced by the very fact that there is

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[102]LeRoy G. Schultz, "The Violated: A Proposal to Compensate Victims of Violent Crime," op. cit., p. 242.

[103]Theory of Legislation, trans. from the French of Etienne Dumont by R. Hildreth (London: Kegan Paul, Trench, Trubner & Co., 1904), p. 317.

such a scheme in existence."[104] The creation of such a program stands as an expression of general interest in the well-being of the individual:

> Of the two major components of the ethos underlying victim compensation, the first is essentially compassionate: people have been hurt through no fault of their own; therefore, it is a moral obligation of those more fortunate to assist such persons. The second element is the product of an economic rationality which suggests that failure to make adequate provision for incapacitated persons ultimately deprives all members of the society of common benefits. "No man is an island," viewed as a principle of social policy, may be considered to include elements both of charitable impulses and of impulses of self-interest.[105]

Both in the short run where the state has a need to be notified of crime and in the long run where the state needs the support of the public, it is contended that compensation programs to victims of crime will make a contribution toward the realization of these needs. The give and take relationship, it is suggested, should be reciprocal between the individual and the state. "The state should assume a general social responsibility to aid unfortunates when, as here, such aid would serve compelling social policies."[106] The approach favored by Professor Norval Morris,

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[104]B. J. Cameron, "Compensation for Victims of Crime: The New Zealand Experiment," Journal of Public Law, XII (1963), p. 375.

[105]Gilbert Geis, "State Compensation to Victims of Violent Crime," U. S., Task Force on Assessment: The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Crime and Its Impact--An Assessment, Appendix B (Washington: Government Printing Office, 1967), p. 157.

[106]"Compensation for Victims of Crime," University of Chicago Law Review, XXXIII (Spring, 1966), p. 533.

Professor of Law and Criminology, Director, Center for Studies in Criminal Justice, University of Chicago,

> is to recognize that crime is endemic in our society and that it is only proper for a society so organized that crime is endemic to share the burden which is by chance imposed on particular, unfortunate individuals. The analogies with workmen's compensation and with compulsory third-party motor vehicle insurance are of some relevance; perhaps a closer analogue is the extensive medical and social welfare provisions of the Veterans Administration legislation by which the community shares in the loss to the individual who has suffered for us from the external aggression of war. We should likewise share the loss to those who suffer for us from the internal aggression of crimes of personal violence.[107]

The discrepant lack of a program to compensate victims of crime logically becomes the concern of those who consider its enactment as a correlate to other manifestations of state concern. This concern has been evidenced by the Earl of Longford:

> We are aware that, at a time when other members of the community who are in need of help are increasingly cared for, this particular group of unfortunates are not only not being helped on a par with others, but are actually having a worse time with every year the crime wave continues. Their risks, in a sense, are becoming worse.[108]

Regardless of the causes attributed to the increase in crime, it seems plausible that the increase arises from some kind of social failure, at least in the context of American cultural values and expectations.

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[107]U. S., Congress, Senate, Committee on the District of Columbia, Hearings, Compensation of Victims of Crime, op. cit., p. 83.

[108]Great Britain, "Crimes of Violence: Compensation for Victims," Parliamentary Debates (Lords), op. cit., col. 250.

> Although there is no precedent for the concept of social fault, and although society cannot be held blameworthy for the commission of every crime, there is an element of social fault in harm to the victim of crime. Indeed, the motive behind compensation proposals is recognition of the failure of society to prevent a high incidence of crime by those unable to pay for the damages they do. Technically there is no negligent act upon which to base liability. However, society has itself fostered the physical conditions which have brought about the present high incidence of crime. It should therefore accept responsibility for some of the resulting ill effects.[109]

It could be contended that society's lack of interest in the victim of crime represents an unfortunate compounding of society's lack of interest in the conditions that spawn crime.

> Of . . . importance is the argument for responsibility which could be based upon the remarkable unresponsiveness of American institutions to the causes of crime, whether they be minority group ghettos, other slums, dope-addiction, organized crime, or an irrational tradition of violence. If society tolerates recognized sources of crime, surely its minimal responsibility extends to repairing the human damage that results.[110]

That there is thought to be a reciprocal benefit to the individual victim of crime and to the state is displayed by the following statutory justification of a compensation plan: "The Legislature hereby declares that it serves a public purpose, and is of benefit to the state, to indemnify those . . . who are victims of crime."[111]

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[109]"Compensation to Victims of Violent Crimes," Northwestern University Law Review, LXI (1966), p. 91.

[110]Robert D. Childres, "Compensation for Criminally Inflicted Personal Injury," New York University Law Review, XXXIX (1964), p. 456.

[111]California, Government Code (1967), Chapt. 5, art. 1, sec. 13960.

For some, the state would be defaulting its felt obligation to establish and maintain a comprehensive system of justice should it fail to include adequate provision for the victim of crime. After having had experience administering a compensation plan, Walker Carter, Chairman of Great Britain's Criminal Injuries Compensation Board, has concluded that "no-one who is called to deal with those cases in which a blameless victim has been seriously disabled, sometimes for life, or with those cases in which the elderly and infirm have suffered injury and shock, can fail to feel deeply what a worthwhile part is played in the full administration of justice by the power to award compensation."[112]

"Practical" Rationalizations--Negative

> The state already provides sufficient remedies to victims of violent crimes. Tort actions in civil cases can be brought.

There is a general feeling approaching universality that tort actions in civil cases offer almost no hope for relief. It is somewhat ironic that it is the state that is responsible for obstructions to prevent recovery in a civil case. First, the offender must be apprehended before a civil suit can be brought. Sometimes the offender is not identifiable. Even if he is identifiable, he is not always

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[112]Great Britain, Criminal Injuries Compensation Board, First Report and Accounts, Cmnd. 2782, Oct., 1965, p. 7.

caught. If he is caught and should have any funds, the chances are good that his defense in his criminal case will exhaust them. If he is convicted and is incarcerated, realities of penal practice preclude his being able to pay any judgment that might be won by his victim in a civil suit. For these reasons it is very difficult to imagine finding anyone who would contend that present remedies for the victim are adequate. Tort actions have a tradition however and there is some attachment to the process. It is suggested by some that there is nothing wrong with the tort action itself. What is lacking is the usual deficiency of funds to pay a judgment. Support of civil actions for tort does occur with recommendations to modify the present reliance upon the financial assets of the offender. In effect, the state would step in to make the payment when the offender is unable to do so. "All that the State can be asked to do," according to Mr. R. Egerton, writing a note of dissent in the Justice Society report, ". . . is to see that the judgment which has been obtained against a criminal, or which it is reasonably satisfied would have been obtained against a criminal, is met."[113] This would leave the victim to either go through a civil case, secure a judgment, and have the state pay it, or to omit the civil suit and negotiate a settlement with the state. This recommendation

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[113]A Report by Justice (Society), Compensation for Victims of Crimes of Violence (London: Stevens & Sons, 1962), p. 30.

then does not leave one far removed from a state compensation program. Basically, the state would be doing the same things, and in either manner, due to the fact that at present remedies available to the victims of crime are glaringly inadequate.

> Private insurance is available to anyone who desires to protect himself from the financial consequences of criminal violence.

There are various suggestions that have been made that seek a remedy to the difficulties under consideration here through private insurance coverage of risks, including that of criminal assault. Some of these suggestions are a little wide of the mark or fail to appreciate the distribution of burdens incident to crime. "Since anybody can purchase protection against any imaginable tort injury from a local insurance broker by simply consulting the 'yellow pages,' dialing the right number and sending a check, the sole remaining question seems to be whether we should have socialized, i.e., government operated, insurance, or whether we should continue to rely on free enterprise."[114] The socialism-free-enterprise argument clouds a multitude of relevant considerations. This contention that private insurance is adequate to meet present needs represents primarily a hope that would seem to have little chance of

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[114]Gerhard O. W. Mueller, "Compensation for Victims of Criminal Violence - A Round Table," Journal of Public Law, VIII (1959), p. 219.

realization. In some cases similar expressions are hard to defend even as wishful thinking. Consider the following:

> Perhaps this whole matter of crime-victim compensation might best be left for solution by the insurance interests of this country. The cost of such insurance would probably be very low and within reach of all of us, particularly where such a risk is added to the conventional forms of insurance. We would thereby avoid serious problems that might arise from an effort to provide compensation out of public funds."[115]

It is, of course, not because we have relied upon private insurance to take care of crime victims, but in spite of such reliance, that we still have the unsatisfactory plight of the victim. There are several reasons why private insurance has not met the need. "Insurance . . . assumes the willingness and financial ability of the potential victim to purchase such a policy. The victims of crime most often come from the lowest income groups, those least able or likely to purchase insurance."[116] One difficulty then is that those most likely to become victims of crime are financially least able to purchase insurance protection. So, while insurance is available in the sense that if one has the price demanded by the insurer he can purchase a policy, it is not available in the sense that those most likely to

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[115]Fred E. Inbau, "Compensation for Victims of Criminal Violence - A Round Table," Journal of Public Law, VIII (1959), p. 203.

[116]Michael P. Smodish, "But What About the Victim? The Foresaken Man In American Criminal Law," op. cit., p. 8.

become crime victims can afford to purchase a policy. That the cost is prohibitive to those who most need protection is indirectly admitted by one who supports private insurance as a preferable alternative to public compensation programs:

> Perhaps the remoter the chance of loss through crime, the more likely it is that a budget policy can be written which is available to even the lowest economic population strata. It will be a happy day when insurance companies can sell many cheap policies in lieu of a few expensive policies of insurance against loss through crime.[117]

Another difficulty is that,

> unfortunately, many existing life and accident policies are written so that benefits are excluded where the death or injury of the insured is the result of any violation of the law or the illegal or intentional act of any person. Even without such a specific disclaimer, "accident" or "accidental means" have been interpreted to preclude double indemnity or any recovery at all for injuries or death caused by another's criminal act.[118]

Not only do those who are most likely to become crime victims not purchase private insurance due to the prohibitive cost, they "quite frequently belong to a population stratum which can least afford the economic loss from crime."[119] It would seem that adequate relief for the victim of crime must be sought elsewhere than via private insurance protection, things being what they are at present.

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[117]Mueller, op. cit., p. 236.

[118]Smodish, loc. cit.

[119]Mueller, op. cit., p. 234.

There is some indication that an effort is being made to offer budget policies to see whether it might be feasible to meet at least part of the needs being considered here through private insurance coverage. The Old American Insurance Company of Kansas City, Missouri, recently began an advertising campaign for violence indemnity policies. "At a cost of $12 a year, a policyholder injured in a crime of violence can collect up to $5,250 to cover medical expenses. If the insured is killed, Old American will pay his beneficiary $10,000."[120] This campaign is aimed particularly at elderly city dwellers. At present this violence indemnity policy is being test-marketed in only a few states west of Ohio but if the policy proves to be a success in these states, Old American will consider offering the policy to residents of other states.[121] It remains to be seen whether this effort will be successful. It is encouraging that such a trial effort is being made and analyses of this experiment should prove most enlightening. Should those who are the most likely future victims of criminal attack purchase such violence indemnity policies it will represent a departure from past practices.

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[120]"The Violent Sell," Time, Nov. 8, 1971, p. 100.

[121]Letter from K. R. Keele, Director, Special Services, Old American Insurance Company, Kansas City, Missouri, Nov. 29, 1971.

Compensation programs would simply foster fraud.

One of the reasons for limiting the coverage of compensation programs to the effects of criminal injuries to the person has been the concern about fraudulent claims and unwarrantable payments. This is a legitimate concern and in framing and administering a compensation program, consideration should be given this matter. Some think that since crime compensation programs are still experimental it would be best to narrow the scope of coverage to first meet needs that are most pressing. It so happens that this objective coincides with the type of coverage that is believed to be least subject to fraud. As compared to other types of losses for which the state might seek to compensate, such as property losses, personal injury is believed less subject to falsification. Nevertheless, the potential for mischief captivates the attention of some and perhaps results in their overemphasizing the likelihood of chicanery.

> While a victim compensation plan might help some innocent victims of crime, it might give even more help to the undeserving. Think of the pretexts some citizens might use to extract "easy" compensation money from the government. Many accidents that occurred in private, for instance, could be passed off as anonymous assault. A person who was willing to lie could claim that he had been psychologically maimed during a midnight holdup--which never took place. There is even the possibility--as suggested by occasional wartime instances of soldiers inflicting minor wounds on themselves in order to evade battle--that people would deliberately injure themselves in order to collect a check from the government.[122]

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[122]"Should the Government Compensate Crime Victims?" Senior Scholastic, April 8, 1965, p. 11.

But there is no basis for anyone to expect to receive a windfall from any of the crime compensation programs that have been put into operation. Their aim is to restore the victim of crime, as near as possible through a monetary compensation, to the state that he enjoyed prior to being victimized. Since the amount of the payment is an equivalence of loss there is no incentive, certainly, to injure oneself in an effort to achieve unjust enrichment. Nothing of the kind seems likely to occur. Not many people desire a stay in the hospital or the experience of recovering from a wound enough to injure themselves or to have others injure them. As for the other suggestions of ways in which fraudulent claims might originate, it would seem to be possible to counter them through proper administration of the program. "The mere fact that crimes may be staged or simulated is not a sufficient ground for barring recovery by victims of 'honest' crime. The remedy lies rather in establishing an efficient machinery of investigation and in stringent requirements of proof."[123] It is not as though governments have never undertaken programs which involved monetary payments upon a showing of injury. There are multitudes of activities where the potential for fraud exists. It is most desirable to prevent fraud and to punish fraud when it occurs, but this has been the

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[123]Helen Silving, "Compensation for Victims of Criminal Violence - A Round Table," Journal of Public Law, VIII (1959), p. 252.

business of government for centuries. It is germane to note that problems of fraud or attempted fraud have occasioned no mention of difficulties for those jurisdictions that presently administer crime compensation programs.

> Criminals and criminal acts would become more numerous due to the neutralization of any sympathy for the potential victim that otherwise might exist without state aid for the victim.

Professor Gerhard O. W. Mueller of New York University Law School, in testimony before a New York state committee hearing on compensation to victims of crime, "warned of a possible increase in crimes of violence if a proposal to compensate the victims became law. He said the proposed legislation might reduce a criminal's 'inner hurdle' against committing crimes on the theory that 'nobody really got hurt.' He was the only one of five witnesses opposed to such legislation before the committee."[124] Professor Mueller has based his opposition to compensation to crime victims because of his belief that these consequences would follow such programs, largely upon his projection of findings that thefts of property occur to some degree because of the feeling that "insurance will take care of it." "We do know," says Mueller, "that by easing the lot of potential victims, we decrease the perpetrator's moral qualms about his proposed crime, thereby increasing

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[124]New York Times, Jan. 15, 1966, 17:3.

the likelihood that he will commit it, and we increase the extent to which, consciously or unconsciously, the potential victim will expose himself to the risk of becoming a victim."[125] For the reasons mentioned above, so far as compensation to victims of crime is concerned, there is little reason to suppose that an individual will court personal injury so that he might be mended at public expense. The attempted analogy of the person who might be careless with insured property and the encouragement of carelessness in the protection of one's person by enacting a crime compensation program do not appear to be valid. In fact, there would likely be no discernable impact at all. As for the other point, that of weakening the offender's "moral qualms" about committing a crime of violence, there is no evidence that indicates that a calculation of the future state of well-being of the victim is made by the offender to cause him to commit or not to commit the crime.

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[125]"Should Society Pay Crime's Victims?" "No--Says Gerhard O. W. Mueller," The Rotarian, Sept., 1965, p. 25.

CHAPTER II

INPUTS: THE CATALYSTS LEADING TO THE CREATION OF COMPENSATION PROGRAMS

Opinion Leaders

It is interesting and instructive to examine the parallels in the steps that led to the adoption of the oldest of the social insurance systems, workmen's compensation, and those that have led to the recent adoptions of crime compensation programs. In both cases, interest in the United States followed attention and actions in European countries. In both cases years of study and agitation preceded program adoptions. Also, in both cases those who took the lead in popularizing and discussing the proposed programs were certain public officials and scholars. First, there was a problem being met unsatisfactorily, if at all, by existing arrangements. Next came the investigations and reports of the pathfinders of the new programs. These efforts in turn sparked more discussion, legislative investigations, and culminated in legislative enactments to better meet felt needs. In the United States the pathfinders of workmen's compensation programs included J. G. Brooks, W. F. Willoughby, J. McMackin, and Theodore

Roosevelt. Their preparation of reports and their discussion of the merits of European workmen's compensation programs prompted considerable scholarly research and legislative investigation.[126] These efforts in turn led to the first legislative enactments to implement the recommendations of the researchers and investigators. Following similar developmental phases to that of workmen's compensation, crime compensation programs were first supported outside the United States.

The late Margery Fry, English social reformer and critic, is the acknowledged stimulant that has led to modern day consideration of public compensation to victims of violent crimes that affect the person. Her suggestion of a compensation plan was widely noted when it was put in the form of a newspaper article in late 1957.[127] Her advocacy of a compensation plan became the subject of several study groups and journal articles. Support mounted and finally culminated with the adoption of compensation plans in New Zealand in 1963 and in Great Britain in 1964. Since that time there have been several other program adoptions including six states in the United States. "The

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[126]Cf. Stefan A. Riesenfeld and Richard C. Maxwell, Modern Social Legislation (Brooklyn: The Foundation Press, 1950), pp. 127-136.

[127]London Observer, Nov. 10, 1957, reprinted as "Justice for Victims," Journal of Public Law, VIII (1959), pp. 191-194.

value of the proposed compensation," according to Miss Fry, "would not be economic alone. There is a natural sense of outrage on the sufferer's part, which the milder aspect of our modern penal methods only exacerbates."[128] Miss Fry's recommendations have been warmly received and it has not been on account of disagreement with them based upon principle that there have not been more adoptions. Rather there has been a hesitancy, which will perhaps be only temporary, to launch new programs by governments in general during the present economic difficulties that governments are experiencing.[129]

Several prominent individuals in public affairs in the United States have been either directly or indirectly moved to act on behalf of compensation programs by the stand of Miss Fry. One of the first and certainly one of the most prestigeous was Arthur J. Goldberg who, in his James Madison lecture at the New York University School of Law, concurred with Miss Fry's ideas on victim compensation.[130]

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[128] Ibid.

[129] This opinion is shared by Stanley L. Van Rensselaer, Chairman of the Crime Victims Compensation Board of New York and Co-Chairman of the International Association of Criminal Injuries Compensation Boards, letter of Jan. 31, 1972; Joseph Pickus, Chairman of the Criminal Injuries Compensation Board of Maryland, letter of Feb. 29, 1972; and Wilfred S. Pang, Executive Secretary of the Criminal Injuries Compensation Commission of Hawaii, letter of Feb. 3, 1972.

[130] Printed as "Equality and Government," New York University Law Review, XXXIX (April, 1964), pp. 205-227.

"Many countries throughout the world," he said, "recognizing that crime is a community problem, have designed systems for government compensation of victims of crime. Serious consideration of this approach is long overdue here."[131] Although his comments about actual adoptions were somewhat precipitous, his added voice of support strengthened the appeal of compensation programs. Coming from a nationally prominent and respected person, the subject no doubt received more attention and serious consideration than it otherwise would have.

Another nationally renowned political figure, former United States Senator Ralph W. Yarborough of Texas, can be counted among the early supporters of compensation plans. He introduced and supported four different compensation plans in the United States Senate, beginning in 1965.[132] These plans were to be limited, variously, to jurisdictions under national control including the District of Columbia, and solely to the District of Columbia. "I would hope," he said in 1965, when he introduced S. 2155, "that Federal action of this nature would encourage States to adopt similar plans in the several States."[133] When he

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[131] Ibid., p. 224.

[132] 89th Cong., S. 2155; 90th Cong., S. 646; 91st Cong., S. 9; 91st Cong., S. 2936. See U. S., Daily Congressional Record, 91st Cong., 2d Sess., 1970, CXVI, No. 206, S21017.

[133] U. S., Congressional Record, 89th Cong., 1st Sess., 1965, CXI, Part 10, 14031.

introduced this bill on June 17, 1965, no state in the United States had a crime compensation plan. "I was hopeful," he said, "that we, in the Congress, would act and set a model to the States, and that States could be stimulated to give such protection to their citizens."[134] Actually, Senator Yarborough's concern for victims of crime was developed while he was a judge for five years in a Texas state district court in Austin, Texas, immediately prior to World War II. "The thing that struck me from looking at this problem from the bench was that the victim in the courtroom was often suffering more than the person accused of crime. . . . I wondered at that time what on earth could be done to help these people who were injured by criminal acts and yet received so little protection from the law."[135] He was not able, at that time, to invent a remedy for this felt need. "As I wondered about this problem as a judge," by his own admission, he said, "I did not know the answer to it. The answer did not occur to me until about 1961, when I read of the bill being debated in the British Parliament to compensate the innocent victims of crime."[136] It was not, however, until after the British scheme was in operation that Senator Yarborough introduced his first bill

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[134] U. S., Congress, Senate, Committee on the District of Columbia, Hearings, Compensation of Victims of Crime, op. cit., p. 22.

[135] Ibid., pp. 19-20.

[136] Ibid., p. 20.

to compensate victims of crime. His own tenure has been cut short by a recent failure to win re-election to the United State Senate, but Senator Mike Mansfield, who has developed "a very strong, independent and sincere interest in the matter of compensating victims of crime"[137] recently introduced S. 750, a crime compensation bill.[138]

Among the governors of the states, Nelson A. Rockefeller of New York has shown much interest in investigating problems of crime and in seeking to correct deficiencies in public performances in combatting these problems. He organized several conferences on crime in New York state beginning in 1966, and dozens of meetings were held throughout the state to air the problems and to seek advice for their solution. One of his concerns was with the victim of crime. Testifying before a committee whose members he had appointed, he noted that "the current annual expenditure of $665M by the state and local governments for crime prevention did not help its victims."[139] One of his themes became the declaration that "the innocent victim is the forgotten man in our society."[140] New York adopted its compensation plan not long after the Governor had made

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[137]Letter from Senator Mike Mansfield, Majority Leader, Washington, July 26, 1971.

[138]U. S., Daily Congressional Record, 92d Cong., 1st Sess., 1971, CXVII, No. 16, S 1359.

[139]New York Times, Jan. 4, 1966, 56:1.

[140]Ibid.

these efforts to construct a comprehensive crime-control program. The program became effective August 1, 1966.[141]

Among the other governors who have sought enactment of crime compensation programs is Governor Richard J. Hughes of New Jersey. In his program for law enforcement put forward in his campaign for re-election in 1965, was a program to compensate victims of crime.[142]

In some instances, programs get suggested by a single individual who is interested in crime compensation. Oregon, the first state to consider a crime compensation program in the United States, had its bill introduced by state Representative Betty Roberts "largely at the behest of an East County man who talked with Mrs. Roberts about the need."[143] Prime sponsor of the legislation then became Dean Seward Reese of the Willamette Law School.[144] Oregon has not adopted a compensation plan as yet, but it is of interest that its consideration was stimulated in this fashion.

In addition to individual endorsements of crime compensation programs, there has been an occasional organization endorsement. For example, the Correctional Association of New York which is described as "the only private

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[141]New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, art. 22.

[142]New York Times, Jan. 2, 1966, 62:1.

[143]Editorial, Oregon Outlook, June 10, 1965, 2:1, 2.

[144]Editorial, Oregon Outlook, June 3, 1965, 2:1, 2.

agency in the state authorized to examine and report on prisons, reformatories and local jails and to make recommendations to the Legislature,"[145] officially took a stand urging legislation to compensate victims of crimes of violence. It is to be imagined that such pronouncements, by esteemed organizations, add to the acceptance of, or increase the support of, compensation proposals.

Publicized Cases of Misfortune

The individual case of misfortune has been used with telling effect by those attempting to cultivate support for crime compensation programs. One of Margery Fry's illustrations became widely publicized partly due to its ironic conclusion. It related the tragic plight of a man who had been beaten by two criminals so severely that he was blinded and also permanently disabled by other injuries.

> He sued the two criminals in court, and was awarded damages of £11,500. The two men concerned were unable to pay. He took them to court for a payment order to be made, and they were ordered to pay 5s. a week each. Miss Margery Fry pointed out that the victim would have to live for 442 years to collect the last instalment of the damages.[146]

But at the time, Miss Fry did not suspect that the case contained other ironies. After R. E. Prentice, a member of the House of Commons, referred to the same case in his own

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[145] New York Times, Dec. 28, 1965, 24:7.

[146] Great Britain, "Crimes of Violence (Compensation for Victims)," Parliamentary Debates (Commons), 694 (May 5, 1964), col. 1182.

efforts to win support for compensation to victims of crime, he received a letter from Mrs. Richardson, the wife of the victim. "She said that she was glad that the case had been raised and went on, 'But may we point out that we do not even get the Ll a month that you mentioned, as we have L240 costs of the court to pay before we can have anything?'"[147]

In New York, the case of Arthur F. Collins probably did as much as anything to crystallize support for a compensation plan. In the presence of his wife and young daughter, he was stabbed to death by another subway passenger when he sought to assist two women who were being menaced by that person.[148] Having no financial resources after her husband's death, Mrs. Christine Collins could not support her sixteen-month-old daughter and found it necessary to send her to her mother in Lehrberg, West Germany.[149] This case not only spurred the state compensation program along, it resulted in the passage of a Good Samaritan law by New York City and the awarding of a pension to Mrs. Collins.[150] This partial compensation program

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[147] Ibid.

[148] New York Times, Nov. 20, 1965, 34:2.

[149] New York Times, Dec. 3, 1965, 34:2.

[150] New York Times, Jan. 2, 1966, 62:1.

compensates only those injuries or deaths incurred while assisting law enforcement officers or while attempting to prevent the commission of a crime or in trying to apprehend a criminal.

In California, Judge Francis McCarty had a case before his court which so aroused him that he was prompted to write a letter to state Senator Eugene McAteer in an effort to remedy similar situations. The case was one in which "a middle-aged woman was knocked down and had her purse snatched by two teen-agers and as a result was injured and had medical expenses of $1,500."[151] It was only three months later that California became the first state in the United States to adopt a compensation program for victims of crime.

In another area, an individual tragedy has educed similar reaction: "The dramatic and unfortunate death of a citizen in Metropolitan Toronto who died while endeavouring to foil a bank robbery has, in that city at least, raised again the question of compensation for victims of crime."[152] These and other like cases of innocent victim's sufferings, because of the sympathy they arouse, and the accompanying desire to collectively do something to aid the

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[151]Jennifer Cross, "Recompense for Violence," The Nation, Nov. 1, 1965, p. 304.

[152]"Compensation for Victims of Crime," The Criminal Law Quarterly, VII (August, 1964), p. 141.

victim, have no doubt benefited efforts to adopt compensation programs.

Public Opinion

Fear of Crime

In recent years the fear of crime has become more pervasive.[153] To an objective investigator of this phenomenon, much of this fear is irrational. But the fear exists. Regardless of the reasons for being fearful, fear itself is a reality which public policy makers must consider. The diminishing of fear can thus occupy a primary place in a comprehensive effort to combat crime and the effects of crime.

There are certain kinds of crime that have the effect of producing more intense alarm than others. "The crimes that concern Americans the most are those that affect their personal safety--at home, at work, or in the streets. The most frequent and serious of these crimes of violence against the person are willful homicide, forcible rape, aggravated assault, and robbery."[154] These are the "personal" crimes and it has been found that "offenses involving physical assaults against the person are the most feared

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[153]See "Why Streets Are Not Safe," U. S. News & World Report, LXVII, (March 16, 1970), p. 15.

[154]U. S., President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in A Free Society (Washington: Government Printing Office, 1967), p. 18.

crimes and the greatest concern is expressed about those in which a weapon is used."[155] One must go further however to gain some understanding of why this particular reaction to these particular crimes occurs. One conclusion is that

> the fear of crimes of violence is not a simple fear of injury or death or even of all crimes of violence, but, at bottom, a fear of strangers. The personal injury that Americans risk daily from sources other than crime are enormously greater. The annual rate of all Index offenses involving either violence or the threat of violence is 1.8 per 1,000 Americans. This is minute relative to the total accidental injuries calling for medical attention or restricted activity of 1 day or more, as reported by the Public Health Service. A recent study of emergency medical care found the quality, numbers, and distribution of ambulances and other emergency services severely deficient, and estimated that as many as 20,000 Americans die unnecessarily each year as a result of improper emergency care. The means necessary for correcting this situation are very clear and would probably yield greater immediate return in reducing death than would expenditures for reducing the incidence of crimes of violence. But a different personal significance is attached to deaths due to the willful acts of felons as compared to the incompetence or poor equipment of emergency medical personnel.[156]

It would appear to be more logical then for Americans to direct their worry and fear toward inadequate or too few ambulances. But these inadequacies do not seem to be the objects of concern of the general public. The man in the street is afraid of being victimized by a stranger. This

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[155]U. S., Task Force on Assessment: The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Crime and Its Impact--An Assessment (Washington: Government Printing Office, 1967), p. 87.

[156]Ibid., p. 88.

appears to represent almost the totality of his concern so far as crime and his becoming a potential crime victim is concerned. The crime of violence then occupies a disproportionate amount of the thought given to crime in general. Among the stimulants that fuel this fear is the lurid portrayal via the mass media of the victim of crime. "The available data indicate that for most people, attitudes about serious crimes and crime trends come largely from vicarious sources."[157] So, while most people are not themselves victims of crime and do not know anyone who has been the victim of crime, they feel threatened because they have heard or read or seen on TV case histories and depictions of violent crime. Their emotions and anxieties become aroused and fed with each day's reports of new victims of crime. Although statistically, the chances of their becoming victims of crime might make the likelihood remote, the prevalent reaction seems to be, "It could have been me," or "It might be me, next time." Since this attitude is not completely rational, it is not possible to neutralize it completely with rational rebuttals. It remains a force to contend with.

One interesting observation is that, aside from the realities of crime being what they are, the manner of reporting these realities actually contributes to an unjustified

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[157] Ibid., p. 86.

fear of crime. The fashion in America seems to require dramatic flair, even in the preparation and presentation of crime statistics.

> Considering the current public sensitivity about crime and violence, the following comparison to European countries is significant:
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> > The publication of criminal statistics [in England and Scandinavia] is not regarded as a dramatic act to mobilize public awareness against the danger of rape, murder and other kinds of crimes, but it is regarded as a regular kind of source of information, bringing to the knowledge of those who are interested--unfortunately very few--what is going on in this vast amount of crime.
> >
> > Our [England's] criminal statistics in comparison to your publications differ as much as--if I may bluntly say so--an old English cup of tea compares with a dry Martini on the rocks. They [British statistics] are very prosaic, very quiet. And this in some ways makes them less attractive to read. But it does produce them for the public.[158]

There are other deficiencies as well in the reporting of crime in the United States that possibly contribute to a perception of there being more crime than there is. These will be considered in the following section of this paper. These remarks are not meant to suggest that crime is not a very serious problem in the United States but rather the intention is to indicate that generally held perceptions of reality can be as important or more so than reality itself as an influence upon a person considering his own

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[158]U. S., National Commission on the Causes and Prevention of Violence, Crimes of Violence, vol. 11, A Staff Report by Donald J. Mulvihill and Melvin M. Tumin with Lynn A. Curtis (Washington: Government Printing Office, 1969), p. 35.

well-being. This may be doubly so when it is impossible to determine the realities of crime. That it is impossible to do so is a matter to be considered later.

The consequences of fear of criminal attack seem to have only the potential for detriment for the individual and for society. The ways in which this fear is externalized can only be viewed as being damaging. It does not seem to be an exaggeration to suggest that the feeling of well-being among the citizenry is in danger of being perhaps fatally eroded by this fear. Already, there are indications that preferred lifestyles are being modified to preserve some feeling of safeness.

> This fear leads many people to give up activities they would normally undertake particularly when it may involve going out on the streets or into parks and other public places at night. The costs of this fear are not only economic, though a burdensome price may be paid by many poor people in high crime rate areas who feel compelled to purchase protective locks, bars, and alarms, who reject an attractive night job because of fear of traversing the streets or who pay the expense of taxi transportation under the same circumstances. In the long run more damaging than costs are the loss of opportunities for pleasure and cultural enrichment, the reduction of the level of sociability and mutual trust, and perhaps even more important, the possibility that people will come to lose faith in the trustworthiness and stability of the social and moral order of the society.[159]

This is as fundamental an impact as one could imagine. The significance of the impact of the fear of crime should not be understated. A most unhealthy state of affairs is

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[159] Task Force Report: Crime and Its Impact--An Assessment, op. cit., p. 94.

arising due to this fear and promises to worsen. "Watch the people," advises a policeman in Washington, D. C., "see how they walk quickly and with a purpose. There's no casual strolling. People don't come into this town at night unless they have a specific destination in mind. They go straight to it and then go home as fast as possible."[160] It is not only the night-time visitor who is detered. More and more the day-time visitor remains away from downtown too. The Metropolitan Washington Council of Governments undertook a survey which showed that "65% of the city's largely white suburban residents visit the downtown area less than once a month, and 15% come downtown less than once a year. Asked their chief worry, the large majority of those surveyed responded: 'Crime.'"[161] Such is the condition of society. The manifestations of fear are beginning to permeate our existance. They take the form, observed by Milton S. Eisenhower, of "locked doors, the empty streets, the growing number of guns bought for self-protection, the signs on public buses that say: 'Driver does not carry cash.'"[162]

With increasing crime rates and the accompanying per-

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[160] Wall Street Journal, Feb. 11, 1970, 1:1.

[161] Ibid.

[162] U. S., Daily Congressional Record, 92d Cong., 1st Sess., 1971, CXVII, No. 17, S1419.

ceptions of what this increase means to the individual we are experiencing also an increase in societal costs other than those that are the direct result of victimization. "What economists label opportunity costs for feeling safe probably are far greater economic burdens of crime for these citizens than the direct costs of victimization. With these precautions go . . . the psychic costs of living in an atmosphere of anxiety."[163]

"Insofar as crimes against individual citizens are concerned, then," it is suspected "that the immediate consequences are of much less moment than are people's intense reactions to the perceived crime situation."[164]

Realities of Crime

Amounts of Crime. There are many difficulties that one encounters in any effort to accurately quantify the occurence of criminal acts. Numerical quantification in this area is a numbers game fraught with what are perhaps insuperable difficulties. The "bible" of U. S. crime statistics is the Uniform Crime Reports (hereafter referred to as UCR).[165] This is an annual publication which presents

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[163]Albert D. Biderman, Louise A. Johnson, Jennie McIntyre, and Adrianne W. Weir, Report on A Pilot Study in the District of Columbia on Victimization and Attitudes Toward Law Enforcement, Bureau of Social Science Research, Inc. Washington: Government Printing Office, 1967), p. 159.

[164]Ibid., p. 160.

[165]FBI, U. S. Dept. of Justice, Uniform Crime Reports, 1969 (Washington: Government Printing Office, 1970), pp. 1-185.

volume, rates, and trends of crime in the United States. Although generally, and professionally, acknowledged to be deficient and inaccurate,[166] the UCR, almost exclusively, forms the basis for what passes for learned consideration of the crime problem in the United States. Among the criticisms of the UCR that one encounters, both inherent collection difficulties and police inadequacies are faulted. While the FBI gives considerable attention to the problems of collecting data, assembling it, and reporting it, it is working exclusively with police data, as contrasted with victim-related data, for example. Participation is voluntary and although that participation is now almost all-inclusive, it has become so gradually and this tends to skew any conclusions reached about trends when comparing early with late data. Also, there are all sorts of variations in the emphasis given to this task by various jurisdictions. Some are zealous; some are apathetic; some conceal the occurrence of crime "to make things look good."[167]

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[166] Cf. the statement of Leon Radzinowicz, the Director of the Institute of Criminology at the University of Cambridge, England, where he is critical of the quality of criminal statistics in the United States as compared to western Europe, in U. S., National Commission on the Causes and Prevention of Violence, Crimes of Violence, op. cit., pp. 16-17.

[167] Ibid., p. 18.

Another thing that makes comparisons difficult is that changes in reporting practices and classification have occurred as the FBI has tried to achieve more sophistication in its crime reporting. Even assuming that the procedures followed by the eight-thousand-five-hundred jurisdictions that report crimes to the FBI are valid (and "the FBI is not in a position to vouch for the validity of the reports received"[168]) the absolute most that can be hoped for is an accurate relaying of information about crimes that have been reported.

> The UCR Index is composed of offenses reported by the police. There is a considerable gap, however, between the amount of crime reported by the police and the true level. This gap has been called the "dark figure" of crime, and its existence is without a doubt the greatest constraint on the validity of crime statistics in the United States or any other country.[169]

Three field surveys, which consisted of interviewing persons to determine whether they had been victims of crime in 1965, indicated that a victim-rate almost double that reported by UCR had occurred in 1965 in crimes of violence.[170]

"Still other constraints (such as the propensity to report volume changes instead of rate changes, or the poss-

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[168] Uniform Crime Reports--1969, op. cit., p. 52

[169] Crimes of Violence, op. cit., pp. 17-18.

[170] Ibid., p. 19.

ibility that nonobjective statements may accompany empirical data) do not pose a problem to the expert seeking to construct levels and trends, but may tend to give the public a somewhat inaccurate picture of violent crime."[171]

Keeping these and other limitations in mind, victimization probabilities[172] will be reviewed.

> Victimization probabilities specify the likelihood of any citizen's being an object of individual violence in any one year and give an idea of whether or not the current widespread public fear of being victimized is justified.
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> In fact, the 1968 victimization probabilities . . . show roughly one chance in 14,706 of a citizen being killed, one chance in 3,226 of a woman being raped, one chance in 763 of an individual being robbed, and one chance in 709 of a person being assaulted seriously.
>
> Although the current national victimization probabilities may not engender great personal fear in the average citizen, the likelihood of victimization has risen at an alarming pace in recent years. Compare the preceding probabilities with those of 1958 (the chance of a citizen being killed was roughly 1 in 21,739, the chance of a woman being raped was 1 in 5,376, the chance of an individual being robbed was 1 in 1,822, and the chance of a person being seriously assaulted was 1 in 1,270). In addition, the likelihood of being victimized increased greatly when the entire lifespan of an individual is considered. Finally, . . . the probabilities are much higher for certain subgroups than for others.[173]

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[171] Ibid., pp. 37-38.

[172] "The victimization probability is found by simply dividing the incidence of an offense per 100,000 into 100,000. Thus, an offense rate of, say, 200 per 100,000 means that the probability of being victimized is 1 in 500." Ibid., p. 130.

[173] Ibid., p. 56.

As an illustration of this last point, "a recent survey in Chicago indicated that the risk of physical assault for the black ghetto dweller is 1 in 77; for the white middle-class citizen, the odds are 1 in 2,000; and for the upper middle-class suburbanite, the odds are 1 in 10,000.[174] "If you live in a metropolitan area today," notes Milton S. Eisenhower, "your mathematical chances of becoming a victim of a homicide, a rape, an assault, or a robbery are one in 125 each year. If you live in the city of Baltimore, your mathematical chance of becoming a victim of one of these four violent crimes is one in 49 each year. So, during his lifetime, the odds are in favor of a Baltimore resident's becoming a victim of a violent crime."[175] In such chronic crime areas, the chances of becoming a victim almost preclude the possibility of escaping violent attack. A recent crime index of the District of Columbia Metropolitan Police Department, in effect, put "residents, tourists, and suburban visitors to the District . . . on notice that they have about one chance in 10 of being the victim of crime while in the District."[176]

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[174] Ibid., p. 130.

[175] U. S., Daily Congressional Record, 92d Cong., 1st Sess., 1971, CXVII, No. 17, S1419.

[176] U. S., Daily Congressional Record, 91st Cong., 2d Sess., 1970, CXVI, No. 13, E633.

Chart 1 indicates that between 1960 and 1969, there was a one-hundred and forty-eight percent increase in the volume of crime and a one-hundred and twenty percent increase in the crime rate. This is a remarkably high increase within a ten-year period but it is even more alarming to note the sharp acceleration of this increase within the last three-year period. This is a large, worsening progression.

For crimes of violence, Chart 2 shows an increase between 1960 and 1969, of one-hundred and thirty percent in the volume of crime and an increase of one-hundred and four percent in the crime rate.

Table 1 provides a numerical basis for plotting the graphs in Charts 1 and 2.

A closer look will now be taken at the particular crimes of violence that are the chief concern of this paper. Chart 3 presents the percentage changes in the number of offenses and the rate of offenses for the crime of murder. "In 1969, there were an estimated 14,590 murders committed in the United States. This represents a numerical increase of 940 over the 13,650 homicides recorded in 1968."[177] The trend for the crime of murder shown in Chart 3 indicates an increase of seven percent in 1969 over 1968 "and this represents the smallest percentage increase since the 6 percent rise in 1965. The long-term trend in this serious

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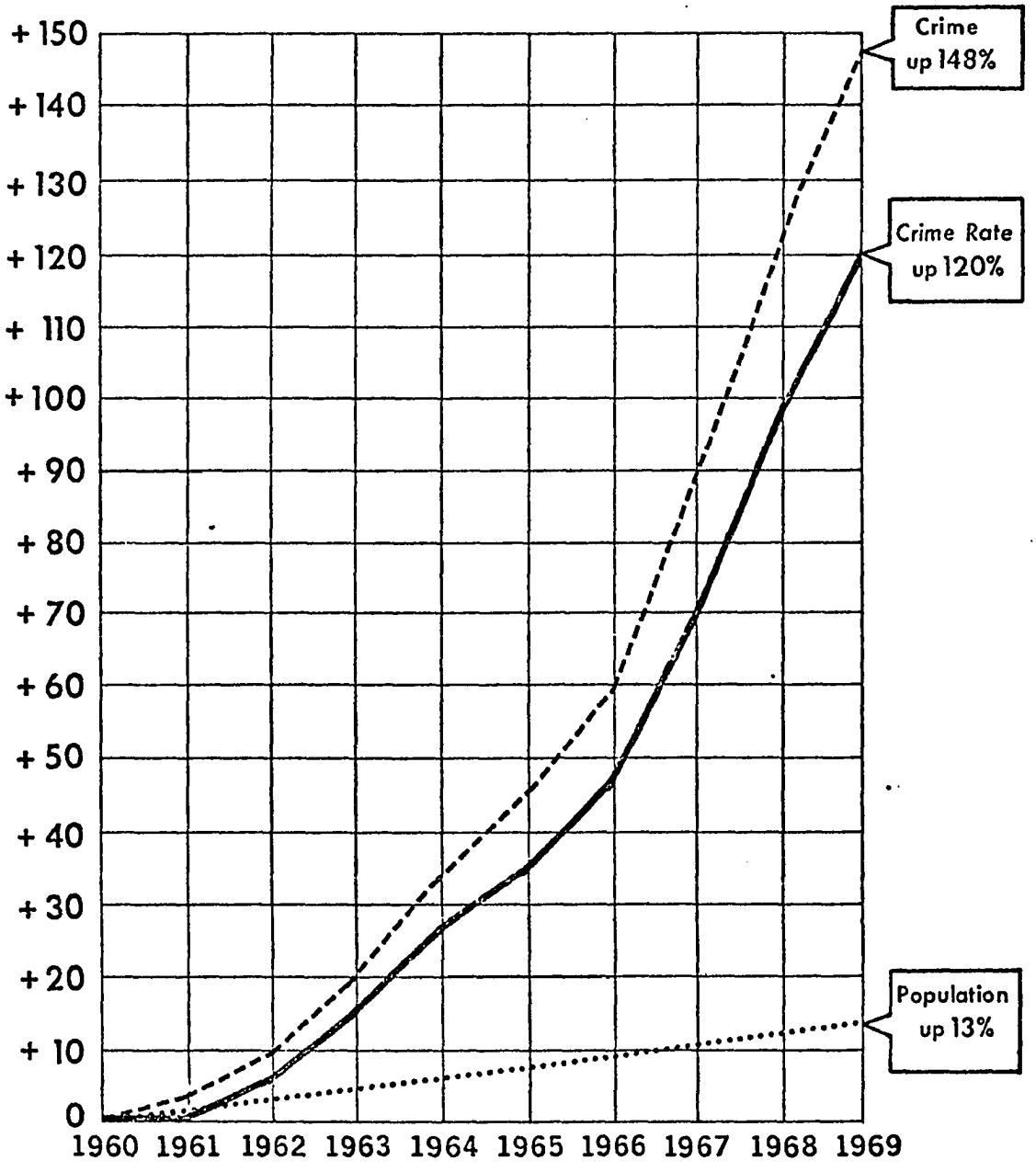
[177] Uniform Crime Reports for the United States - 1969, op. cit., p. 6.

CHART 1

CRIME AND POPULATION

1960 - 1969

PERCENT CHANGE OVER 1960[a]



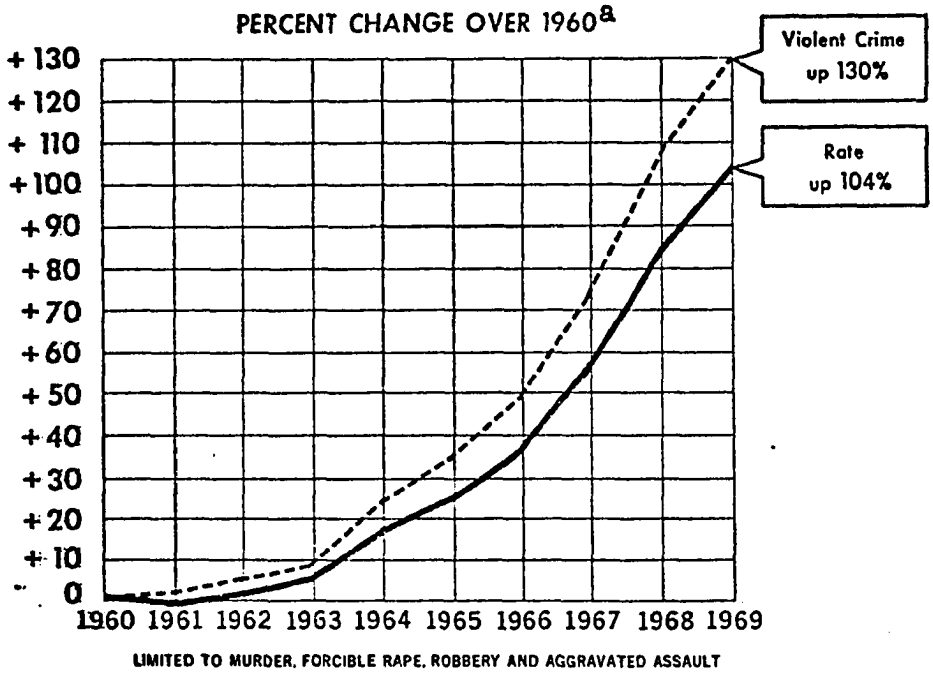
CRIME - CRIME INDEX OFFENSES

CRIME RATE - NUMBER OF OFFENSES PER 100,000 POPULATION

[a]Uniform Crime Reports for the United States - 1969, op. cit., p. 2.

CHART 2

CRIMES OF VIOLENCE
1960 - 1969



[a]Uniform Crime Reports for the United States - 1969, op. cit., p. 3.

TABLE 1

National Crime, Rate, and Percent Change [a]

Crime Index Offenses	Estimated crime 1969		Percent change over 1968		Percent change over 1960	
	Number	Rate per 100,000 inhabitants	Number	Rate	Number	Rate
Total	4,989,700	2,471.1	+11.7	+10.6	+147.7	+120.0
Violent	655,100	324.4	+11.2	+10.1	+129.7	+104.0
Property	4,334,700	2,146.7	+11.8	+10.6	+150.6	+122.6
Murder	14,590	7.2	+6.9	+5.9	+62.1	+44.0
Forcible rape	36,470	18.1	+17.4	+16.8	+116.3	+92.6
Robbery	297,580	147.4	+13.7	+12.5	+177.1	+146.1
Aggravated assault	306,420	151.8	+8.5	+7.4	+101.6	+79.2
Burglary	1,949,800	965.6	+6.6	+5.5	+117.3	+92.9
Larceny $50 and over	1,512,900	749.3	+19.0	+17.8	+198.9	+165.4
Auto theft	871,900	431.8	+12.1	+11.0	+167.7	+137.8

[a]Uniform Crime Reports for the United States - 1969, op. cit., p. 5.

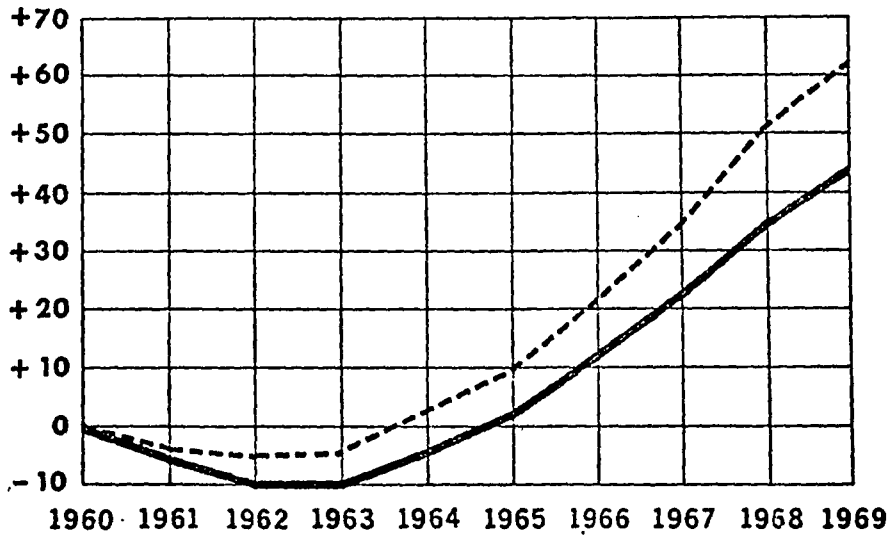
CHART 3

MURDER
1960 - 1969

PERCENT CHANGE OVER 1960[a]

- - - - .NUMBER OF OFFENSES UP 62 PERCENT

——— RATE PER 100,000 INHABITANTS UP 44 PERCENT



[a]Uniform Crime Reports for the United States - 1969, op. cit., p. 6.

crime during the period 1960-1969 reveals an increase from 9,000 to 14,590 murders. This is a rise of 62 percent."[178] A look at the murder rate shows that:

> There were 7.2 victims per 100,000 inhabitants in 1969. This is a rise from the 6.8 murder rate recorded in 1968 and represents a 6 percent increase in the murder rate, 1969 over 1968. Nation-wide, cities with 250,000 or over in population had a murder rate of 15.7 per 100,000 inhabitants, up 11 percent over 1968. In the suburbs the rate was 3.7 per 100,000, an increase of 12 percent over 1968. The rate in the rural areas was 5.6 per 100,000 inhabitants, a decrease of 11 percent.[179]

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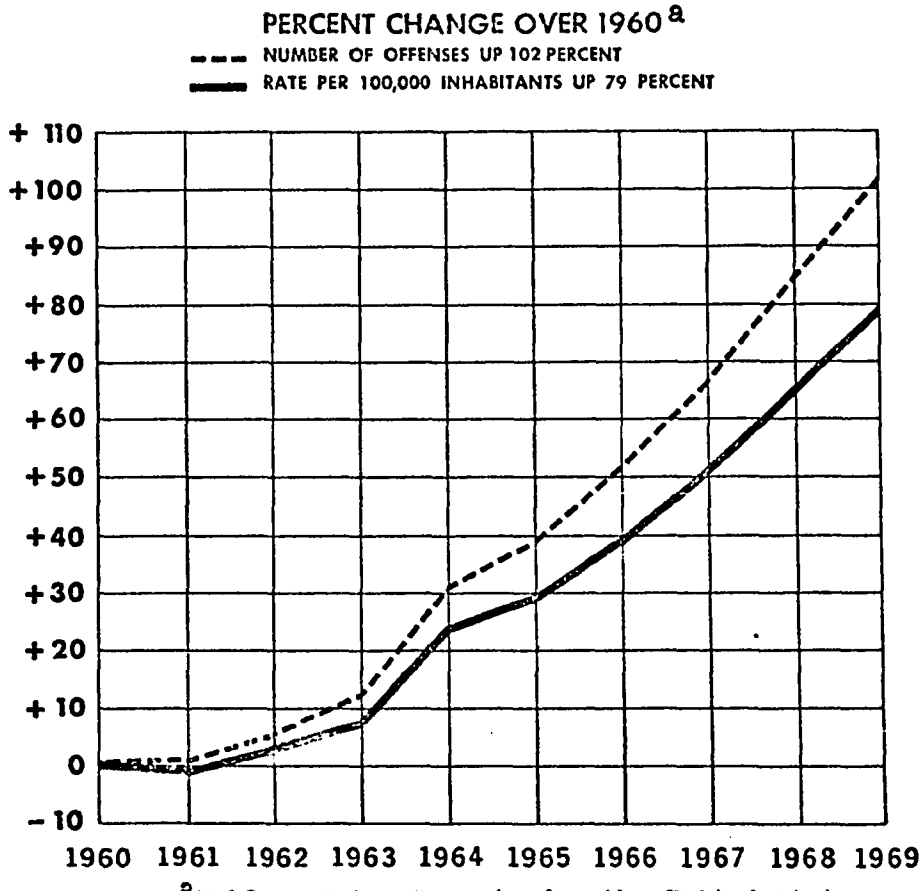
[178] Ibid.

[179] Ibid., pp. 6-7.

Chart 4 presents the percentage changes in volume and rate for the crime of aggravated assault between 1960-1969.

CHART 4

AGGRAVATED ASSAULT
1960 - 1969



[a]Uniform Crime Reports for the United States - 1969, op. cit., p. 10.

In calendar year 1969, there was an estimated total of 306,420 aggravated assaults. This is an increase of 24,020 offenses over the previous year. This violent crime against the person made up over 6 percent of the Crime Index offenses in 1969 and comprised 47 percent of the crimes of violence.[180]

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[180]Ibid., p. 9.

The trend for the crime of aggravated assault so far as volume is concerned indicates an increase in 1969 of nine percent over 1968 and one-hundred and two percent over 1960.[181]

The rate for aggravated assault increased so that:

> For each 100,000 persons in the United States during 1969, there were 152 victims of aggravated assault. Large core cities 250,000 and over in population recorded a victim rate of 319 per 100,000, suburban 95, and rural areas 85. Overall, the victim rate for aggravated assault increased 7 percent over 1968, and 79 percent over 1960.[182]

A criticism of the FBI's reporting of violent crime is that it includes both attempts to commit crime and completions of a criminal act. The exception is criminal homicide. "Deaths caused by negligence are not included in this category but are counted as manslaughter by negligence. Attempts to kill or assaults to kill are scored as aggravated assaults and not as murder. The crime count for this offense classification also excluded suicides, accidental deaths and justifiable homicides."[183]

> This means that the general category of "aggravated assault" includes attempted homicides, completed aggravated assaults, and attempted aggravated assaults--and there is no way of differentiating among them in the UCR figures. Similarly, attempts and completions are combined together in the categories of forcible rape and robbery.[184]

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[181] Ibid. [182] Ibid. [183] Ibid., pp. 5-6.

[184] Crimes of Violence, op. cit., p. 27.

There is an objection to combining criminal actions of widely varying seriousness.

> This makes refined analysis of the crimes extremely difficult. To the extent that the public image of these crimes is couched in terms of the more serious (and generally more publicized) variations under the same crime category, the result may be a somewhat distorted conception of what the rate for the particular crime means.[185]

Another practice that is criticized as preventing a truer appraisal of the realities of crime is the use of what is called a Crime Index by the FBI as the basis for its reporting what it believes to be the most significant offenses. These crimes, called Index crimes, are murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary--breaking or entering, larceny fifty dollars and over, and auto theft.[186] The Task Force on Individual Acts of Violence of the National Commission of the Causes and Prevention of Violence made the following criticism of the UCR practice of separating the Index offenses from the non-Index offenses,

> as if the former were uniformly more serious. Yet, arson and assault and battery (both non-Index crimes) may in fact involve more physical injury than many Index offenses, such as forcible rape and even some aggravated assaults. One study, for example, has revealed that nearly two-thirds of the injuries sustained by the victims of criminal activities occur in connection with non-Index offenses. Because part of the officially stated rationale behind the seven Index crimes is to choose those of "sufficient

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[185] Ibid., p. 24.

[186] Uniform Crime Reports for the United States - 1969, op. cit., p. 55.

> importance" and because it is assumed that there is a strong relation between "importance" and "seriousness," the Task Force suggests that either the justification for the Index be redefined, or, its scope expanded to include more than the seven offenses presently used.[187]

Thus we would have added to those commissions of criminal acts that go unreported, those that are not reported because they are not of "sufficient importance" when in fact injuries from criminal acts result.

Chart 5 presents the percentage changes in volume and rate for the crime of forcible rape between 1960-1969.

> During 1969, there was an estimated total of 36,470 forcible rapes. Numerically, the volume increased by 5,410 offenses over 1968. Forcible rape made up less than 1 percent of the Crime Index total and less than 6 percent of the crimes of violence in 1969.[188]

The trend for the crime of forcible rape shown in Chart 5 shows an increase in volume of seventeen percent from 1968 to 1969 and an increase of one-hundred and sixteen percent in 1969 over 1960. Forty-six percent of forcible rapes in 1969 occurred in cities with two-hundred and fifty thousand or more inhabitants.[189]

The rate for forcible rape between 1960 and 1969 increased ninety-three percent and 1969 increased by seventeen percent over 1968. "In 1969, 35 out of every 100,000 females in this country were reported forcible

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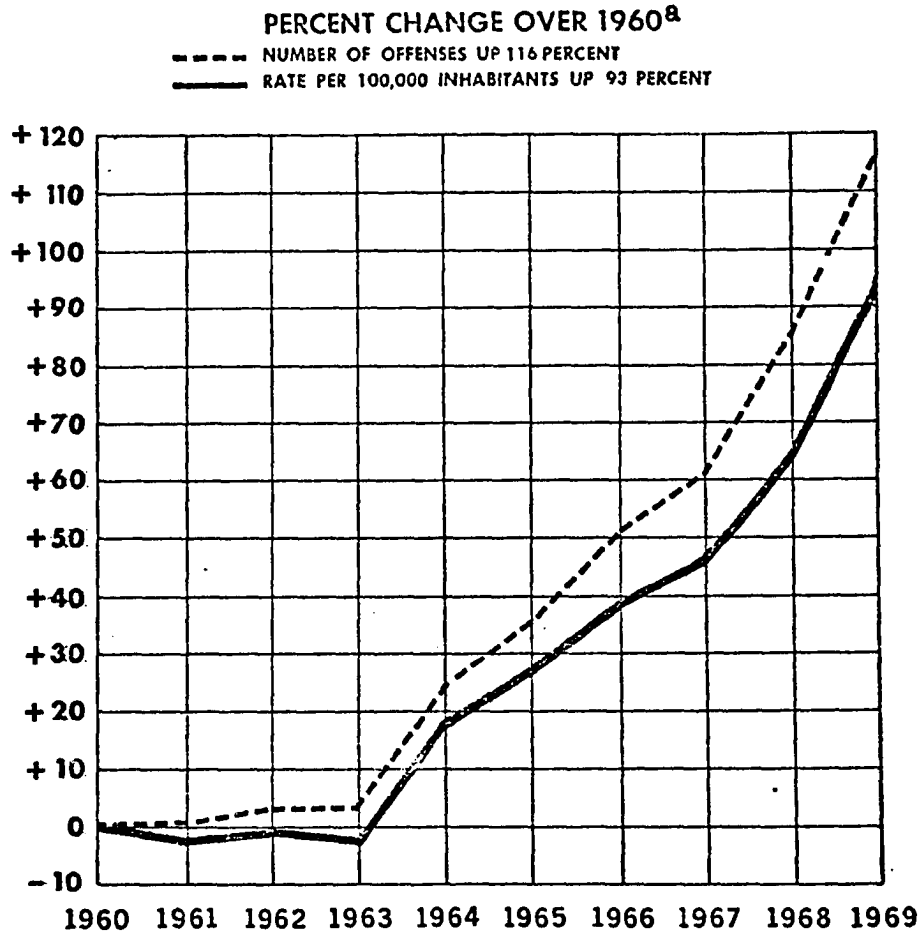
[187] Crimes of Violence, op. cit., p. 25.

[188] Uniform Crime Reports for the United States - 1969, op. cit., p. 11.

[189] Ibid.

CHART 5

FORCIBLE RAPE
1960 - 1969



[a]Uniform Crime Reports for the United States - 1969, op. cit., p. 12.

rape victims. . . . The large core cities recorded a victim risk rate of 74 per 100,000 females, while the suburban area rate was 27 and the rural area 21."[190]

It is of interest to note that the survey of victimization conducted by the National Opinion Research Center at the University of Chicago in 1965, showed a victim rate for

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[190]Ibid., p. 11.

forcible rape three and one-half times greater than the UCR rate.[191]

Chart 6 presents the percentage changes in volume and rate for the crime of robbery between 1960-1969.

> During calendar year 1969, there were an estimated 297,580 robberies committed in the United States. This represents a significant increase over the 261,730 robberies which occurred in calendar year 1968. This offense makes up 6 percent of the total Crime Index and comprises 45 percent of the crimes of violence.[192]

"In 1969 robbery offenses increased 14 percent in volume when compared with 1968. Since 1960, robbery has increased 177 percent."[193]

> The 1969 robbery rate of 147 victims per 100,000 inhabitants was 13 percent above the 1968 rate and 146 percent above the 1960 rate. Robbery is a big city crime. American cities with over 250,000 population accounted for nearly three out of every four robberies which occurred in the United States during 1969.
>
> Cities with over 250,000 inhabitants had a robbery rate of 488 victims per 100,000 inhabitants. There were 50 robbery victims per 100,000 in the suburban areas, up 12 percent over the preceding year, and 13 victims in the rural portions of the country. Robbery rates in the larger cities were about 10 times greater than they were in the suburban areas, again pointing out the fact that robbery rates tend to increase in proportion to density of population.[194]

This last ascribed relationship is very dubious. Others have credited this difference in the incidence of crime found in the central city, the suburbs, and rural areas

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[191] Crimes of Violence, op. cit., p. 19.

[192] Uniform Crime Reports for the United States - 1969, op. cit., p. 13.

[193] Ibid. [194] Ibid.

to differences in the concentrations of what is called the "subculture of violence" which mostly includes those in the lower socioeconomic classes.[195] Those in the subculture of violence do not share the values of the middle-class and therefore do not share "the middle-class value-system which views such acts [attacks against the person] as the most heinous of crimes."[196] For a fundamental change to take place, it is suggested that:

> Dispersion of the group that shares the subcultural violence value should weaken the value. Through wider economic opportunities, freedom of residential mobility, etc., integration of the group members into the larger society and its predominant value system should function to destroy or at least to mitigate the subculture of violence. In the correctional environment, the treatment program, especially when using individual or group psychotherapy, should try to counterbalance or to eliminate the allegiance of the subject to the subculture of violence and his differential perspective of the world.[197]

Society has as yet shown little willingness to come to grips with these basic problems that propagate crimes of violence. Without attending to these deep root-causes of crime, such superficial attacks as the current "law and order" emphasis would seem to have little chance of being

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[195]Marvin E. Wolfgang, "A Sociological Analysis of Criminal Homicide," in Studies in Homicide, ed. by Marvin Wolfgang (New York: Harper & Row, 1967), p. 19.

[196]Marvin E. Wolfgang, Patterns in Criminal Homicide (Philadelphia: University of Pennsylvania, 1958), p. 329.

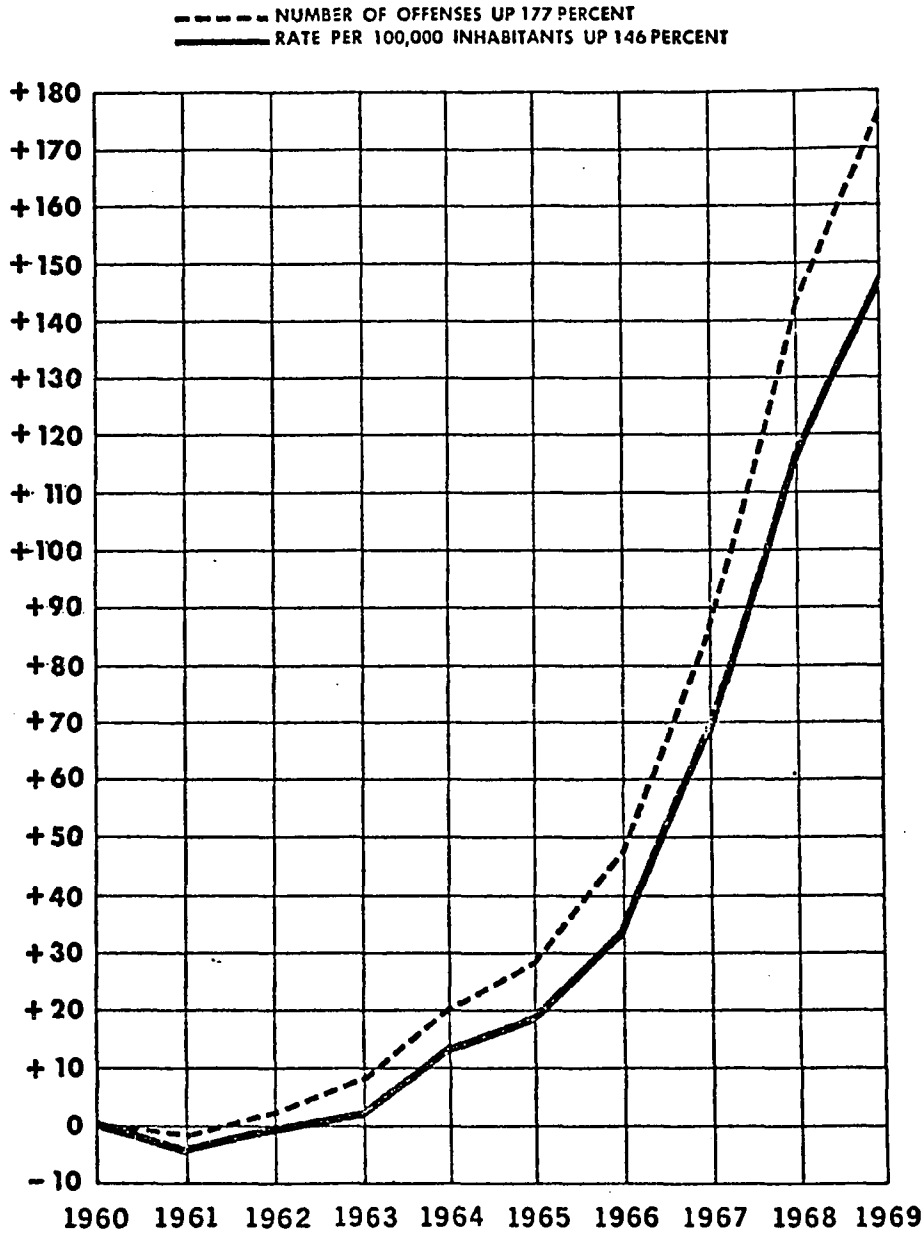
[197]Marvin E. Wolfgang and Franco Ferracuti, "Subculture of Violence--A Socio-Psychological Theory," in Studies in Homicide, op. cit., p. 280.

CHART 6

ROBBERY

1960 - 1969

PERCENT CHANGE OVER 1960[a]



[a]Uniform Crime Reports for the United States - 1969, op. cit., p. 14.

successful.

The Index of Crime for the United States in 1969 is shown in Table 2:

TABLE 2

Index of Crime, United States, 1969[a]

Area	Population[1]	Total crime index	Violent[2] crime	Property[2] crime	Murder and non-negligent manslaughter	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny $50 and over	Auto theft
United States Total	201,921,000	4,989,747	655,061	4,334,686	14,587	36,470	297,584	306,420	1,949,843	1,512,913	871,930
Rate per 100,000 inhabitants		2,471.1	324.4	2,146.7	7.2	18.1	147.4	151.8	965.6	749.3	431.8
Standard Metropolitan Statistical Area	137,785,000										
Area actually reporting[3]	97.7%	4,212,466	569,110	3,643,356	11,179	30,257	283,210	244,464	1,615,300	1,235,785	792,271
Estimated total	100.0%	4,265,595	573,964	3,691,631	11,318	30,616	284,578	247,452	1,637,148	1,254,059	800,424
Rate per 100,000 inhabitants		3,095.8	416.6	2,679.3	8.2	22.2	206.5	179.6	1,188.2	910.2	580.9
Other Cities	26,260,000										
Area actually reporting	88.0%	354,178	32,774	321,404	956	1,811	7,211	22,796	140,194	142,078	39,132
Estimated total	100.0%	398,936	37,998	360,938	1,151	2,054	8,099	26,694	158,023	158,986	43,929
Rate per 100,000 inhabitants		1,519.2	144.7	1,374.5	4.4	7.8	30.8	101.7	601.8	605.4	167.3
Rural	37,876,000										
Area actually reporting	74.7%	252,231	28,242	223,989	1,401	2,748	3,528	20,565	123,683	78,675	21,631
Estimated total	100.0%	325,216	43,099	282,117	2,118	3,800	4,907	32,274	154,672	99,868	27,577
Rate per 100,000 inhabitants		858.6	113.8	744.8	5.6	10.0	13.0	85.2	408.4	263.7	72.8

[1] Population is Bureau of the Census provisional estimates as of July 1, 1969.

[2] Violent crime is offenses of murder, forcible rape, robbery and aggravated assault; property crime is offenses of burglary, larceny $50 and over and auto theft.

[3] The percentage representing area actually reporting will not coincide with the ratio between reported and estimated crime totals since these data represent the sum of the calculations for individual states which have varying populations, portions reporting and crime rates.

[a] Uniform Crime Reports for the United States - 1969, op. cit., p. 56.

Comparisons of Index crimes in the United States for 1960-69 are presented in Table 3.

Analyses of crime in the United States are for the most part based upon these statistical presentations of the UCR. Some of the inadequacies of these reports have been considered here. Table 4 compares rates of crime for Index offenses against the person as reported by the UCR with rates for the same offenses indicated by the survey done for the National Commission on the Causes and Prevention of Violence

TABLE 3

Index of Crime, United States, 1960-69[a]

Population [1]	Total Crime Index	Violent [2] crime	Property [2] crime	Murder and non-negligent man-slaughter	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny $50 and over	Auto theft
Number of offenses:										
1960—179,323,175	2,014,600	285,200	1,729,400	9,000	16,860	107,390	152,000	897,400	506,200	325,700
1961—182,953,000	2,082,400	286,100	1,796,300	8,630	16,890	106,210	154,400	934,200	528,500	333,500
1962—185,822,000	2,213,600	298,200	1,915,400	8,430	17,210	110,390	162,100	978,200	573,100	364,100
1963—188,531,000	2,435,900	313,400	2,122,500	8,530	17,310	115,980	171,600	1,068,800	648,500	405,200
1964—191,334,000	2,755,000	360,100	2,395,000	9,250	21,020	129,830	200,000	1,193,600	732,000	469,300
1965—193,818,000	2,930,200	383,100	2,547,200	9,850	22,970	138,100	212,100	1,261,800	792,300	493,100
1966—195,857,000	3,264,200	425,400	2,838,800	10,920	25,330	157,320	231,800	1,387,200	894,600	557,000
1967—197,864,000	3,502,300	494,600	3,307,700	12,090	27,100	202,050	253,300	1,605,700	1,047,100	654,900
1968—199,861,000	4,466,600	558,800	3,877,700	13,650	31,060	261,730	282,400	1,828,900	1,271,100	777,800
1969—201,921,000	4,989,700	655,100	4,334,700	14,590	36,470	297,580	306,420	1,949,800	1,512,900	871,900
Percent change 1960-1969 [3]	+147.7	+129.7	+150.6	+62.1	+116.3	+177.1	+101.6	+117.3	+198.9	+167.7
Rate per 100,000 inhabitants: [3]										
1960	1,123.4	159.0	964.4	5.0	9.4	59.9	84.7	500.5	282.3	181.6
1961	1,138.2	156.4	981.8	4.7	9.2	58.1	84.4	510.6	288.9	182.3
1962	1,191.2	160.5	1,030.8	4.5	9.3	59.4	87.3	526.4	308.4	196.0
1963	1,292.0	166.2	1,125.8	4.5	9.2	61.5	91.0	566.9	344.0	214.9
1964	1,439.9	188.2	1,251.7	4.8	11.0	67.9	104.5	623.8	382.6	245.3
1965	1,511.9	197.6	1,314.2	5.1	11.9	71.3	109.5	651.0	408.8	254.4
1966	1,666.6	217.2	1,449.4	5.6	12.9	80.3	118.4	708.3	456.8	284.4
1967	1,921.7	250.0	1,671.7	6.1	13.7	102.1	128.0	811.5	529.2	331.0
1968	2,234.8	294.6	1,940.2	6.8	15.5	131.0	141.3	915.1	636.0	389.1
1969	2,471.1	324.4	2,146.7	7.2	18.1	147.4	151.8	965.6	749.3	431.8
Percent change 1960-1969 [3]	+120.0	+104.0	+122.6	+44.0	+92.6	+146.1	+79.2	+92.9	+165.4	+137.8

[1] Population is Bureau of the Census provisional estimates as of July 1, except Apr. 1, 1960, Census.
[2] Violent crime is offenses of murder, forcible rape, robbery and aggravated assault. Property crime is offenses of burglary, larceny $50 and over and auto theft.
[3] Percent change and crime rates calculated prior to rounding number of offenses. Revised estimates and rates based on changes in reporting practices.

[a] Uniform Crime Reports for the United States - 1969, op. cit., p. 57.

by the National Opinion Research Center (NORC) at the University of Chicago. As indicated in Table 4, the 1965 victim rate for the four violent Index crimes was almost double the comparable UCR rate.

Some doubt exists then, that the crime statistics presented in the UCR accurately reflect the true incidence of crime in the United States. Even though all crime may not be reported it does seem that due to the greater efforts that have been made to improve the reporting of crime that the crime reported is coming closer to approximating the

TABLE 4

Comparison of NORC and UCR Rates
(per 100,000 population)

Index crimes	NORC survey 1965-1966[a]	UCR rate for 1965[b]
Criminal homicide	3.0	5.1
Forcible rape	42.5	11.6
Robbery	94.0	61.4
Aggravated assault	218.3	106.6
Total violence	357.8	184.7

[a]Philip H. Ennis, Criminal Victimization in the United States: A Report of a National Survey, University of Chicago: National Opinion Research Center, Field Surveys II (Washington: Government Printing Office), 1967), p. 8; reprinted in Crimes of Violence, op. cit., p. 20.

[b]Uniform Crime Reports for the United States - 1965, op. cit., p. 51.

occurence of crime. This presents the interesting phenomenon that much of the crime increase, brought to the attention of the public through the UCR, may be a perceptual increase rather than an absolute increase. As more sophistication is realized in reporting crime, more crime that occurs gets reported. This does not necessarily mean that more crime occurs. Added to this is the aforementioned dramaturgic style of presenting crime statistics to the public. It is somewhat paradoxical then that from the UCR

there may be greater concern for safety resulting than is warranted by what is reported while at the same time that which is reported is said not to represent things nearly as bad as they really are. With the same reporting conventions used by the FBI, its UCR might produce general panic if the crime reported should equal that which is alleged to really occur.

Costs of Crime. If the amount of crime were known it would aid in figuring the costs of crime. Without knowing how much crime occurs or the degree of the impact of various crimes, it is not possible to accurately measure crime loss.

> Lack of adequate victim-statistics is one reason for our lack of knowledge about the cost of crime. For decades there has been a deep concern about crime. The public is shocked by crime waves. People and politicians talk about a "war" against crime. Crime has become the favorite news topic after economics. There is a boom in public interest in crime. However, we just don't know how heavy a burden crime is upon American society. The total loss caused by crime is not known.[198]

It is possible to suggest various kinds of loss that result from crime, if not possible presently to measure that loss. There are losses that do not result from the individual being a victim of crime but that result from his fear of becoming such, as discussed above. These losses include lost opportunities for engaging in social,

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[198] Stephen Schafer, The Victim and His Criminal: A Study in Functional Responsibility (New York: Random House, 1968), pp. 61-62.

cultural, economic, recreational, and leisure pursuits. There has been no attempt to assign a monetary value to these losses. How would one go about evaluating in fiscal terms the cost of an eroding sense of well-being among the public or a declining sense of community? These are perhaps the most fundamental losses that we suffer, both individually and collectively. It may well be then that our greatest losses are not subject to a monetary evaluation.

There are certain costs and certain losses for which estimates have been made. There are the institutional costs which society bears to create and maintain correctional programs; there are the costs of law enforcement and the administration of criminal justice; and there are the costs of repairing or attending to the victims of crime and their families.

In 1965, losses suffered through willful homicide, based simply on the potential earnings of the deceased amounted to about seven-hundred-fifty million dollars.[199] Loss through injury sustained through criminal assault are much harder to estimate. "At present there are no reliable data available either as to the number of cases in which injury occurs or the degree of injury involved."[200] These losses would include lost earning capacity, cost of

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[199] Task Force Report: Crime and Its Impact--An Assessment, op. cit., p. 45.

[200] Ibid.

medical treatment, time lost from work, and miscellaneous expenses that always seem to accompany personal injury. "If a loss of one week's wages of $100 and medical bills of $250 were assumed for each victim hospitalized and a total loss of $50 for each victim injured but not hospitalized, the total loss in 1965 would be around $65 million."[201]

Costs for corrections, including institutional costs, such as parole, probation, and rehabilitation, came to a grand total for local, state, and national jurisdictions, in 1965, of one-billion and thirty-four million dollars.[202] The breakdown of spending among governments was: "local: $343M; State: $632M; Federal: $59M."[203]

> Institutional costs predominate--taking about 80 percent of all State and local expenditures. While no figures on correctional expenditures by function are available, staff, guards, and custodians make up 62.6 percent of all non-Federal operation personnel, business and supporting services 27.8 percent, and personnel, business and supporting services 27.8 percent, and personnel involved in treatment aimed directly at rehabilitation only 9.5 percent.[204]

This classification of costs presents a rather revealing reflection of public attitudes about the handling of prisoners. Keeping the prisoner locked up as punishment would seem to be the chief objective of our "corrections" policy.

> Continuation of present trends would mean the doubling of public expenditures for law enforcement and the criminal justice system from 1965 to 1975. In absolute amounts, expenditures, . . . would increase from $4.6 billion in 1965 to $9 billion by 1975. These figures deal only with the police, court and corrections functions.[205]

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[201] Ibid. [202] Ibid., p. 54. [203] Ibid. [204] Ibid.

[205] Ibid., pp. 55-56.

As the crime problem becomes more serious, it becomes increasingly difficult to adequately staff positions related to preserving public safety. This is partly the result of not being able to offer sufficient financial incentives but it also no soubt is partly the result of law enforcement becoming more hazardous.

> During the 10-year period 1960 to 1969 there were 561 law enforcement officers feloniously murdered while protecting life and property.[206] In 1969, there were 35,202 assaults on police officers, 11,949 resulting in injury.[207] Eighty-six police officers, a 34-percent increase over 1968, were killed.[208]

The impact of crime then has many ramifications. Some of them are better understood than others; all would appear to be destructive not only to the individuals directly or indirectly involved but to the whole society. These estimates and projections of some of the costs of crime give some indication of the severity of the burdens imposed upon society by crime. They would seem to only bear heavier upon society as time passes unless basic, underlying problems are faced with the application of resources sufficient to solve them. It is felt by some that one of the chief impediments to making the resources available to try to solve these problems is a public attitude made unfavorable partly by the state's neglecting victims of crime. The

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[206] Uniform Crime Reports for the United States - 1969, op. cit., p. 45.

[207] Ibid., p. 150. [208] Ibid., p. 43.

adoption of a program to compensate victims of crime is seen as a necessary step in changing public attitudes regarding public expenditures to overcome problems that foster crime. Until the state does something for the victims of crime, it is contended, there will continue to be resistance to spending programs that are imagined by the public to reward the criminal.

CHAPTER III

AN ANALYTIC EXAMINATION AND EVALUATION OF THE ADOPTION AND ADMINISTRATION OF CRIME COMPENSATION PROGRAMS IN THE UNITED STATES, GREAT BRITAIN, AND NEW ZEALAND

Favoring Adoption

Little opposition to the adoption of compensation plans has developed, either to the principle of compensating victims of crime or the proposal that government should provide such compensation. Another favorable factor has been a receptive legislative mood. It seems likely, except for the current economic difficulties that our governments are experiencing, that this favorable legislative mood would have produced additional adoptions. "I would have to say that probably the economics, namely, the cost is what is holding up many states and I know that in many instances it is so."[209] Prior to the adoption of a compensation plan by New York, State Attorney General Louis J. Lefkowitz expressed optimism about chances for such legislation. "The Legislature," he said, "is in a mood to do something."[210]

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[209]Stanley L. Van Rensselaer, Chairman of the Crime Victims Compensation Board of New York and Co-Chairman of the International Association of Criminal Injuries Compensation Boards. Letter of Jan. 31, 1972.

[210]New York Times, Jan. 15, 1966, 17:3.

A factor favorable to adoption of compensation plans is that public officials desire to do something that will be favorably received by the public. It would seem natural then that harried legislators would warmly embrace a new program desired by the public and which has no significant public opposition. This was put very well by Lord Mancroft when the proposed British plan was being debated in Parliament:

> I do not think I am guilty of wild or extravagant language or unnecessary hyperbole if I say that the popularity of the Government is not at the moment at its zenith. Fervent supporters of the Government such as myself frequently pray that the Government should be given more chances to do something which is both popular and right. My Lords, here is their chance.[211]

That the public does favor the adoption of a public compensation program to compensate victims of crime was shown in a Gallup poll survey conducted toward the end of 1965. Sixty-two percent favored compensation; twenty-nine percent did not; and nine percent expressed no opinion.[212] This is certainly a very strong indication of support.

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[211]Great Britain, "Crimes of Violence: Compensation for Victims," Parliamentary Debates (Lords), 245 (Dec. 5, 1962), col. 260.

[212]Gallup Political Index, "Compensation for Crime Victims," Report No. 5 (Princeton, N. J.: American Institute of Public Opinion, Oct. 1965), p. 21.

> The emergence and the extraordinary recent popularity of schemes to compensate victims of violent crimes can be most readily understood as a response to the ever increasing degrees of anonymity, urban living, juvenile precocity, social change, and other crime-related factors in American society and throughout the world.[213]

Added to these favorable considerations is the reality that compensation programs are not too difficult to institute, relative to other things that governments do.

> Programs calling for compensation to victims of violent crime are a relatively easy social and political goal, much easier than plans to compensate victims of circumstances which might reasonably be related to their own lack of intelligence or care, or even to their inadvertent misfortune at the hands of natural phenomena, such as lightening.[214]

Forces Unfavorable to Adoption

Although Senator Ralph Yarborough's four bills to create a compensation program for areas within national jurisdiction became the objects of considerable and favorable academic consideration, politically, they never got off the ground. "The major political roadblock to such legislation lies in the geographical distribution of crime."[215] The point is well taken that differentials in the geographic distribution of crime might also lead to differentials in the geographic spread of crime compensation support. Here

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[213] Task Force Report: Crime and Its Impact--An Assessment, op. cit., p. 157.

[214] Ibid., pp. 157-158.

[215] "Help for the Victim," Newsweek, June 23, 1969, p. 59.

again one is dealing with perceptions and there would certainly have to be a distinction drawn between the support of rural publics or their opposition and the support or opposition of rurally elected legislators and their counterparts in metropolitan areas. The Gallup poll survey showed that, with regard to variation in community size, that residents of rural areas approved compensation by sixty-six percent whereas residents of metropolitan areas approved compensation by fifty-nine percent.[216] No reasons for the high level of rural support and the difference in rural-metropolitan support are indicated. It does seem plausible however that legislators from rural areas might oppose crime compensation programs because of their not wanting the burden of absorbing the costs of crime shifted partly to their rural constituents.[217] Since each member of the body politic does not run the same risk of becoming a victim of crime, more is involved than simply broadening the base of risk sharing to include all members of the community. "Compensation would inevitably redistribute the costs of crime from some groups which at present bear a heavy portion of those costs to others on which they fall more lightly."[218]

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[216]Gallup Political Index, loc. cit.

[217]This reaction on the part of rural legislators has been observed by Joseph Pickus, Chairman, Criminal Injuries Compensation Board of Maryland. Letter of Feb. 29, 1972.

[218]"Compensation for Victims of Crime," University of Chicago Law Review, loc. cit.

Table 5 illustrates this point that significant differences do exist in the crime rate throughout the United States. Reflecting an understanding that crime compensation programs supported from general tax revenues would result in shifting the incidence of the burden of crime, the Gallup survey found that the higher a person's income, the less likely was he to support a crime compensation program.[219]

TABLE 5

Crime Rate by Area, 1969[a]
(rate per 100,000 inhabitants)

Crime Index Offenses	Area			
	Total U.S.	Cities over 250,000	Sub-urban	Rural
Total	2,471.1	4,824.7	1,940.8	858.6
Violent	324.4	859.7	162.6	113.8
Property	2,146.7	3,965.0	1,778.2	744.8
Murder	7.2	15.7	3.7	5.6
Forcible rape	18.1	37.9	13.7	10.0
Robbery	147.4	487.5	50.4	13.0
Aggravated assault	151.8	318.6	94.7	85.2
Burglary	965.6	1,752.1	804.6	408.4
Larceny $50 and over	749.3	1,165.3	702.5	263.7
Auto theft	431.8	1,040.6	271.2	72.8

[a]Uniform Crime Reports for the United States - 1969, op. cit., p. 5.

Opposition might for the reasons considered above, be expected to come primarily from legislators serving rural constituents and from those who perceive that a compensation program might be financially detrimental to them. Opposition might conceivably come also from those who,

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[219]Gallup Political Index, loc. cit.

while they have no particular opposition to crime compensation programs themselves, do oppose new programs because of their general opposition to the expansion of the role of government.

Costs of Compensation Programs

Certainly one of the chief political considerations that will be weighed by policy makers thinking about the adoption of crime compensation programs is the cost of such a program. Reflecting the concern of this study to provide information to policy makers within the United States that will assist them in evaluating specific aspects of crime compensation programs, the costs of these programs to the states in the United States that have operational programs will be examined here. These states are California, New York, Maryland, Hawaii, Massachusetts, and Nevada. The costs presented include those of the most recent year for which complete data is available for each jurisdiction.

The California State Board of Control, which administers California's victim compensation program, made 130 awards in fiscal 1969-70.[220] The total cost of these awards was $167,235.01. The average cost was $1,286.42. To help pay for these awards California levies a special fine upon those convicted of committing a crime of violence

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[220]California, State Board of Control, Monthly Activity: Victims of Violent Crimes Claims, Fiscal Year 1969-70 (Mimeographed).

that has caused personal injury or death.[221] The record of receipts going to the Indemnity Fund following the enactment of this statute are quite interesting. The small amounts of these receipts support contentions noted earlier that those who are found guilty of committing crimes of personal violence are, as a class, without means. The receipts and expenditures of the Indemnity Fund have been as follows:[222]

	1965-66 F.Y.	1966-67 F.Y.	1967-68 F.Y.
Receipts	$551	$5,500	$4,520
Expenditures	---	---	6,997

	1968-69 F.Y.	1969-70 F.Y.	1970-71 F.Y.
Receipts	$3,316	$4,797	$ 626
Expenditures	5,728	5,080	1,414

In 1970, the New York Crime Victims Compensation Board made 458 awards to victims of crimes of violence.[223]

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[221] California, Govt. Code, Chapt. 5, art. 1, sec. 13964: "Upon conviction of a person of a crime of violence committed in the State of California resulting in the injury or death of another person who was a resident of the State of California at the time the crime was committed, the court shall take into consideration the defendant's economic condition, and unless it finds such action will cause the family of the defendant to be dependent on public welfare, may, in addition to any other penalty, order the defendant to pay a fine commensurate in amount with the offense committed. The fine shall be deposited in the Indemnity Fund in the State Treasury, which is hereby continued in existence, and the proceeds in such fund shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to this chapter."

[222] Letter from Houston I. Flournoy, Controller, State of California, Aug. 13, 1971.

[223] The data for New York is taken from and calculated from New York, 1970 Fourth Annual Report of the Crime Victims Compensation Board, Leg. Doc. (1971) No. 95 (April 1, 1971).

These included 100 awards for death claims, 112 awards in which periodic payments were made, and 246 lump-sum payments for injuries. The average lump-sum award was for $1,930.00; the average death award was $2,040.00; and the average protracted claim award was $3,450,00. Total lump-sum awards amounted to $474,780.00; total death awards amounted to $204,000.00; and total protracted claim awards amounted to $386,000.00. The total cost of the New York crime compensation program for 1970 was $1,064,780.00.

The Criminal Injuries Compensation Commission of Hawaii made 121 awards in 1970.[224] The average award was for $2,167.58. The total awards amounted to $262,157.14.

In Maryland, in fiscal year 1970-71, the Criminal Injuries Compensation Board made 111 awards.[225] The lump-sum awards averaged $1,850.00; death awards averaged $2,400.00; and periodic payments in protracted claims awards averaged $1,625.00. The averages for death awards and protracted awards represent only the costs for the fiscal year and not the total amount of the awards, which may or may not continue in subsequent fiscal years. Total lump-sum awards amounted to $120,971.05; total protracted awards, including death awards and periodic payments,

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[224]Hawaii, Third Report of the Criminal Injuries Compensation Commission, Dec. 22, 1970.

[225]Maryland, Second Report of the Criminal Injuries Compensation Board, July 15, 1971.

amounted to $588,283.36. The total costs for fiscal 1970-71 were $622,074.41. In Maryland, as in California, an effort has been made to collect money from those convicted of committing crimes to be used to help finance the costs of making awards through the crime compensation program.[226] The $5.00 cost imposed upon those who have been convicted of committing crimes in Maryland, as noted in the language of the statute, is not limited to those who have been found guilty of committing crimes of violence. It is imposed generally for conviction of any crime by any judge in Maryland. As might be expected, this provision has produced much more money than California's similar provision. The amounts collected under the Maryland statute have been as follows:[227]

Fiscal Year 1969	$118,958.60
Fiscal Year 1970	135,438.75
Fiscal Year 1971	121,993.68

As in California, the effort in Maryland to finance its crime compensation program awards from the proceeds of special costs or fees imposed in the criminal process has

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[226]Maryland, Annotated Code of Maryland, art. 26A, sec. 17: "Where any person is convicted after July 1, 1968, of any crime by any judge, or trial magistrate, with criminal jurisdiction, there shall be imposed as additional cost, in the case, in addition to any other costs required to be imposed by law, the sum of five dollars ($5). All such sums shall be paid over to the Comptroller of the State to be deposited in the general funds of the State. . . . Crime as used in this section does include violations of Articles 66½ (Motor Vehicles) or 66C (Natural Resources) of this Code."

[227]Letter from E. V. Schoonmaker, Accountant, Comptroller of the Treasury, State of Maryland, Aug. 17, 1971.

been only partially successful. For fiscal year 1971, with the same number of convictions in Maryland, the special cost would have had to have been over $25.00 per conviction to have fully supported Maryland's crime compensation program.

Massachusetts is the only state that has assigned the administration of its crime compensation program to its courts. There, the district court judges administer the compensation program. Only summary accounts are kept of the handling of claims under Massachusetts' crime compensation program. The office of the Attorney General of Massachusetts supplied the following information for publication in the Fourteenth Report of the Supreme Judicial Court for the Commonwealth of Massachusetts:

> 55 cases were filed in the year ending July 30, 1969; 129, in the next twelve months; 88, in the period from July 1, 1970, to April 26, 1971. As of March 30, 1971, awards have totalled $80,460. Sixty-five cases have been closed. Of this number 62 awards were granted, or an average award of $1,298.[228]

By August 16, 1971, the total payments to victims of violent crimes under Massachusetts' crime compensation program had reached $113,310.76.[229] Legislative appropriations for Massachusetts' crime compensation program have been in the following amounts: 1969, $1,000.00; 1970, $30,000.00;

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[228]Letter from Richard D. Gerould, Executive Secretary, Supreme Judicial Court for the Commonwealth of Massachusetts, Sept. 1, 1971.

[229]Letter from Robert Q. Crane, Treasurer and Receiver General, The Commonwealth of Massachusetts, Aug. 16, 1971.

1971, $65,000.00; 1972, $25,000.00. Total appropriations have amounted to $121,000.00.[230]

In Nevada, the Board of Examiners administers that state's limited "citizenship" compensation program. There, compensation is awarded only for injuries or death sustained while "attempting to prevent the commission of a crime or to arrest a suspected criminal or while aiding or attempting to aid a police officer to do so."[231] As of August 4, 1971, only four awards had been made under this program. Three awards of $5,000.00 each and one of $59.00 had been made.[232] "Of the three maximum awards, injury resulted from gunshot wounds while attempting to prevent an armed robbery. The claimant awarded special damages was the result of knife wounds sustained while attempting to prevent an assault."[233]

There are many factors that will have an impact upon the costs of a program to compensate victims of crime. The nature of the program itself, including exclusions, limitations, and terms of eligibility, will be a significant factor. The total population and age distribution of that population within a particular jurisdiction will be influential. The volume of crime and the kinds of crimes com-

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[230] Ibid.

[231] Nevada, Revised Statutes, Chapt. 217, sec. 217.070.

[232] Letter from Howard E. Barrett, Clerk, Board of Examiners, State of Nevada, Aug. 4, 1971.

[233] Ibid.

mitted, influenced by the degree of urbanization, and the socio-economic characteristics of the population within a jurisdiction will affect the costs. Other factors include the administrative interpretations and application of the provisions of the crime compensation program and the public's awareness of the compensation program and the willingness of crime victims to file claims for awards. Those states that have had experience with crime compensation programs have found that the number of claims filed increases dramatically once the existence of the program becomes generally known.

By scrutinizing the provisions of the crime compensation programs of the states whose costs are reported here and by making comparisons of the factors mentioned above that are most likely to influence program costs, states that are contemplating the adoption of their own crime compensation programs should be able to gain some appreciation of their approximate program costs.

National Politics: Its Impact upon the Future of State Crime Compensation Programs

Recent events indicate that crime compensation programs will become an issue between the major political parties before the 1972 presidential election. It now appears that the Democrats will be sponsoring a drive to have such a program adopted at the national level to apply to those areas within the national jurisdiction and, through a grant-in-aid program, to have additional crime compensa-

tion programs adopted by states. Prominent Democrats who have recently indicated support of programs to compensate victims of crimes of violence include Senator Edward M. Kennedy; Senate majority leader, Mike Mansfield; and Senator John L. McClellan.[234] The Nixon administration, allegedly for financial reasons, does not now support crime compensation programs that would go beyond making payments to families of policemen slain in the line of duty.[235] This partisan difference of opinion could give the Democrats an issue which would be equally attractive to the liberals and conservatives of the party. It may provide the Democrats with a much needed rallying point in their efforts to counter the Nixon administration's law-and-order emphasis. Senator McClellan, who is Chairman of the Senate Subcommittee on Criminal Law and Procedures has said that this subcommittee will give serious consideration to crime compensation programs early in 1972.[236] It recently began holding hearings on this subject. Senator McClellan recently spoke of the concept of compensating victims of crimes of violence as "an idea whose time has come."[237] There is also support for national legislation in this area from the state level. Appearing before the Senate Subcommittee on Crimi-

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[234]See New York Times, Dec. 1, 1971.

[235]Ibid. [236]Ibid.

[237]Albuquerque Journal, Dec. 12, 1971, G-8.

nal Law and Procedures in November, 1971, Stanley L. Van Rensselaer, Chairman of New York's Crime Victims Compensation Board, and Governor Marvin Mandel of Maryland both urged the passage of a national grant-in-aid program to enable more states to adopt crime compensation programs.[238] As noted above, the programs of the states represented by these two spokesmen are the two biggest programs in the United States, in terms of claims and awards.

Should the consideration of programs to compensate victims of crimes of violence get caught up in the political whirlwind of national politics, as it now appears likely to, it may well blossom into an issue of considerable political consequence. It would seem most advantageous, from the point of view of one who is interested in there being more future program adoptions, for this to happen.

Choosing an Agency to Administer the Crime Compensation Program

The Decision to Assign Administration to an Existing Body or to Create a New Body

There are no clear-cut indices of performance that result in the automatic assignment of the administration of a victim compensation plan either to newly created agencies or existing agencies, administrative or judicial.

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[238] New York Times, Dec. 1, 1971.

> The public bureaucracy is an expression of American needs as perceived and translated into action by people whose concepts of administrative ideas and forms rest on American values and assumptions. Modern Americans who design and operate bureaucracies to fight crime or lower the death rate or guard against excessive concentrations of economic power or advance civil rights do not work from a primeval beginning. Rather they function in a network of past experience, present circumstances, and future possibilities.[239]

In its Model Act, the Council of State Governments suggests as Alternate I the establishment of a Criminal Injuries Compensation Board and as Alternate II the use of a court.[240] Here, as elsewhere, one is faced with choosing from among different combinations of advantages and disadvantages. "Neither courts nor administrative agencies are without disadvantages, yet each possesses certain advantages that the other does not."[241]

The desire to achieve certain advantages and to avoid certain disadvantages has led the jurisdictions here being considered to variously adopt one or another way of administering their crime compensation programs. These adoptions and rationalizations put forward to support them, together with some critical evaluations, will be considered below.

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[239]Norman John Powell, Responsible Public Bureaucracy in the United States (Boston: Allyn and Bacon, 1967), p. 165.

[240]"Compensation for Victims of Crime," Suggested State Legislation, XXVI (1967), A-41--A-42.

[241]Michael P. Smodish, "But What About the Victim? The Foresaken Man in American Criminal Law," University of Florida Law Review, XXII (Summer 1969), p. 13.

Use of the Courts. Many reasons have been suggested why it would be prefereable or not to assign the administration of a crime compensation program to courts. Of those jurisdictions here considered, only the state of Massachusetts has chosen the courts to administer a compensation program.[242]

For some, courts are to be preferred due to the nature of the work to be done and the feeling that its judicial aspects should be emphasized:

> The money damages award for injuries suffered by the victim of a crime properly belongs within the province of courts, and juries. . . . A commission that sits in session and hears a large number of cases will soon lose its perspective and false and improper standards may be established. As the volume of cases increases, so will institutionalization. . . . The fresh view of ever-changing juries can preserve the integrity of adequate compensation for victims of crimes, that is, remedy in direct proportion to the wrong.[243]

For others, there is an objection to expanding the administrative agencies in government, if not to expanding the role or tasks of government. "I share . . . the legal laymen's instinct," noted The Lord Bishop of Chester, "against a proliferation of special tribunals to deal with particular matters in judicial cases. If it is possible for

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[242] Massachusetts, Compensation of Victims of Violent Crimes, Annotated Laws (1968), ch. 258A. sec. 2.

[243] Luis Kutner, "Crime-Torts: Due Process of Compensation for Crime Victims," Notre Dame Lawyer, XLI (1966), p. 500.

the existing courts of the land to deal with this matter I believe that that would be more desirable."[244]

Very early in modern-day considerations of enacting compensation programs were the efforts of a committee created by the government in Great Britain to examine compensation and the practical problems involved in administering such a scheme. This committee became known as the Working Party and its Report became the basis of many future inquiries into compensation programs.[245] The Working Party's conclusion regarding the administration of a compensation program was that it is pretty much of a toss-up in choosing between using courts and an administrative tribunal; "which of those was chosen would depend on the nature of the scheme."[246] It was noted however that there are certain needs to be realized from the administration of a compensation program other than administrative efficiency and that courts could meet these needs.

> For the scheme to be acceptable to public opinion, claims would need to be determined by some body whose decisions would command confidence and be immune from pressures. . . . Decisions by judges carry more weight with the public, and from that point of view the courts would be preferable.[247]

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[244]Great Britain, "Crimes of Violence: Compensation for the Victim," Parliamentary Debates (Lords), 245 (Dec. 5, 1962), col. 271.

[245]Great Britain, Compensation for Victims of Crimes of Violence, Cmnd. 1406, June, 1961.

[246]Ibid., p. 19.

[247]Ibid.

This same viewpoint was shared by a special commission created by the Massachusetts legislature to study compensation for victims of violent crimes.[248] This commission offered many plausible reasons for assigning the administration of the compensation program to the courts rather than to administrative tribunals. Several contentions emphasized the judicial nature of the decisions that must be made in administering a compensation program and the suitability of using the courts to make these decisions.[249] Other contentions that the courts would be preferable in administering a compensation program were based upon suggestions that courts possess unique advantages to effectively administer such programs. Among these alleged advantages in using courts is that "they can insure a greater uniformity in their interpretations and decisions because they are bound by custom to follow the principle of stare decisis and the rule of precedence."[250] Also, the point is made that courts are already staffed with "experienced judges who are disinterested, full-time, legally trained professionals,"[251] who would provide competence that would be difficult to duplicate should separate administrative agencies be established. It was also felt that desirable citizen-government relationships would more likely be fostered through court administration,

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[248]Massachusetts, The Special Commission on the Compensation of Victims of Violent Crimes, Report, (July, 1967), p. 18.

[249]Ibid., pp. 16-18.

[250]Ibid., p. 18.

[251]Ibid., p. 19.

> especially where these cases would be handled in the District Courts, the citizen would be dealing with a body in his own neighborhood. . . . The decentralization of our District Court system would give the handling of these cases a localized character and make the adjudicating body more accessible to our citizenry. On the other hand if these cases were handled by an administrative agency, two alternatives would exist: (1) either complainants would be forced to go to a central agency located in Boston which would result in great inconveniences for many; or (2) a system of branch offices would have to be set up all over the state which would greatly increase the expense of putting the legislation into operation.[252]

A long-range concern with the preservation of the judicial trial was also evidenced by this commission. It was noted that there is a tendency to move away from the courts and to establish administrative agencies that employ less rigid rules of evidence.

> The danger is that the trend will inevitably erode the integrity of the trial process as we know it today. What is involved is not only the future migration of still more cases from the court's jurisdiction, but the contagion of indifference, at times approaching disdain for the forms of the judicial trial. How long will the guarantees of the trial process remain vital if other processes, dealing with comparable problems, demonstrate the dispensability of those guarantees. For example, if administrative adjudication can function while receiving hearsay, how long can the judicial trial continue to be unaffected by such experience?[253]

While these seem to be sound bases for choosing courts to administer a crime compensation program, there are also many criticisms that have been directed against using the courts for this purpose. Again, this seems due to differences in perception and in the priorities sought through the administration of the scheme. This does not mean

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[252] Ibid., pp. 18-19.

[253] Ibid., p. 19.

that the above contentions are necessarily invalid but that others have different conceptions and attachments to alternative working arrangements. They too may not necessarily be valid or invalid. Very often, advantages become disadvantages and disadvantages become advantages, depending upon one's personal slant.

Among the objections to using courts to administer compensation programs, the ones most typically encountered are:

(1) the substantial additional workload placed upon the courts;

(2) the potential delay in adjudication that seems inherent in the judicial process; and

(3) the more rigid setting which usually accompanies judicial proceedings as compared to the more free-wheeling administrative proceedings.[254]

That these alleged difficulties may be more imagined than real is evidenced by the calculation of the Massachusetts special commission that compensation cases would increase the case load of its District Courts by less than one-half of one percent, an insignificant increase.[255]

Use of an Administrative Body Already in Existence. A jurisdiction creating a crime compensation program may decide to assign its administration to an existing administrative agency. Several considerations might favor this decision. The anticipated case load might be light so that the performance of additional administrative duties in conjunction

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[254]Glenn Eldon Floyd, "Massachusetts' Plan to Aid Victims of Crime," Boston University Law Review, XLVIII (Summer, 1968), p. 363. Cf. Robert Childres, "The Victims," Harper's Magazine, April, 1964, p. 161; Glenn E. Floyd, "Victim Compensation Plans, "American Bar Association Journal, LV (1969), p. 161.

[255]The Special Commission on the Compensation of Victims of Violent Crimes, op. cit., p. 17.

with a compensation program would not be burdensome. Also, there may be one or more administrative agencies already created that perform related tasks so that some desirable degree of experience and performance has been realized. It might be thought desirable to capitalize on these resources rather than to try to duplicate them through creating a special, single-function administrative agency to administer the crime compensation program. The element of cost is certain to be a significant consideration and it might be thought best on this account to have an operating administrative agency assume the administration of the program.

There are however certain circumspections present in deciding to utilize existing administrative agencies to handle the administration of the crime compensation program. For one thing, such an agency will already have a reputation with the public, favorable or unfavorable. Also, the chief work of the agency may tend to color its handling of the details of the crime compensation program. California has had experience with having its crime compensation program administered by two different, established administrative agencies: the Department of Social Welfare and the State Board of Control. The Department of Social Welfare was first to administer California's crime compensation program.[256] Its direction of the program quickly became an object of criticism. This was partly because the public tended to view the crime compensation program as a welfare measure because of its being administered by the Department of Social Welfare.

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[256] Cal. Welfare & Inst'ns. Code, sec. 11211, 1965 Regular Session, ch. 1549.

> There has already been some indication that the placing of the compensation program within the jurisdiction of the Department of Social Welfare might have been in ill-considered move, particularly in terms of identifying the new law in the public mind with charity rather than with legitimate payment of one's due.[257]

Criticism also developed when the Department of Social Welfare, given the power to establish criteria for eligibility, followed the rules it had previously promulgated for providing welfare to families with dependent children.[258] This and other rules of the Department of Social Welfare, resulted in a restricted program, viewed skeptically by the public. Noting negative attitudes of initial recipients of financial awards granted as part of California's crime compensation program, researchers suggested that if such attitudes continued to manifest themselves in later recipients,

> it is likely that state authorities will re-examine the ingredients of the existing program and reorganize them in order that they may come closer to producing results more in keeping with their aims and ambitions for victim compensation.[259]

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[257] Gilbert Geis, "Experimental Design and the Law: A Prospectus for Research on Victim-Compensation in California," California Western Law Review, II (1966), p. 89.

[258] Gilbert Geis and Dorothy Zietz, "California's Program of Compensation to Crime Victims," The Legal Aid Briefcase, XXV (1966), pp. 66-69.

[259] Ibid., p. 69.

This re-examination did occur and it resulted in transferring the administration of the crime compensation program to the State Board of Control.[260] The initial California crime compensation program was passed in the form of two independent legislative acts. One of these acts created the usual compensation program. The other created a program to compensate "good Samaritans" who incurred personal injury or property damage while being of assistance in preventing crime or apprehending criminals.[261] The compensation of "good Samaritans" was initially made the responsibility of the State Board of Control so it was natural that the regular crime compensation program, when taken away from the Department of Social Welfare, was also put under the jurisdiction of the State Board of Control. When part of the first

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[260] Cal. Govt. Code (1967), ch. 5, art. 1, sec. 13962, 13963. The State Board of Control is an administrative board exercising quasi-judicial powers. Charles L. Harney, Inc. v. State of California (1963) 32 Cal. Rptr. 524, 217 C.A. 2d 77. The Board has the responsibility for discharging a variety of duties, including the regulation and allowance of expenses to be paid to state employees while traveling on official state business, governing the presentation and audit of claims against the state for which an appropriation has been made or for which a state fund is available, making financial awards to state employees for their contributions toward the improvement of work processes or their superior work, regulating the use of state-owned motor vehicles, regulating deductions from the salary or wages of state employees for the purchase of United States savings bonds or for charitable contributions, determining the value of services furnished by the state as an employer to its employees, stopping the payment of warrants drawn without authority of law or for a larger amount than the state actually owes, exempting state agencies and employees who are required to collect money owing to the state when the amount is so small as not to justify the cost of collection, and providing for the disposal of property which has escheated to the state from the estates of deceased persons. Cal. Govt. Code (1967) ch. 2, secs. 13920-13926; ch. 3 secs. 13940-13944; ch. 4, secs. 13950-13955; 1971 Supp., part 4, ch. 1-4.

[261] Cal. Pen. Code, secs. 13600-03, 1965 Regular Session, ch. 1395.

compensation program was assigned to the State Board of Control, several advantages were then cited. These would seem to apply also to the transfer of the major part of the crime compensation program to the State Board of Control:

> First, the Board of Control has experience with financial claims against the state. Secondly, because it is an administrative body the Board's hearings can proceed in a relaxed, nonadversary setting, allowing for quick and inexpensive decisions on what will often be routine claims.[262]

Since the total crime compensation program in California has been administered by the State Board of Control the kinds of criticisms directed at the administration of the program by the Department of Social Welfare have not continued. The more successful handling of the compensation program by the State Board of Control may be due in part to its experience in handling claims against the state. That the Board has been able to accommodate itself to the administration of the crime compensation program, in addition to performing its usual functions, would seem to be partly due to the small number of claims for compensation which have been filed with the Board. From the inception of the Good Samaritan Program in 1965, the State Board of Control received only fifty-one claims through fiscal year 1970-1971.[263] After assuming responsibility for the administration of that part of the crime compensation program previously handled by the Department of Social Welfare, the claims considered by the State Board of Control increased but the number of claims filed per month has never been very great. This is illustrated in Table 6.

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[262]James E. Culhane, "California Enacts Legislation To Aid Victims of Criminal Violence," Stanford Law Review, XVIII (Nov. 1965), p. 267.

[263]California, State Board of Control, Yearly Activity: Good Samaritan Program Claims (Mimeographed.)

TABLE 6

Monthly Activity Victims of Violent Crimes Claims

Nov. 1967 through Aug. 1970[a]

Number of Claims filed per month	Number of Months
1-10	2
11-20	2
21-30	15
31-40	12
41-50	3
50+	0
	34

[a]Compiled from California, State Board of Control, Monthly Activity: Victims of Violent Crimes Claims, Fiscal Year 1967-68; 1968-69; 1969-70; 1970-71, (Mimeographed.)

In no month has the number of claims filed reached fifty and in only three months have claims filed exceeded forty-one. As can be seen above, in the usual month, between twenty-one and forty claims can be expected. Should the number of claims filed increase significantly in the future, there might conceivably have to be reconsiderations of the selection of an administrative agency to administer the crime compensation program. Until that event happens, the State Board of Control seems likely to perform adequately. Unless specific advantages of a special crime compensation commission were desired, it would probably be possible to even handle a greatly increased case load through increasing the staff of the State Board of Control.

As can be seen from California's experiences a certain amount of caution should be exercised in assigning the administration of a crime

compensation program to an existing administrative agency. If done with care however, it might be possible for a jurisdiction to satisfy itself by selecting an existing agency to administer its crime compensation program.

Creation of a New Crime Compensation Board. The most popular, in terms of adoptions, of the alternative ways of administering crime compensation programs is the creation of a new administrative tribunal. Of the jurisdictions here considered, New York,[264] Maryland,[265] Hawaii,[266] Great Britain,[267] and New Zealand[268] have chosen to assign the administration of their programs to new administrative boards. Among the advantages that lie with the selection of a new administrative agency to handle the compensation program are flexibility,[269] wide discretion,[270] and quick handling of claims.[271]

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[264]New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 622.

[265]Maryland, Annotated Code of Maryland, Art. 26, sec. 3.

[266]Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-11.

[267]Great Britain, Compensation for Victims of Crimes of Violence, Cmnd. 2323, March 1964, sec. 9.

[268]New Zealand, Statutes of New Zealand, 1963, No. 134, sec. 4.

[269]"Compensation to Victims of Violent Crimes," Northwestern University Law Review, LXI (1966), p. 103.

[270]Great Britain, "Crimes of Violence: Compensation for Victims," Parliamentary Debates (Lords), 245 (Dec. 5, 1962), col. 294 (Remarks of Viscount Colville of Culross).

[271]A Report by Justice (Society), Compensation for Victims of Crimes of Violence, (London: Stevens & Sons, 1962), p. 23.

"In addition," it has been suggested, "through the use of a centralized and specialized administration, it can secure relatively uniform treatment of applicants and can keep the total of awards within the limited funds available, while simultaneously assuring all applicants at least basic protection."[272] A "model statute" has also proposed the creation of a new administration agency to handle its suggested crime compensation program: "Administration of the Model Act is not given to the courts for the same reasons that administration of most workman's compensation acts is not; congested court dockets (especially prevalent in large cities where the bulk of claims will arise) will thus be avoided, and the Commissioners will be allowed to acquire a familiarity and, hopefully, an expertise in the examination of claims."[273] Senator Ralph W. Yarborough in discussing one of his bills, S. 2155, which would have created a Violent Crimes Compensation Commission to administer a crime compensation program within the jurisdiction of the national government, said:

> Let us create an administrative tribunal, seeking to combine the informality and speed of the justice court with the flexibility of the FCC . . . . This should be done by an administrative procedure as informal as possible, specifically freed from the precedents of the criminal law.[274]

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[272]"Great Britain Approves Compensation Program for Victims of Criminal Violence," Harvard Law Review, LXXVIII (March-June 1965), p. 1684.

[273]"A State Statute to Provide Compensation for Innocent Victims of Violent Crimes," Harvard Journal on Legislation, IV (1966-67), p. 133.

[274]"We Should Compensate the Victims of Crime," Student Lawyer Journal, XII (1966), p. 7.

Countering some of the criticism directed against the proliferation of governmental agencies and the contention that they tend to grow beyond the demands of substantive need, the point has been made that "if sufficient care is taken in organizing it and setting out its functions, the agency should never become a bureaucratic monster."[275]

For these reasons, some arising from a positive attachment to the administrative tribunal as an administrative device, some arising from dissatisfaction with alternatives, the new administrative board or commission has come to be favored as the preferred means of administering crime compensation programs. The groundwork was prepared of course by the numerous studies and inquiries that were undertaken in Great Britain prior to its and New Zealand's creation of crime compensation programs and their selection of new administrative bodies to administer the programs.

The Crime Compensation Board

The concern here is with those components of the compensation program that have been chosen in the creation of new administrative bodies that control membership on those bodies. Those jurisdictions that have chosen to utilize existing bodies for the administration of their compensation programs will not be considered here since the members of those bodies were not selected, nor were staffing procedures devised, for their later coming to administer crime compensation programs.

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[275]Robert D. Childres, "Compensation for Criminally Inflicted Personal Injury," New York University Law Review, XXXIX (1964), p. 464.

Membership

Specific practices among those jurisdictions under consideration that are related to membership on crime compensation boards, are presented in Table 7. Comparisons and critical evaluations of these practices will be considered below.

How many? The number of members specified to constitute the crime compensation board is three in all jurisdictions and model statute recommendations presented in Table 7, except for Great Britain where the membership is nine. It would seem that tradition has been as great an influence as anything else in the selection of the three-man tribunal. No doubt, this has proven to be an acceptable practice and there is no particular reason to object to the practice being continued here or to recommend alternatives. Objectively, the number chosen should facilitate the working of the board. Depending upon other decisions made, such as the nature of dividing the work load, the number of claims filed, and whether the task is viewed as one that is full-time or part-time for each member, a membership of a different size might be thought desirable for a particular jurisdiction. Three would seem be a minimum, considering quorum requirements; more than three would seem to require justification.

Length of term? Staggered terms? Eligible for succession? These factors as they are related to one another are significant through their impact upon the development and maintenance of those abilities and knowledge that are desirable in facilitating the administration of a crime compensation program. The rationale offered to support the Model

TABLE 7

CRIME COMPENSATION BOARD MEMBERSHIP

	No. of Bd. Members	How Chosen	Length of Term (years)	Staggered Terms	Subject to Re-appt.	Legal Qualifications	Salary	Full-Time or Part-Time	Other
New Zealand[a]	3	Appt. by Gov. Gen. on rcmdn. of Min. of Justice	5	no	yes	Chmn. only: lawyer, 7 yrs. practice	Expenses	part-time	May be removed by Gov. Gen. only for stated causes
Great Britain[b]	9 (orig. 6)	Appt. by Home Sec. & Sec. of St. for Scot after consultation w/Lord C Chancellor	Not Specified	-	-	yes	$60/sitting day	part-time	-
New York[c]	3	Appt. by Gov.	7	yes	yes	Admitted to practice law in N.Y./10 Yrs.	Chmn.: $28,875, members: $27,536	full-time	Only 2 of same pol. party
Maryland[d]	3	Appt. by Gov.	5	yes	Not Specified	One member only: admitted to prac. law in Md./5 yrs immed. prior to appt.	Annual Salary as provided in annual budget	full-time	Only 2 of same pol. party
Hawaii[e]	3	Appt. by Gov.	4	yes	yes (only 2 consv. terms)	One member only: admitted to prac. before st. S. Ct. for 5 yrs.	Expenses plus: $50/day for members, max. $6,600/yr.; Chmn.: $55/day, max. $7,200/yr.	Not Specified	No. off. or emp of st. or pol. subdiv. is eligible for appt.
Model Act[f]	3	Appt. by Gov.	6	yes	yes	no	To be set by Leg.	Not Specified	May be removed only for cause.
Suggested Act[g]	3	Appt. by Gov.	5	yes	yes	One member; an atty. licensed to prac. in st.	To be set by Leg.	Not Specified	One member: a med. or osteopathic phy. licensed to prac. in st.

[a] New Zealand, Statutes of New Zealand, 1963, No. 134, secs. 4-9.

[b] Great Britain, Criminal Injuries Compensation Board, Sixth Report, Cmnd. 4494, Oct. 1970, pars. 1-4, p. 20.

[c] New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 622.

[d] Maryland, Annotated Code of Maryland, Art. 26A, sec. 3.

[e] Hawaii, Hawaii Revised Statutes, Vol 4, ch. 351, secs. 351-11, 351-12.

[f] "A State Statute to Provide Compensation for Innocent Victims of Violent Crimes," Harvard Journal on Legislation, IV (1966-67), pp. 139-140.

[g] Council of State Governments, "Compensation for Victims of Crime," Suggested State Legislation, XXVI (1967), A-41.

Act's suggestions is that "the Act provides for six-year terms which are staggered in order to provide continuity and time to develop skill in the handling of the cases."[276] Also, "the Commissioners are allowed to succeed themselves since this will help to preserve the expertise of the Commission."[277] Senator Ralph W. Yarborough, in an effort to provide a crime compensation program for the District of Columbia, incorporated into his bill (S. 2936) staggered terms, eligibility for reappointment, and an eight year term for commissioners.[278] These provisions were duplicated in Senator Mike Mansfield's bill (S. 750) which would create a crime compensation program to compensate victims of crime committed within the criminal jurisdiction of the national government.[279]

How chosen? There is a consensus that these positions should be filled via appointment by the governor or other chief administrative official by and with the consent of the senate.

Professional or educational qualifications? Professional or educational qualifications prescribed for members of crime compensation boards consist of "legal training and experience." The jurisdictions for which membership qualifications are prescribed in Table 7, all make

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[276]"A State Statute To Provide Compensation For Innocent Victims of Violent Crimes," op. cit., p. 140.

[277]Ibid.

[278]U.S., Daily Congressional Record, 91st Cong., 2d Sess., 1970 CXVI, No. 151, S14527.

[279]U.S., Daily Congressional Record, 92d Cong., 1st Sess., 1971, CXVII, No. 16, S1360.

the practice of law a required qualification for at least one member and there are no other professional or educational qualifications prescribed. Only in the Suggested Act is it proposed that one member be a medical or osteopathic physician licensed to practice in the state, and that plan prescribes that one member be an attorney licensed to practice in the state.

There may be very good reasons for emphasizing legal qualifications but there are objections to this emphasis by some, particularly when it is carried to the point of excluding other fields and interests. Prior to the adoption of a crime compensation program in Great Britain, a study made by lawyers recommended

> that the Compensation Board should consist of a legally qualified chairman, a doctor or person able to assist the Board on medical matters, and a Justice of the Peace, and that one of these three should be a woman. The chairman should be a lawyer with practical experience of proceedings before administrative tribunals. The inclusion of a female member should minimise any embarrassment which a female claimant might feel on appearing before in all-male Board.[280]

When the British compensation plan was adopted however, this recommendation was not followed. A board of five, in addition to the chairman, was created. The board members were to be "legally qualified" and the chairman was to be "a person of wide legal experience."[281] Objections were raised to the creation of an all-lawyer board.

> I consider that it is a profound mistake that in addition to a chairman of wide legal experience, the Board is to include five other members, all of whom are lawyers. . . .

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[280] A Report by Justice (Society), op. cit., p. 23.

[281] Great Britain, Compensation for Victims of Crimes of Violence, Cmnd. 2323, March 1964, p. 4.

> However skillful lawyers may be in dealing with the facts of any case, is it not inevitable that many cases will depend on local circumstances, on medical knowledge and on knowledge of everyday life which could more suitably be provided by others?[282]

Not long following these remarks, the chairman of Britain's board was named: "His Honour Kelly Carter, Q. C. Senior Official Referee, aged 65, chairman of Lincoln Quarter Sessions, and ... chairman of the East Midland Agriculture Land Tribunal from 1948 to 1954 was named chairman of the Criminal Injuries Compensation Board."[283] In little more than a month the members of the first British board were also appointed. They were:

1. Sir Ronald Long, solicitor, of Halstead, Essex, and President of the Law Society 1963-64.
2. Mr. R. H. McDonald Q. C., of Edinburgh, a Scottish advocate who was admitted to the Faculty of Advocates in 1946 and "took silk" in 1957.
3. Sir Ronald Morison, Q. C., a member of both the English and Scottish Bar, who has served as chairman of the executive committee of the British Iron and Steel Federation, the Police Arbitration Tribunal, the departmental committee on the Probation Service and Railway Staff National Tribunal.
4. Mr. E. D. Sutcliffe, Q. C., a barrister of the south-eastern circuit.
5. Mr. G. S. Waller, Q. C., Recorder of Leeds[284]

An opinion was later offered by Sir Walker Carter, Q. C. (Chairman of the Board) as to why legal qualifications were prescribed for all

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[282] Great Britain, "Crimes of Violence (Compensation for Victims), Parliamentary Debates (Commons), 694 (May 5, 1964), col. 1195 (remarks of Mr. Johnson).

[283] The Times (London), June 25, 1964, 10b.

[284] The Times (London), August 8, 1964, 4f.

members of the Criminal Injuries Compensation Board. "The scale of compensation that we are told to award," he said, "is that given by the courts. That is probably why we are all lawyers, because it is thought that we know, or are more likely than anybody else to know, how much the courts would be likely to give if the case came before them."[285] Others forecast changes in the qualifications for members of the British board. "Experience will probably indicate a need," said Bernard Downey, "for the appointment of lay members having practical experience of the problems which are bound to perplex the lawyers before long."[286] These changes in qualifications have not yet materialized. This may be in part due to the resourcefulness of the lawyer members. "We have armed ourselves," said Sir Walker Carter, "with copies of Faber's 'Anatomical Atlas,' Parr's 'Concise Medical Encyclopaedia' and Gray's 'Anatomy.' We have done our best with the 1st of these three, but it is really too difficult for us. However, the Atlas and the Medical Encyclopaedia have enabled us to translate--we know not whether accurately--the magnificent reports which are sent in to us. With the aid of those two books we manage to understand--or we hope that we do--what is the exact nature of the injuries."[287]

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[285] Remarks in an address to The Medico-Legal Society, Jan. 13, 1966, printed as "The Work of the Criminal Injuries Compensation Board," Medico-Legal Journal, XXXIV (1966), p. 49.

[286] Compensating Victims of Violent Crime," The British Journal of Criminology, V (1965), p. 94.

[287] "The Work of the Criminal Injuries Compensation Board," op. cit., p. 52.

While it sounds attractive and sensible that a crime compensation board's membership ought to be representative of a broader spectrum of the community than the legal field, on closer examination of the way in which such boards operate,[288] this contention does not seem to be as vital as it might otherwise be. For example, in Great Britain, there is no collective meeting of the board members. Single members review reports submitted to support claims and themselves dispose of most of the cases. "As the files are completed, they are mailed in groups of eight to the individual Board members for disposition 'on the papers.'"[289] Should there be a request for a hearing, either by the applicant or the single member of the board, only three other members of the board will conduct it.[290] Thus there is not the opportunity, that critics of an all-lawyer board imagine, for there to be a give-and-take discussion among board members with deference being given, as the occasion demands, to diverse learned opinions. In a case such as this, the need is for single members who, having certain training, will likely be better able to perform the tasks in question than someone who has a different kind of training. This was put rather well by Sir Walker Carter. He was responding to the following question: "Would it not be helpful if at

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[288]Cf. John D. Millett, Government and Public Administration (New York: McGraw-Hill, 1959), p. 442.

[289]Allen M. Linden, "Victims of Crime and Tort Law," Canadian Bar Journal, XII (1969), p. 29.

[290]Great Britain, Compensation for Victims of Crimes of Violence, Cmnd. 2323, March 1964, p. 7.

sometime in the future a member of the Board were to have both the legal and the medical qualification?"[291]

> Sir Walker Carter replied that he was sure it would be an enormous help for the Board to have a medical member sitting at hearings. The real difficulty was that 90% of the cases were dealt with by a single member and never went further, and in those cases a medical member might not know quite so much as a lawyer about the scale of damages awarded by the courts. On the other hand, a legal member had to refer to the medical books. Whilst doctors were not quite so good at knowing the scale of damages, lawyers were certainly nothing like as good as medical men in understanding what the injuries really were.[292]

Similarly, in New York,[293] Maryland,[294] and California[295] claims can be handled by a single member of the crime compensation tribunal. While it would seem to be desirable for the single members of crime compensation agencies to be generalists, the difficulties that face the members in reviewing cases can probably be met as well by lawyers as by those with different specialist training. On the other hand there would seem to be no good answer to whether it would be preferable to have the doctor check the law books or to have the lawyer check the medical books. These are, after all, criminal-injury cases.

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[291] "The Work of the Criminal Injuries Compensation Board," op. cit., p. 54.

[292] Ibid.

[293] New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 627.

[294] Maryland, Annotated Code of Maryland, Art. 26A, sec. 8.

[295] California, West's Annotated California Codes, v. 33, Pt. 3, ch. 1, secs. 13907, 13908.

Powers of the Crime Compensation Board

Crime compensation boards have in general been given the same powers as other administrative tribunals. These include the power to make rules, to provide for a paid staff, to administer oaths and subpoena witnesses and documents, and to reach decisions on the basis of evidence that might not be admissible in a court of law. Provisions for these powers are listed in Table 8.

TABLE 8

POWERS OF THE CRIME COMPENSATION BOARD

	Hold Hearings	Administer Oaths and Subpoena Witnesses and Documents	Bound by Rules of Evidence	Provisions for a Paid Staff
New Zealand[a]	Yes	Yes	No	Not specified
Great Britain[b]	Yes	No	No	Yes
New York[c]	Yes	Yes	No	Yes
Maryland[d]	Yes	Yes	No	Yes
Hawaii[e]	Yes	Yes	No	Yes
California[f]	Yes	Yes	No	Yes

[a]New Zealand, Statutes of New Zealand, 1963, No. 134, secs. 10=13.

[b]Great Britain, Criminal Injuries Compensation Board, Sixth Report, Cmnd. 4494, Oct., 1970, secs. 1, 4.

[c]New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 623.

[d]Maryland, Annotated Code of Maryland, Art. 26A, sec. 4.

[e]Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, secs. 351-13, 351-14.

[f]California, Govt. Code, ch. 5, art. 1, sec. 13963.

TABLE 9

GENERAL PROCEDURES OF THE CRIME COMPENSATION BOARD

	Hearings		Bases for Decisions		Action deferred if crim. case pending	Crim. conviction sufficient proof of crime	Standard of Proof		Review of Decisions	
	Pub.	Private	Pub. Rec	Med. Exam			Beyond a Reasonable Doubt	Balance of Probabilities	Internal	External
New Zealand[a]	yes		yes[l]	Not Specified	yes[n]	yes		yes	no	no
Great Britain[b]		yes	yes	yes	yes[o]	yes[p]		yes	yes	yes
New York[c]		yes	yes	yes	yes	no		yes[q]	yes	no[u]
Maryland[d]	yes[j]		yes	yes	yes	no		yes[j]	yes	no[u]
Hawaii[e]	yes		yes	yes	yes	yes		yes[r]	yes[t]	yes[v]
California[f]	yes		yes	yes[m]	no[m]	no[m]		yes	no	no[m]
Massachusetts[g]		yes[k]	yes	yes	no[k]	no[k]		yes[s]	no	yes
Model Act[h]	not specified		yes	yes	not specified	not specified		yes	yes	yes
Suggested Act[i]	not specified		yes	yes	yes	yes	not specified		not specified	no

[a] New Zealand, Statutes of New Zealand, 1963, No. 134.
[b] Great Britain, Criminal Injuries Compensation Board, Sixth Report, Cmnd. 4494, Oct. 1970
[c] New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22.
[d] Maryland, Annotated Code of Maryland, Art. 26A.
[e] Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351
[f] California, Govt. Code, ch. 5, Art. 1.
[g] Massachusetts, Annotated Laws of Mass., ch. 258A.
[h] "A State Statute to Provide Compensation for Innocent Victims of Violent Crimes," Harvard Journal on Legislation, IV (1966-67), pp. 132-147.
[i] Council of State Governments, "Compensation for Victims of Crime," Suggested State Legislation, XXVI (1967), A-41.
[j] Letter from Martin I. Moylan, Executive Director, Maryland Criminal Injuries Compensation Board, June 14, 1972.
[k] Telephone Conversation with Brian T. O'Neill, Massachusetts Assistant Attorney General, July 14, 1972.
[l] Letter from R. D. Jamieson S. M., Chairman, New Zealand Crimes Compensation Tribunal, September 6, 1971.
[m] Letter from Richard A. Godegast, Asst. to the Sec., California State Board of Control, June 21, 1972.
[n] The Attorney General may apply to the tribunal for an adjournment of any proceedings when prosecution has, or is about to commence.
[o] Great Britain, Criminal Injuries Compensation Board, First Report and Accounts, Cmnd. 2782, Oct., 1965, p. 4.
[p] Great Britain, Criminal Injuries Compensation Board, Second Report, Cmnd. 3117, Oct., 1966, p. 5.
[q] Letter from Stanley L. Van Rensselaer, Chairman, New York Crime Victims Compensation Board, June 19, 1972.
[r] Letter from Wilfred S. Pang, Executive Secretary, Hawaii Criminal Injuries Compensation Commission, June 21, 1972
[s] Massachusetts District Court Rules (Civil), Rule 80.
[u] The Attorney General may request review if an award is thought improper or excessive.
[v] Hawaii, S. B. No. 1061, Sec. 1 b (b), enacted May 19, 1972. Judicial review extends only to the question of whether an order or decision was beyond the commission's authority or jurisdiction.

In choosing from among alternative procedures that might be adopted one of the difficulties is that all of the advantages do not accrue to one procedure and all of the disadvantages to another procedure. It becomes necessary to weigh the advantages and disadvantages of one procedure with those of another procedure. Not all such evaluations result in unanimous conclusions that one procedure is to be universally adopted. It is also possible that different combinations of administrative procedures will satisfactorily meet the felt needs of different jurisdictions.

With respect to the meetings of the crime compensation board being open to the public or held in private, there is some difference of opinion as to which is preferable. There is no doubt value in the real or potential scrutiny by the public afforded by public meetings. Alternatively, in some areas at least, e.g., rape cases, public meetings would seem to invite unwanted and perhaps undesirable side-effects. There may be a desire, for example, to shield the victim of crime from embarrassment or possibly detrimental intrusions into his private affairs. There would certainly be a preference to avoid a situation in which the case would attract the curious to the extent of disrupting the orderly disposition of the case, which is not in fact being tried before the compensation board. Here, as with other procedures adopted as part of the administrative scheme, there will have to be a balancing effected and a given procedure that is thought to be most desirable will have to be chosen. If it proves not to be desirable in practice, alternatives can be adopted until the desired results are attained.

One common objective in the administration of the compensation programs is the expeditious handling and disposition of claims. The examination of records facilitates this objective. Valid, factual data would seem to be indispensable here. The procedures of the crime compensation boards reflect this conclusion. Although, as noted above, all of the crime compensation boards considered here except for Great Britain have the power to subpoena witnesses and documents, the boards have proceeded to gather information through voluntary cooperative efforts in preference to using their power to force divulgence of information. Requests for information and the examination of public records have been honored beyond the expectations of the compensation boards. This is reflected in the experience of the New York Crime Victims Compensation Board:

> We also acknowledge the cooperation of each and every law enforcement agency and particularly the State Police who have cooperated exceedingly.
>
> Every state agency we have asked for information, or help, in any claim to carry out the provisions of this statute has also been of great aid and willingly have made the information available.[296]

Cooperation has also been apparent in more extensive investigations in New York:

> There are many times when the investigator in the field is unable to find any witnesses and the police and the district attorneys have allowed this Board to examine their files and even furnish copies of statements and/or depositions taken from witnesses that were interviewed immediately following the incident.[297]

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[296] New York, 1968 Second Annual Report of the Crime Victims Compensation Board, Leg. Doc. (1968), No. 100, April 1, 1969, p. 12.

[297] New York, 1970 Fourth Annual Report of the Crime Victims Compensation Board, Leg. Doc. (1971), No. 95, April 1, 1971, p. 9.

The same kind of harmonious working relationships between the compensation board and other public officials have been fostered and exist in other jurisdictions as well. This is illustrated by the comments of the Maryland Criminal Injuries Compensation Board: "We . . . acknowledge the cooperation of each and every law enforcement agency and particularly to the State Police who have been of great assistance and willingly have made the information available."[298] The examination of police and court records constitutes the foundation of the investigative efforts of the compensation boards. "It has been our experience," notes the Maryland Board, "that a thorough review of the crime, beyond that of the police and court records, is necessary in approximately 20% of our claims."[299] The Hawaii Criminal Injuries Compensation Commission, which at this time still does not have an investigative staff, has effected cooperation with other public officials in order to secure public records and documents through the use of its rule making power. "We issued an order on March 14, 1969," it noted, "whereunder all information contained in police reports received by us are given confidential status and is permitted to be disclosed to persons, other than the Commission and its staff, only upon specific order of the Commission. This arrangement has led to the prompt procurement of police reports, even where criminal investigations of those cases were still pending. In almost every

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[298]Maryland, Criminal Injuries Compensation Board, First Annual Report, 1969, Jan. 15, 1971, p. 9.

[299]Maryland, Criminal Injuries Compensation Board, Second Annual Report (pre-printers copy) July 15, 1971, p. 5.

instance, this procedure has resulted in a speedier processing of applications."[300] Anticipating the addition of a full-time investigator to its staff, the Hawaii Board notes that, "currently, we many times hear only one side of a case and while the police reports are invaluable, there is still much need for additional investigatory work."[301] This would indicate the desirability of the crime compensation board being adequately staffed so that information related via public records and documents might be supplemented, where thought necessary, by other means. Problems with witnesses have been noted however:

> We have no power to compel witnesses to attend hearings to give evidence and they frequently refuse to do so, or fail to appear. Thus, in cases where an applicant's share of responsibility has to be considered, his evidence may stand uncontradicted. We cannot say in how many cases we would have reached a different conclusion if further evidence of those who were compelled to come against their will would be of little value. Furthermore, if the assailant had been acquitted it would be hard to compel him to give evidence a second time to support his acquittal.[302]

Both the New York and Maryland Boards have experienced delays in "attempting to locate and interview reticent witnesses."[303] Where possible, decisions are reached on claims by reviewing information contained in public records and documents and medical reports. Testimony or

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[300]Hawaii, Criminal Injuries Compensation Commission, Second Report, Jan. 6, 1970, p. 5.

[301]Hawaii, Criminal Injuries Compensation Commission, Third Report, Dec. 22, 1970, p. 8.

[302]Great Britain, Criminal Injuries Compensation Board, Second Report, Accounts for the year ended 31st March, 1966, Cmnd. 3117, pp. 12-13.

[303]New York, 1968 Second Annual Report, op. cit., p. 10; Maryland, First Annual Report, 1969, op. cit., p. 7.

information from witnesses has been sought chiefly in cases where there is some question of provocation which requires intensive investigation.[304]

As related to the criminal case that involves the offender and the state, in point of time or the impact of conclusions reached within the court and by the crime compensation board, the consideration of the claim by the compensation board can pose difficulties. The objective is to handle properly both the criminal case and the claim for compensation by the victim of crime and to have the least possible influence by one procedure upon the other. So as not to prejudice the case of the alleged criminal, it might be thought desirable not to have an award made to his alleged victim prior to the decision in the criminal case.

> It is obviously prejudicial to the defendent if the fact of an award to the victim is publicized immediately before the criminal trial. Also, it seems desirable to consider an exclusionary rule barring reference to proceedings before the commission in the criminal trial. Any hint of a commission award could be extremely prejudicial to the accused and should thus be excluded.[305]

At the same time, the victim might suffer undue hardship if made to wait too long for the settlement of his claim. A potentially undesirable result might occur also where the alleged offender is found guilty of having criminally injured the claimant and such conviction is accepted as sufficient proof by the compensation board that a crime has occurred. The claimant might conceivably become too concerned as a witness in the criminal case that the accused be found guilty. It is hoped that a

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[304] Ibid.

[305] Ralph W. Yarborough, "S. 2155 of the Eighty-Ninth Congress--The Criminal Injuries Compensation Act," Minnesota Law Review, L (1965), p. 262.

situation such as this would not result, but it must be guarded against, and it certainly must not be fostered by the procedures of the compensation board. To best protect the interests of the victim and the accused attacker, it would seem preferable to neither defer board action on a claim if a criminal case is pending or to accept a criminal conviction as sufficient proof that a crime has occurred. On the one hand the proceedings and action of the board in such a case could be kept under wraps until the criminal case has ended. This would protect the interests of the victim by not forcing him to wait so long for the settlement of his claim and at the same time would not interfere with the interests of the accused attacker. On the other hand, by not taking a criminal conviction as sufficient proof that a crime has occurred and by not defering action on the claim for compensation for the victim until the criminal case has ended, the victim is not likely to have the same concern that the accused be found guilty. This would best protect the interests of the accused. Such a relationship between the board's and the court's actions would keep their proceedings as separate as possible and minimize the influence that one's actions would have upon the other's.

The informal proceedings of the crime compensation boards, the acceptance of all evidence thought relevant,[306] and the fact that the proceedings do not amount to a trial would seem to favor as a standard

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[306]Cf. Millett, Government and Public Administration, op. cit., pp. 440-441.

of proof the "balance of probabilities" rather than "beyond a reasonable doubt."[307] The purposes or objectives of the compensation programs would seem to make the "beyond a reasonable doubt" test inappropriate here.[308] The British Criminal Injuries Compensation Board, being explicit on this point has said:

> Our hearings are held in private and have been conducted informally. We have not considered ourselves bound by the rules of evidence. The applicant is called upon to prove his case on the balance of probabilities.[309]

While these actions are not unique to the British Board, a practice is followed there that is quite exceptional:

> A legally qualified member of the Board's staff appears as advocate at each hearing. He acts as a friend of the Board rather than as a party to the dispute. He presents all the facts and arguments which are relevant whether they are favourable or unfavourable to the applicant's case. He also draws attention of the Board to its previous decisions and to the decisions of the courts. In some cases he challenges the case put forward by cross-examination, by the evidence he calls and by his submissions of law. In others, the evidence he calls and the arguments he puts forward may tend to establish the applicant's case.[310]

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[307] Black's Law Dictionary, 4th ed. (1951), p. 1364, defines "probability" as "likelihood; appearance of reality or truth; reasonable ground of presumption; verisimilitude; consonance to reason. The likelihood of a proposition or hypothesis being true, from its conformity to reason or experience, or from superior evidence or arguments adduced in its favor. . . .Inference; assumption; presumption. . . . A condition or state created when there is more evidence in favor of the existence of a given proposition than there is against it." "Beyond a Reasonable Doubt" is defined, p. 204: "In evidence means fully satisfied, entirely convinced, satisfied to a moral certainty." For the use of these "measures of persuasion" cf. John Henry Wigmore, Wigmore's Code of the Rules of Evidence, 3rd ed. (Boston: Little, Brown, and Co., 1942), pp. 502-504, where it is noted that "beyond reasonable doubt" is appropriate in criminal cases. "Balance of probabilities" is appropriate in civil cases.

[308] See James Hart, An Introduction to Administrative Law, op. cit., pp. 606-610.

[309] Second Report, op. cit., p. 12.

[310] Ibid.

Although this manner of getting at the facts is not the pattern followed in other jurisdictions, there is the same interest shown elsewhere in developing the truth in each case that comes before the compensation board. In New York, for example,

> The claimant is advised that this Board is not his adversary, but that the Board must of necessity have all of the facts concerning not only the crime, but his participation, if any, and his financial resources must be fully revealed to the staff. The claimant or the survivor is fully advised that the Board will develop any and all information relevant to the claim whether it be to his advantage or against him.[311]

It is suggested that provisions for internal review of single-member decisions are desirable. As the work load increases as more eligible victims become aware that they can apply for compensation, those jurisdictions that have initial full-board review may find it advisable to provide for initial single-member review and decision making, reserving full-board review for appeals from these decisions. Internal review is desirable for several reasons. From the point of view of the claimant, it is more equitable. He may have had his claim rejected on its merits or because of its not coming within the specifications of the compensation scheme. He might feel, if he has been given an award, that it is too low. Full-board review permits a reappraisal of the claim, in the interest of affording equitable treatment of claimants. Full-board review also possesses advantages for the compensation board. It provided an opportunity to achieve more uniformity among the single members determinations and also permits the single

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[311] New York, 1969 Annual Report of the Crime Victims Compensation Board, Leg. Doc. (1970), No. 97, April 1, 1970, p. 9.

member to request full-board review of difficult or unusual cases. Reports of current practices indicate that where instituted, full-board review is not often requested. Single-member decisions and the acceptance of these decisions by claimants dispose of most cases. For example, in New York in 1968, the Crime Victims Compensation Board made "422 decisions which were rendered by the single Board Member." Of these, there were "14 full Board review meetings to review the decision of the single Board Member in 51 claims where the claimant asked for the same."[312] This means that fewer than twelve percent of these decisions were made via full-board review. In 1969, also in New York, of eight-hundred and twenty-six decisions rendered, a total of ninety-nine claims were reviewed by the full board.[313]

These claims reviewed would amount to slightly more than twelve percent of the total decisions made in 1969. It is interesting to note that while the total number of cases decided in 1969 was almost double the number decided in 1968 that the percent of cases reviewed by the full board remained almost the same. Constancy in the proportion of cases decided by full-board review is also apparent in British experience. While the work load of its Criminal Injuries Compensation Board has increased yearly, the percent of cases appealed to the full board for review has remained nearly the same from year to year. In the working year of the board in 1968-69 seven percent of all cases were

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[312] New York, 1968 Second Annual Report of the Crime Victims Compensation Board, Leg. Doc. (1968) No. 100 (April 1, 1969), p. 8.

[313] New York, 1969 Annual Report of the Crime Victims Compensation Board, Leg. Doc. (1970) No. 97 (April 1, 1970), pp. 10, 15.

decided at review hearings, compared with six percent in 1967-68 and five percent in 1966-67.[314]

External review of compensation board decisions and actions would seem to be desirable, if strictly limited to a determination as to whether the board had acted within prescribed boundaries or limitations legally imposed upon its operations or where the decision is arbitrary, e.g., not based on the record. The practice of Hawaii in this respect, as noted in Table 9, would seem to be appropriate. There, judicial review of the actions of its Criminal Injuries Compensation Commission extends only to the question of whether an order or decision was beyond the Commission's authority or jurisdiction. The British compensation program incorporated the view that external review of compensation board decisions is undesirable and excluded such review altogether. "This is inconsistent with American administrative law practice," said Professor Robert D. Childres of the New York University School of Law, "and should not be followed."[315] "The principal controls of public administration that deserve the name of remedies are," according to James Hart, "those that operate through the courts."[316] Judicial review of the British Criminal Injuries Compensation Board came about in 1967 when three judges of the Divisional Court unanimously ruled that the court has

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[314]Great Britain, Criminal Injuries Compensation Board, Fifth Report: Accounts for the year ended 31st March, 1969, Cmnd. 4179, Oct. 1969, p. 8.

[315]"Compensation for Criminally Inflicted Personal Injury," New York University Law Review, XXXIX (1964), p. 465.

[316]An Introduction to Administrative Law (New York: Appleton-Century-Crofts, 1950), p. 38.

power to quash decisions of the board. The Divisional Court also ruled that "the 3-member hearing was in no sense an appeal, it was merely a renewal of the application, and there was nothing wrong with de novo proceedings."[317]

> Lord Parker, L.C.J., held that the Divisional Court had jurisdiction to inquire into the decisions of the Board in order to see whether there was on the face of the record any error of law. Diplock, L.J., said that the Board when determining applications in accordance with the procedure laid down by the Scheme was clearly performing de facto quasi-judicial functions; that is, acting as an inferior tribunal. Ashworth J., said that, though set up by the executive, the Board's existence and functions had been recognised by Parliament, which negatived the notion that the Board was a private tribunal, and conferred on the Board a public or official character.[318]

In this case, no error was found in the Board's decision and it was upheld, but the Court's power to review such decisions was clearly stated. Although there has been no challenge of provisions that bar external review in other jurisdictions, it may well be that when such challenges come that the proscriptions of such review will not in fact prevent courts from exercising judicial review there also. The statutory language barring judicial review of decisions of the crime compensation board at least represents a legislative bluff which may or may not be called by courts in such jurisdictions when and if requests for review are made.

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[317] The Times (London), April 21, 1967, 5A, case of Regina v. Criminal Injuries Compensation Board ex parte Lain (1967), 2 ALL. E. R. 770.

[318] Great Britain, Criminal Injuries Compensation Board, Third Report, op. cit., pp. 4-5.

The Crime Compensation Board and the Applicant

Two time deadlines which the applicant must meet have been incorporated in the compensation programs and the model recommendations presented in Table 10. "They serve the dual purpose of protecting against fraudulent claims and of insuring a prompt investigation of the crime by the police authorities."[319] A report of the crime by the potential applicant to the appropriate police authorities

> reflects the determination that fraudulent claims will be deterred and the apprehension of the offender will be facilitated if the commission of the crime is promptly reported to the police. The applicant should not expect the state to award compensation if he has not made a reasonable effort to aid the state in the apprehension of the criminal."[320]

Most plans permit delays in reporting if there are excusable causes for the delay. "An example of this might be where it is not clear that a crime has been committed--as in the case of a fire which is later found to have been caused by arson."[321] The deadline on filing the application for compensation amounts to a statute of limitations. Here also, most jurisdictions permit delays where circumstances warrant. "These might include latent injuries not discovered or discoverable for one year, amnesia or discovery that a crime has occurred only after a lengthy investigation of more than a year."[322] The imposition of a set deadline for reporting the crime and for filing the application, with

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[319]"A State Statute to Provide Compensation for Innocent Victims of Violent Crimes," op. cit., p. 137.

[320]Ibid.

[321]Ibid.

[322]Ibid.

TABLE 10

THE CLAIMANT AND THE CRIME COMPENSATION BOARD

	Must Report to Police	Must Submit to a Medical Examination	Deadline on filing Application	Applicant given Rules gov. Bd's. Proceedings	False Statements Punishable	Legal Aid		Assistance of Friend
						Permitted	Paid by Board	
New Zealand[a]	not specified		one year[j]	not specified	yes	yes	1	yes
Great Britain[b]	without delay	yes	as soon as possible	not specified[m]	not specified	yes	no	yes
New York[c]	48 hrs.[j]	yes	90 days[k]	not specified	not specified	yes	not specified	not specified
Maryland[d]	48 hrs.	yes	90 days[k]	not specified	yes	yes	yes	not specified
Hawaii[e]	without delay	yes	18 mos.	not specified	not specified	yes	1	yes
California[f]	must "cooperate"	not. spec.	one year	yes	not specified	yes	yes	not specified
Massachusetts[g]	48 hrs.[j]	yes	one year[j]	not specified	not specified	yes	1	not specified
Model Act[h]	24 hrs.[j]	yes	one year[j]	not specified	not specified	yes	not specified	yes
Suggested Act[i]	5 days[j]	yes	two years	not specified	not specified	yes	1	yes

[a] New Zealand, Statutes of New Zealand, 1963, No. 134.
[b] Great Britain, Criminal Injuries Compensation Board, Sixth Report, Cmnd. 4494, Oct. 1970.
[c] New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22.
[d] Maryland, Annotated Code of Maryland, Art. 26A.
[e] Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351.
[f] California, Govt. Code, ch. 5, Art. 1.
[g] Massachusetts, Annotated Laws of Mass., ch. 258A.
[h] "A State Statute to Provide Compensation for Innocent Victims of Violent Crimes," Harvard Journal on Legislation, IV (1966-67), pp. 132-147.
[i] Council of State Governments, "Compensation for Victims of Crime," Suggested State Legislation, XXVI (1967), A-41.
[j] Good cause must be shown for failure to comply within this period
[k] For good cause shown, Board may extend filing time to maximum of one year
[l] Compensation Board must approve any payment made by client to his lawyer, subject to maximum amount
[m] police stations hold copies of the scheme and "Guide to Procedure"

the added proviso that delays that the compensation board deems justifiable be allowed, would seem to be preferable to alternatives. Great Britain, for example, which specifies that the crime be reported "without delay" found it necessary to clarify what is required by this. Is a reporting of the crime three weeks after its commission, notification "without delay"? Such a late reporting was accepted by the British Criminal Injuries Compensation Board and led to a clarification of what is necessary under the "without delay" requirement. "A university student was walking with friends when they were attacked by a gang of youths. He was struck on the head with a brick and was unconscious for three weeks."[323] The victim of course was not able to report the crime until he regained consciousness and apparently none of his friends had done so either. There would seem to be nothing gained by such a stipulation as "without delay" or "as soon as possible." It is also desirable from the interests of the police that the crime be reported quickly after its having occurred and a definite, short time period would seem to hasten such reporting.

For the dual purposes of aiding in the appraisal of damages to the victim and as another protection against fraud, requiring the applicant to submit to a medical examination would seem necessary. Even though the compensation board might usually accept records of medical examinations obtained and submitted by the applicant, it would seem to be desirable to have the check of requiring an occasional applicant to be

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[323] The Times (London), May 20, 1966, 16c.

examined by a doctor of the board's choice. This should not be thought to work counter to the interests of the applicant. The British board has this power and exercises it occasionally. "It is a great tribute to the way the system works," said Sir Walker Carter, Chairman, "that the report that we obtain from our own doctor is probably rather more favourable to the applicant than the one put in by his own doctor. The reports are extremely objective and our man, being perhaps slightly more skillful, is able to see some of the difficulties which escaped the other doctor."[324]

Difficulties still remain in getting eligible victims of crime to apply for compensation. Many efforts have been put forth in an attempt to familiarize the public with the new compensation programs, where they have been created. Commenting on the first annual report of the Hawaii Criminal Injuries Compensation Commission, Wilfred S. Pang, executive secretary of the commission, said: "'The biggest problem is that people are just not coming forward--primarily because of ignorance, not knowing that we have this legislation.' He said that only a small percentage of victims of what appear to be eligible crimes under the compensation law are filing applications."[325] In New York this problem is reported to be much the same. "It is apparent," said Mr. Stanley L. Van Rensselaer, Chairman of the New York Crime Victims Compensation Board, "from the

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[324]"The Work of the Criminal Injuries Compensation Board," op. cit., p. 52.

[325]Helen Altonn, "Victims of Crimes Reminded of Compensation Law," Honolulu Star-Bulletin, Jan. 22, 1970, reprinted in U.S., Daily Congressional Record, 91st Cong., 2d Sess., 1970, CXVI, No. 18, E890.

number of crimes reported resulting in personal injuries, which continue to increase, that the number of claims filed with the Board is a small percentage of this total."[326] In Great Britain, research was conducted recently to determine just what the size of the gap between those who are eligible for compensation and those who apply for compensation might be. The method of research was for the board's

> Chief Executive Officer to examine the reports of recorded crimes for 1966 in the main categories of crimes likely to result in injury being sustained and to assess the numbers which could reasonably be expected to satisfy all the terms and conditions of the Scheme. The results of this sample survey of nearly one thousand cases were then applied to the national figures and, after making such allowances as appeared to be proper, it was concluded 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.
>
> The gap between actual applications and the potential number is, therefore, not as wide as we first thought. Nevertheless, the present rate of about 7,000 new applications per year is still far short of what we consider to be the upper ceiling.[327]

Sundry means have been taken to inform the public of the benefits available to victims of violent crimes against the person by the administrative bodies charged with handling compensation programs. These include the use of the mass media, notification of organizations, and the distribution of pamphlets and brochures describing the compensation programs. In 1968, the New York board distributed over 200,000 brochures.[328]

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[326] 1969 Annual Report of the Crime Victims Compensation Board, op. cit., p.17.

[327] Criminal Injuries Compensation Board, Fourth Report, op.cit., p. 14.

[328] 1968 Second Annual Report of the Crime Victims Compensation Board, op. cit., p. 7.

This was in addition to exposure through radio, television, news articles, and academic journals. One of the deficiencies of such a broadcast effort may be that it is not so much the general public that needs the information as it is the victim of crime who needs the information. There are several indications that for the greatest success, in terms of getting eligible applicants to apply for compensation, information should be put specifically in the hands of the victim. The New York board reports that it is having success in getting referrals from members of the medical profession and that hospitals are cooperating by distributing brochures to crime victims.[329] It is also interesting to note that in Great Britain, "of the first 880 cases, 115 came from policemen."[330] On reflection, the chairman of the British board concluded that such a large section of claimants were police officers due to the high incidence of criminal injuries suffered by policemen and also due to the fact that the "police officers knew the law and they knew their rights; and they had the pamphlets explaining the Scheme to issue at police stations, and who better to issue them to than themselves?"[331] While application forms are available only from the Criminal Injuries Compensation Board in Britain, there the police stations hold, in addition to the provisions of the compensation plan itself, a "Guide to Procedure"[332] which contains instructions for the filing of claims.

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[329] 1969 Annual Report of the Crime Victims Compensation Board, op. cit., p. 17.

[330] "The Work of the Criminal Injuries Compensation Board," op. cit., p. 50.

[331] Ibid., p. 53.

[332] J. F. Garner, "The Criminal Injuries Compensation Board," Public Law, (1967), p. 324.

It seems likely therefore that the police are among the best informed of the British public about its compensation scheme.

It would appear most advisable to work the dispensing of information about the compensation scheme and the rules governing the compensation board's proceedings into the administration of the scheme itself. At the time of reporting to the appropriate police officials a crime which has caused a compensable injury, it would seem advantageous to utilize this contact to bring to the attention of the victim his eligibility for compensation and to put in his hands instructions regarding the filing of a claim for compensation. The lack of such a practice was the object of a recent criticism by Herbert A. Rosenthal who has been investigating the problem of providing compensation to victims of crime, for the District of Columbia Bar Association. He noted that "except in California, there is no requirement that crime victims be told of the availability of crime compensation."[333] California assures such notification by requiring that:

> The district attorney of each county shall inform each person in the county who may be eligible to file a claim pursuant to this chapter of such eligibility. The district attorney of each county shall obtain from the board any forms which may be necessary in the preparation and presentation of such claims.[334]

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[333]William Raspberry, "Victims of Crime: Vexing Problem," Washington Post, Dec. 19, 1970, A-19, reprinted in U.S., Daily Congressional Record, 91st Cong., 2d Sess., 1970 CXVI, No. 211, S21639.

[334]California, Victims of Crime, Government Code (1967), ch. 5, art. 1, sec. 13965.

Some such formal requirement to assure that the victim of crime who is eligible to apply for compensation learns of such eligibility would seem to be needed. The vehicle for relating this information about the crime compensation program might be the public attorney, as above, or the police, to whom the original report of the crime is given.

It would seem desirable to impose a penalty for false statements made in an effort to receive awards. Hopefully, the prospect of possibly having the penalty assessed will deter the filing of fradulent claims and also reduce claims evidently filed as acts of flippancy. Maryland has included the following provision in its compensation act:

> Any person who asserts a false claim under the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than $500 or one year imprisonment or both, and shall further forfeit any benefit received and shall reimburse and repay the State for payments received or paid on his behalf pursuant to any of the provisions hereunder.[335]

A provision of Massachusetts' compensation program, while it might have some effect toward reducing the filing of frivolous claims, would seem to be of questionable utility. There, each claim must "be accompanied by an entry fee of five dollars."[336] Since there has been no experience or problems in other jurisdictions with the filing of frivolous claims, it would seem inappropriate to take initial action such as this. The real problem, as evidenced by the experience of other jurisdictions, in inaugurating a crime compensation program is to make the existence

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[334]California, Victims of Crime, Government Code (1967), ch. 5, art. 1, sec. 13965.

[335]Maryland, Annotated Code of Maryland, Art. 26A, sec. 16.

[336]Massachusetts, Annotated Laws of Massachusetts, ch. 258A sec. 4.

of the program known to the public and more specifically the crime victims who are eligible for compensation. Other jurisdictions have found no need to take such action as this to discourage the filing of claims, frivolous or otherwise. Should a jurisdiction find a need for such action, based upon its administration of a crime compensation program, that action can then be taken. Certain problems must of course be anticipated and guarded against initially but there is no experience to indicate that Massachusetts' action would be needed or desirable. Considering the difficulties that have been experienced in attracting eligible claimants to file thus far, such a barrier as that of a filing fee would seem inadvisable at this stage of the operation of crime compensation programs.

All of the compensation programs considered here permit legal assistance for the claimant. Some specifically authorize the assistance of a friend of the claimant. Most all of the programs do not however pay for legal assistance for the claimant. Table 10 indicates those jurisdictions that impose restrictions upon the amounts that the claimant can pay his lawyer for handling his compensation claim. This represents a concern that the award made will benefit the claimant and not his lawyer. Massachusetts provides that:

> The court may, as part of any order entered under this chapter, determine and allow reasonable attorney's fees, which shall not exceed fifteen per cent of the amount awarded as compensation under this chapter, which fee shall be paid out of, but not in addition to, the amount of compensation, to the attorney representing the claimant. No attorney for the claimant shall ask for, contract for or receive any larger sum than the amount so allowed.[337]

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[337] Ibid.

Hawaii has almost identical limitations imposed upon the payment of legal fees and in addition provides that "any attorney who charges, demands, receives, or collects for services rendered in connection with any proceedings under this chapter any amount in excess of that allowed under this section, if any compensation is paid, shall be fined not more than $2,000.[338] In Great Britain, where no payment is made for legal assistance for the claimant as part of the administrative expense of operating the compensation program and no part is taken by the compensation board in paying for such assistance from the award that the claimant receives, objection has been raised. From the lawyer's point of view, this may not be as he thinks it should be. Mr. Jeffrey W. Cohen, an attorney who had represented a victim and took the case before the Criminal Injuries Compensation Board, made the following criticisms in a letter to the editor:

> . . . when I wrote to the board notifying them that my client accepted their award I asked whether the matter of my professional costs and the cost of the medical report (6 guineas) would be met by the board, who have now replied to me: "Legal expenses incurred by an applicant are not met by the board who regard them as the applicant's personal responsibility."
>
> Is this fair? Are the board in any different position from that of an insurance company who would inevitably accept the liability for professional fees and disbursements? Why should I have to go to my client and explain that from his award I have to deduct my costs? Or is this just another case where as in the county court, the lawyer is expected to work for virtually nothing?[339]

While the compensation programs permit legal assistance for the claimant, such assistance has not been indispensable to the claimant's success in

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[338] Hawaii, Hawaii Revised Statutes, vol. 4, ch. 351, sec. 351-16.

[339] The Times (London), April 8, 1968, 9c.

being awarded compensation. An analysis of hearings held in the year 1966-67, before the British Criminal Injuries Compensation Board, revealed that "the 'success rate' for those who appeared in person (63%) was almost exactly the same as those who were represented (61%)."[340] That the individual, representing himself or handling his claim by himself, is as likely to be successful in receiving an award as if he had legal assistance would seem to be due to the way in which compensation boards proceed in reviewing applications and in reaching their decisions. For example, in New York,

> the board has continued to treat each claimant not as an adversary, but rather to determine the full and true facts concerning each claim. We are dedicated to seeing that those persons who are entitled to an award shall receive the same, . . .[341]

In New York, in 1969-70, "of the 929 claims filed, 198 were represented by attorneys and the balance were filed by the individuals."[342]

While it seems reasonable that the manner in which the proceedings of the compensation board are conducted should not necessitate the retention of legal assistance, it also seems reasonable that if such assistance is desired by the claimant, the proceedings of the board will not thwart either this desire or undermine the effectiveness of such counsel. Regarding the latter point, some criticism has been

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[340] J. F. Garner, "The Criminal Injuries Compensation Board," op. cit., p. 325.

[341] 1968 Second Annual Report of the Crime Victims Compensation Board, op. cit., p. 10.

[342] 1969 Annual Report of the Crime Victims Compensation Board, op. cit., p. 6.

directed at the British board by Mr. Gerald Jones. A feature of the board's procedure which he faulted would appear to weaken the counseling role of the lawyer.

> It appears to be standard practice for the board to make its own arrangements for obtaining medical reports preparatory to making an award. If a client asks his solicitor whether a certain award should be accepted, the solicitor cannot refer to the medical reports held by the board, because they are "supplied to the board on strict confidence." If, however, the claimant appeals against the award, and the doctors who made the reports consent, the reports are open to inspection by the claimant.
>
> Surely it is illogical that one should either have to obtain one's own medical report, or go to the trouble and expense of appealing against the award, before the fairness of an award can properly be assessed?[343]

It has also been suggested that without legal assistance, too many claimants accept the initial assessment of damages which is often too low. "To begin with, the vast majority of claimants act on their own without any professional advice, and none of them will have any idea at all of the true value of their claim."[344] After reviewing a number of British cases, where the standard for compensation payments is common-law damages, Mr. J. C. Walker was led "to the somewhat disturbing conclusion that some of the awards fall far short of those which would have been made for similar injuries in the civil courts."[345] In addition to the claimant's ignorance of what the equivalent common-law damages might be in his case, it seems that perhaps due to the newness

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[343] The Times (London), April 16, 1968, 7c.

[344] J. C. Walker, "Valuations of the Criminal Injuries Compensation Board," The Solicitors' Journal, CX (Dec. 30, 1966), p. 970.

[345] Ibid.

of the compensation program, "that a great proportion of the claimants are extremely grateful, in the circumstances, to receive anything at all."[346] Even if the Claimant is satisfied with the award that he receives, he has however been cheated if that award is less than the scale that has been set, in the British scheme, at common-law damages. "Anything less than this scale is therefore inequitable."[347]

The fact that a small number of appeals are made from initial awards may be due to factors other than the fairness of that award.

> Is it therefore really surprising that a claimant is reluctant to appeal when he (a) does not know the value of his claim, (b) does not know the medical evidence, (c) is told that if he appeals he may have his original award reduced or cancelled out completely, (d) is told that the board's own solicitor will attend the hearing and may argue against his appeal, and (e) knows that if he does not want to conduct the appeal himself, he will have to pay his own costs of representation?[348]

While the diligence of the board may be such as to protect the best interests of the claimant it may be more satisfactory to provide as an administrative expense of the compensation board for reasonable fees for legal assistance for claimants.

Payments

What is to be compensated? Who is to be compensated?

The thing that is compensated is personal injury or death suffered by an innocent victim of a crime involving force or violence. The

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[346] *Ibid.*, p. 971.

[347] *Ibid.*

[348] *Ibid.*

measure of this compensation is variously out-of-pocket losses necessitated by being a crime victim, lost earnings or support, or, where described below, pain and suffering, or loss of earning power. As noted, the damage stems from criminal action. Should the provisions, or the interpretations of the provisions, that prescribe eligibility for the crime compensation program provide for no exceptions, such as when the damage is inflicted by one who is very young, insane, or drunk, there will be the same opportunity for events that transpired in great Britain. There, a member of the Criminal Injuries Compensation Board denied a claim "where a boy of 6 was partially blinded by a stone thrown by a boy of 8 (since the age of 10 is prescribed as the age of criminal responsibility, no criminal action was deemed to have occurred.)[349] There was criticism that this decision was too legalistic and conflicted with the spirit of the compensation program. There may have been a feeling that the decision was inequitable but it did certainly follow the letter of the plan's provisions because there was no exception to the requirement for a criminal action in determining compensation eligibility. As matters then stood, the "victim who may suffer injuries inflicted by a child receives nothing (law states that a criminal offense is necessary and one less than 10 cannot commit a 'crime.')"[350] This situation was later changed:

> In a reply by Mr. Roy Jenkins to a request for a statement by Arthur Davidson, the compensation scheme was modified by the

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[349] The Times (London), July 5, 1965, 6c.

[350] The Times (London), Oct. 7, 1965, 13c.

> office of the Home Secretary to include victims of those who could not be the subject of criminal prosecution due to age or insanity.[351]

The jurisdictions of California,[352] New York,[353] Massachusetts,[354] Hawaii,[355] and New Zealand[356] have incorporated provisos into their compensation statutes that will prevent occurrances similar to that described above. New Zealand, for example, has specified that "a person shall be deemed to have intended an act or omission notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming of criminal intent."[357] Such a provision would be advisable if the plan makes compensation specifically available only to criminally inflicted death or injury. An alternative suggestion is that "this situation would be clarified if the plan were referred to as compensation for acts of violence rather than crimes.[358]

Those who are eligible for awards under the compensation programs here considered are identified in Table 11.

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[351] The Times (London), August 5, 1966, 14g.

[352] California, Govt. Code, ch. 5, Art. 1, sec. 13961.

[353] New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 621, par. 3.

[354] Massachusetts, Annotated Laws of Mass., ch. 258A, sec. 1.

[355] Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-31.

[356] New Zealand, Statutes of New Zealand, 1963, No. 134, sec. 17.

[357] Ibid.

[358] Michael P. Smodish, "But What About the Victims? The Forsaken Man in American Criminal Law," University of Florida Law Review, XXII (Summer 1969), p. 14.

TABLE 11

THOSE ELIGIBLE FOR COMPENSATION

Eligible for Compensation	Great Britain[a]	Calif.[b]	Mass.[c]	Hawaii[d]	N.Y.[e]	Maryland[f]	New Zealand[g]
Victim	X	X	X	X	X	X	X
Dependents of Victim	X	X	X	X	X	X	X
Person responsible for maintenance of victim, where such person incurrs pecuniary loss or expenses				X			X
Parent of Victim					X		

[a]Great Britain, Compensation for Victims of Crimes of Violence, Cmnd. 2323, March 1964, par. 3.

[b]California, Govt. Code, ch. 5, Art. 1, sec. 13962.

[c]Massachusetts, Annotated Laws of Mass., ch. 258A, sec. 3.

[d]Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-31.

[e]New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 624.

[f]Maryland, Annotated Code of Maryland, Art. 26A, sec. 5.

[g]New Zealand, Statutes of New Zealand, 1963, No. 134, sec. 17.

Should "Criminal Offense" be Defined? The Advantages and Disadvantages of Having a List of Compensable Crimes

In referring to the "victim of crime" there is some difficulty in delineating what is meant by "victim" and also what is to be meant by

"crime." "The meaning of 'the victim of crime,' . . . is dependent to a great degree upon the meaning given to 'crime.'"[359] Since these programs have been created to compensate the victim of crime, it is necessary to give some attention to the efforts to differentiate the victim of crime in criminal cases from the victim of crime in compensation considerations. In the first emphasis, before there can be a victim of crime there must be a criminal. If there is no criminal, there is no victim of crime. This becomes important in cases of the nature of that referred to above when conduct that would otherwise be criminal is not criminal in a given instance due to the age, state, or condition of the actor. "When, however, attention is directed to the victim and to whether he should be deemed the victim of crime for purposes of compensation, it is necessary to ask whether the traditional conclusion that there is no crime when there is no criminal is satisfactory."[360] Since these jurisdictions whose practices are examined here have exhibited a preference for making a "criminal offense" a necessary prerequisite for compensation, it is interesting to note how they have gone about defining the term. The options are to state a generic definition or to proceed to formulate a list of specific actions that are to be considered as compensable. Here, as in other areas, all of the advantages or disadvantages do not accrue to either practice. Both practices have their supporters, but the most support seems to be

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[359] LeRoy L. Lamborn, "Toward A Victim Orientation in Criminal Theory," Rutgers Law Review, XXII (1968), p. 733.

[360] Ibid., p. 740.

behind the use of a generic classification of crime for compensation purposes. "Covered crimes," it has been suggested, "should not be limited to enumerated offenses or to crimes of violence, because of the difficulty of predicting what crimes may give rise to personal injury."[361] "Furthermore, listing would lead to persistent argument over the precise category for various crimes, a result alien to the spirit of the program."[362] For example, it is the personal injury that results from the crime that is significant here, but not all personal injuries are sustained as a result of crimes against the person but may result from a crime against property such as arson. The result might be that in the event that a list of compensable crimes excluded crimes against property, where the intention was to compensate for personal injuries resulting from criminal action, the person injured while escaping from a structure fired by an arsonist would be made ineligible for compensation. To cover such a situation as this and to still, for the most part, confine compensation to personal injuries resulting from specifically listed crimes against the person, a presumption similar to that made by Senator Ralph W. Yarborough might be incorporated into the compensation plan. While cautioning against the dangers that can stem from the use of a list of crimes, he nevertheless thought a list to be workable if the presumption is made "that any type of crime producing a personal injury is included

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[361] Paul Frederick Rothstein, "State Compensation for Criminally Inflicted Injuries," Texas Law Review, XLIV (Nov. 1965), p. 43.

[362] "Great Britain Approves Compensation Program for Victims of Criminal Violence," Harvard Law Review, LXXVIII (March-June 1965), p. 1685.

as an assault, and that classification would entitle the victim to an award."[363] It would seem that some such saving clause as this would be desirable if the choice to adopt or utilize an already existing list of crimes, such as might be found in the jurisdiction's penal code, is made. Otherwise, there is the possibility for irrational inequities to result in the awards made by the compensating authority. Also, such efforts

> "have fallen constant prey to writers who readily can demonstrate that the omission of one or another specific offense is very likely to deprive a person requiring assistance from such help even though his case is patently one more deserving than many eventuating from the offenses which are included on the list of compensable crimes."[364]

Alternatively, there are some potential advantages that lie with adopting a specific list of compensable crimes. By keeping the list short, total cost can be kept down. This might be thought desirable, praticularly by a jurisdiction that is concerned with minimal financial outlays or that wishes to hedge against the uncertainty of costs, having little or no experience to use as a guide or upon which to base firm expectations. It has also been suggested that there are other advantages:

> Dishonest claimants would have greater freedom from detection if they could employ the shelter provided by the vague words of a general definition . . . . The apparent advantages of using a schedule to delineate the scope of the scheme are

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[363] Ralph W. Yarborough, "S. 2155 of the Eighty-Ninth Congress--The Criminal Injuries Compensation Act," Minnesota Law Review, L (1965), p. 263.

[364] Gilbert Geis, "State Compensation to Victims of Violent Crime," Appendix B, U.S., Task Force on Assessment: The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Crime and Its Impact--An Assessment (Washington, D. C.: Government Printing Office, 1967, p. 174.

that the time expended in arguing legislative purpose and points of law would be reduced substantially, and the plan would be more intelligible to those who might not be familiar with the more complex principles of statutory interpretation.[365]

The practices of the jurisdictions being examined are noted in Table 12.

TABLE 12

Practices in Defining "Criminal Offenses" for Compensation to Victims of Crime

	Great Britain[a]	Calif.[b]	Mass.[c]	Hawaii[d]	N.Y.[e]	Maryland[f]	New Zealand[g]
Generic definition of crime	X		X		X		
List of crimes put in compensation plan				X			X
Use of existing list of crimes in penal code		X				X	

[a]Great Britain, Compensation for Victims of Crimes of Violence, cmnd. 2323, par. 43.

[b]California, Govt. Code, ch. 5, Art. 1, sec. 13961

[c]Massachusetts, Annotated Laws of Mass., ch. 258A, sec. 1.

[d]Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-32.

[e]New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 621 (3).

[f]Maryland, Annotated Code of Maryland, Art. 26A, sec. 2 (c).

[g]New Zealand, Statutes of New Zealand, 1963, No. 134, Schedule.

Great Britain, which uses a generic definition of crime in its crime compensation program, found it necessary to modify its definition in the following respect:

> Another change in the Scheme was to require the applicant to show that his injuries were directly attributable to a crime of violence (including arson and poisoning) whereas under the former Scheme he was only required to show that his injuries were directly attributable to a criminal offence. One of the reasons for this change is that a breach of the Factory Acts is a criminal offence and the Scheme was plainly never intended to permit an application to the Board instead of an action for breach of the statutory duty imposed by the Factory Acts.[366]

The British Board has assembled and presented the following division of cases which gives some basis for appraising the nature of harm that produces the filing of claims for compensation there.

Reflecting upon the relatively high percentage of assaults by strangers in the streets, the Board concluded that:

> Many seemed to us to be simply casual and unpremediated acts of brutality. Some were cases where the offender mistook the identity of his victim. In some cases there may well have been a hidden reason for the assault which could not be detected. In others the purpose may have been theft or sexual assault which was not carried out. The great majority could not be explained.[367]

Hawaii, which uses a list of crimes put in the compensation plan, received 84 applications in 1969. These applications covered the

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[366]Great Britain, Criminal Injuries Compensation Board, Sixth Report, op. cit., p. 8.

[367]Great Britain, Criminal Injuries Compensation Board, Second Report, op. cit., p. 15.

TABLE 13

Classification of Applicants[a] in Great Britain	1966-67 Percentage	1965-66 Percentage
1. Law Enforcement		
(a) Police Officers	12	15
(b) Civilians injured when preventing or attempting to prevent the commission of a criminal offence, or arresting or attempting to arrest suspected offender	4	3
(c) Civilian injured in voluntary act of aiding the police	less than 1	less than 1
2. Murder and Manslaughter	2	1
3. Sexual offences	2	2
4. Injuries inflicted by children and young persons	4	3
5. Assaults in furtherance of theft	19	17
6. Assaults by strangers in street	18	19
7. Assaults in or in vicinity of licensed premises including dance halls and clubs	11	11
8. Assaults inflicted in or connected with public transport	4	5
9. Assaults arising from the driving of motor vehicles	3	2
10. Assaults in or connected with restaurants, cafes, etc.	1	1
11. Assaults in or connected with places of entertainment	7	2
12. Assaults by relative, friends or acquaintances	10	13
13. Assaults by strangers in private premises	3	6
	100	100

[a]Great Britain, Criminal Injuries Compensation Board, Third Report, op. cit., p. 16.

following types of crimes, as categorized by the Hawaii Criminal Injuries Compensation Commission.[368]

Intermediate assault and battery	34
Aggravated assault and battery	21
Murder	10
Rape	6
Manslaughter	5
Assault with intent to rape	3
Miscellaneous (typically involving the use of an automobile)	3
Carnal abuse of female under 12	1
Unlawful use of explosives	1
TOTAL	84

Assault and battery offenses accounted for 65 percent of all applications. Homicides (murder and manslaughter) accounted for about 18 percent of applications. In 1970, the Hawaii Commission handled and disposed of 147 applications. They covered the following types of crimes:[369]

Intermediate assault and battery	71
Aggravated assault and battery	41
Murder	24
Rape	6
Manslaughter	2
Miscellanceous (typically involving the use of an autombile)	3
TOTAL	147

Assault and battery offenses accounted for about 76 percent of the cases. Homicides (murder and manslaughter) accounted for about 18 percent of the cases. Percentagewise, there is noticeable consistency between the 1969 and 1970 types of crimes that led to the filing of claims with the Hawaii Commission.

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[368] Second Report, op. cit., p. 2.

[369] Hawaii, Criminal Injuries Compensation Commission, Third Report, op. cit., p. 2.

New York, whose Crime Victims Compensation Board administers a program that contains a generic definition of crime, had the following breakdown of types of crime in 1968 in the 519 claims accepted for decision.[370]

Assault	311
Stabbed	42
Murder	92
Shot	61
Mugged	11
Robbed	2
TOTAL	519

In 1969, in New York, there were 929 claims filed.[371] This represents nearly a two-fold increase over the 519 claims filed in 1968. The breakdown by types of crime for these 929 claims was as follows:[372]

Assault (incl. mugging)	537
Murder	140
Stabbed	121
Shot	120
Other:	
Rape	8
Motor vehicle	3
TOTAL	929

Another sharp increase in claims was experienced by the New York Crime Victims Compensation Board in 1970. Total claims increased to 1,594.[373] "Approximately 60% of the personal injuries claims are assaults,

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[370] New York, Second Report of the Crime Victims Compensation Board, op. cit., p. 8.

[371] New York, 1969 Annual Report of the Crime Victims Compensation Board, op. cit., p. 6.

[372] Ibid., p. 7.

[373] New York, 1970 Fourth Annual Report of the Crime Victims Compensation Board, op. cit., p. 6.

excluding stabbing, and/or robberies; 12% are death claims; another 12% were knife wounds; another 12% bullet wounds and the rest miscellaneous, such as, rape and motor vehicle violations of law."[374] Comparable distributions for 1968 indicate that approximately 60 percent of the claims filed resulted from assault; 18 percent were death claims; 8 percent were knife wounds; 12 percent were bullet wounds. In 1969, approximately 58 percent of the claims resulted from assaults; 15 were death claims; 13 percent were knife wounds; 13 percent were bullet wounds. It is quite interesting that the distribution of claims filed with the New York Crime Victims Compensation Board by types of crime was nearly the same in each of these three years despite large increases in the number of claims filed from year to year. The 519 claims filed in 1968 were followed by 929 claims filed in 1969, a 179 percent increase. This was followed by 1,594 claims filed in 1970, a 171 percent increase over 1969.

In Maryland, "criminal offense" is given its definition through the use of an existing list of crimes in the state's penal code. In 1969, the Maryland Criminal Injuries Compensation Board handled 180 personal injury claims and 60 death claims.[375] The types of crime that produced these claims were as follows:[376]

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[374] Ibid., p. 8.

[375] Maryland, Criminal Injuries Compensation Board, First Annual Report, op. cit., p. 5.

[376] Ibid., pp. 5-6.

Assault	73
Stabbed	17
Murders	60
Shot	48
Mugged	18
Manslaughter by auto	4
Burglary	1
Assisting in arrest	1
Rape	5
Miscellaneous	13
TOTAL	240

Approximately 40 percent of the claims were produced by assaults (including mugging); 25 percent were death claims; 7 percent were knife wounds; 20 percent were bullet wounds. In 1970, the Maryland Board handled 308 claims, approximately an 80 percent increase in claims over 1969.[377] The types of crime that produced these claims were as follows:[378]

Assault	78
Stabbed	34
Murdered	71
Shot	85
Mugged	25
Burglary	1
Rape	1
Miscellaneous	13
TOTAL	308

In 1970, approximately 33 percent of the claims resulted from assaults (including mugging); 23 percent were death claims; 11 percent were knife wounds; 28 percent were bullet wounds. Here again, within this jurisdiction there is some consistency between these two years in the distribution of types of crime that led to the filing of claims with the compensation board. In practice, it would seem that the use of any one of

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[377] Maryland, Criminal Injuries Compensation Board, Second Annual Report, (pre-printers copy) July 15, 1971, p. 3.

[378] Ibid.

the three alternative ways of defining criminal offense (generic definition of crime, list of crimes put in the compensation plan, or the use of an existing list of crimes in the jurisdiction's penal code) would cover the types of crime that have produced the claims filed in the jurisdictions considered above. It is interesting to note that death claims, stabbing claims, shooting claims, and assault without weapon claims account for practically all of the claims filed. The esoteric case, much discussed and anticipated, has been insignificant in producing claims.

Lump-sum Payments or Payments Over Time?

Due to the great variety of compensation cases that come up for decisions by compensation authorities, it would seem that the more flexibility that might be exercised in awarding payments the better. For some types of cases, the lump-sum payment would seem to be preferable. For other types of cases it would be inappropriate. "Although a lump sum payment may be appropriate for a minor or temporary injury, it cannot be relied on to provide adequate cover for the victim of a serious, long-term disability."[379] In addition to meeting the needs of cases which do not require further consideration and which can be terminated with the payment of a lump-sum award, attachment to the lump-sum payment seems to reflect a desire to dispose of cases completely and thus escape the administrative bother of supervision, making periodic payments, and perhaps reconsidering the cases as circumstances become

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[379] D. R. Harris, "Compensation for Victims of Crimes of Violence," The A. G. Davis Essays in Law, ed. J. F. Northey (London: Butterworths, 1965), p. 65.

altered by future events. For the most part however, the advantages in being able to make periodic payments are greater than the alleged disadvantages of not being able to close a case.

> Although periodical payments lead to increased administrative expenses, it does not follow that the total cost of the scheme will be greater, since the review of an award may lead to its reduction. If there is an unexpected improvement in the victim's condition, if a widow remarries, or if a claimant dies, the payments will cease or be reduced. The power of review is also a safeguard against fraudulent or exaggerated claims; . . .[380]

There have been many suggestions by those who have evaluated the pros and cons of lump-sum and periodic payments that advantage should be taken of the administrative opportunities which the compensation authority offers to reduce what otherwise must in many cases be guesswork when lump-sum payments are made.[381] "By predetermining damages, one virtually insures that there will be no close relation between the amount determined and losses thereafter suffered. Compensation must be in the form of payments periodically disbursed and under constant review if it is to bear any close relation to damages suffered."[382] A further criticism of the lump-sum payment, where payment is delayed in an effort to reduce guesswork, is that the compensation may not be forthcoming when most

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[380] Ibid.

[381] Cf. Paul Frederick Rothstein, "State Compensation for Criminally Inflicted Injuries," op. cit., p. 49. Robert D. Childres, "Compensation for Criminally Inflicted Personal Injury," New York University Law Review, XXXIX (1964), p. 463. "Great Britain Approves Compensation Program for Victims of Criminal Violence," Harvard Law Review, op. cit., p. 1686.

[382] Robert Childres, "Compensation for Criminally Inflicted Personal Injury," Minnesota Law Review, L (1965), p. 278.

needed. "The delay of two or three years in receiving payment of damages is equally unsatisfactory, for compensation is often most needed immediately following the criminal act."[383] The use of an emergency or interim payment might however be used to avoid some of the difficulties inherent in waiting for a long period to decide upon the making or the amount of an award. Even though such payment might ease the financial difficulties of the crime victim or his dependents, there remains the criticism that the lump-sum payment is in most cases defective because it is final and not subject to review. "Fresh evidence or changed circumstances after an award might reveal considerations which should have affected the board's disposition. Some provision should be made to enable adjustment subsequent to the rendering of the award so as to prevent unjust enrichment or inadequate compensation."[384] Otherwise, it has been noted, "inflation, re-marriage, unexpected recovery or deterioration, or any of the turns of the wheel of fortune may in the event render an award too large or too small."[385] These are some of the considerations that would favor the making of periodic payments. "Reviewable periodical payments are the obvious solution, in the interests of both the victim and public funds, with the power to award lump sums in

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[383]Robert Childres, "The Victims," Harper's Magazine, April, 1964, pp. 161-162.

[384]"Compensation to Victims of Violent Crimes," Northwestern University Law Review, LXI (1966), p. 99.

[385]Alec Samuels, "Compensation for Criminal Injuries in Britain," University of Toronto Law Journal, XVII (1967), p. 40.

addition where deemed by the Board to be appropriate, for example, for pain and suffering which has ceased."[386] There is considerable flexibility, in this respect, in the plan of New Zealand. "Its statute is unique in expressly providing that the tribunal may vary its order on the application of the attorney general, the victim, a dependent, or the offender, having regard to fresh evidence, change of circumstances, or payment of other compensation."[387] The practices of New York are also to be recommended, in this respect:

> Since periodic payments are made monthly, in both protracted and death cases, periodic checks are made every four months to determine if the payments should be continued. In protracted cases, if the doctor advises that the victim is able to return to work, payments are stopped.
>
> In death cases, if there is a change of dependency payments are then stopped.[388]

The practices of the jurisdictions here considered regarding the types of payments made are noted in Table 14. It would seem to be best if the compensation authority were given the power to make awards in the form of lump-sum, periodic, and/or partial or emergency payments as the circumstances of each case dictate.[389]

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[386] Ibid.

[387] "Compensation to Victims of Violent Crimes," Northwestern University Law Review, loc. cit. See New Zealand, Statutes of New Zealand, 1963, No. 134, sec. 21.

[388] New York, Crime Victims Compensation Board, 1968 Second Annual Report, Leg. Doc. (1968), No. 100, p. 9.

[389] Cf. Glenn E. Floyd, "Victim Compensation Plans," American Bar Association Journal, LV (1969), p. 160. Michael P. Smodish, "But What About the Victim? The Foresaken Man in American Criminal Law," op. cit., p. 18. Robert Childres, "Compensation for Criminally Inflicted Personal Injury," Minnesota Law Review, op. cit., p. 279.

TABLE 14

Types of Payments Made to Victims of Crime

	Great Britain[a]	Calif.[b]	Mass.[c]	Hawaii[d]	N.Y.[e]	Maryland[f]	New Zealand[g]
lump sum	X	X	X	X	X	X	X
periodic				X	X		X
interim, emergency, or partial	X	X			X[h]	X[h]	X

[a]Great Britain, Compensation for Victims of Crimes of Violence, Cmnd. 2323, par. 19.

[b]California, Govt. Code, ch. 5, Art. 1, sec. 13963.

[c]Massachusetts, Annotated Laws of Mass., ch. 258A, sec.6.

[d]Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-61.

[e]New York , McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, secs. 632, 630.

[f]Maryland, Annotated Code of Maryland, Art. 26A, secs. 13, 11.

[g]New Zealand, Statutes of New Zealand, 1963, No. 134, sec. 20.

[h]Maximum of $500, to be deducted from final award, excess over final award to be repaid.

Is There a Minimum Loss Required for Claims?

There are more considerations to be taken into account when deciding whether or not to impose a minimum loss amount for the determination of victim eligibility than might first be apparent. Most of these considerations are related to concepations of desirable balance. On the one hand there is the feeling that no minimum requirement would result in the bringing of many burdensome, trivial claims, perhaps to the extent

that the compensating authority would be impeded in its efforts to take care of what would generally be considered more deserving, more substantial claims. "At some undeterminable point, although technically a person is a victim of crime," it has been suggested, "his injury is so minimal that it may well be ignored."[390] This sounds reasonable except that what might be considered "trivial" loss to one person may really be considerable to another person. The compensation program, it is felt, should not set the minimum loss, if one is adopted, so high that those who incur what is for them a substantial loss are arbitrarily excluded from being compensated. Another factor to be considered is that:

> studies have shown that most violent crimes occur in poverty-stricken urban areas. Assuming this is true, the victims will most likely be persons of little or no income, to whom a loss of even a small amount may be much more injurious than a large loss would be to a person of substantial means. The possible evils and inequities that would result from the $100 minimum deduction may be enough to lead to its abandonment, or at least an equitable application on a case to case basis.[391]

It has been suggested that requiring that minimum losses be sustained before one might be eligible for compensation "is probably the only way to be sure that administrative expenses do not dwarf the actual benefits."[392] Alternatively, however, the point has been made that "the administrative costs tend to be incurred anyway in investigating a claim to see

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[390] LeRoy L. Lamborn, "Toward A Victim Orientation in Criminal Theory," op. cit., p. 767.

[391] Glenn Eldon Floyd, "Massachusetts' Plan to Aid Victims of Crime," Boston University Law Review, XLVIII (1968), p. 367.

[392] "Great Britain Approves Compensation Program for Victims of Criminal Violence," Harvard Law Review, op. cit., p. 1686.

if it is eligible or not, and there is in fact very little saving except perhaps that some potential claimants are deterred from making any claim at all."[393] There are also administrative practices, such as those developed by the New York Crime Victims Compensation Board, which could be emulated by other jurisdictions to minimize the cost of determining whether a claim warrants investigation. There, in 1968-69,

> "the number of claims that were accepted and investigated were [sic] 519 and in addition to that there were what shall be termed inquiries, 1307. These inquiries were not processed by opening a file and starting an investigation in view of the lack of information. Accordingly, a preliminary investigation was conducted to determine if the claim was one that should be accepted for investigation. This was done to save the time of the investigative staff. This preliminary investigation was done by telephone and letter and a great saving was accomplished."[394]

Enlightened administrative practices such as these go far in discounting the contentions that administrative costs, except for a rather high minimum loss requirement, would be too burdensome to maintain. Another point made against the minimum loss requirement is that "a jurisdictional minimum would also tempt victims to exaggerate their loss."[395] The practices of the jurisdictions here examined, respecting minimum loss requirements are described in Table 15.

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[393] Alec Samuels, "Compensation for Criminal Injuries in Britain," op. cit., p. 38.

[394] New York, Crime Victims Compensation Board, 1968 Second Annual Report, op. cit., p. 7.

[395] Ralph W. Yarborough, "S. 2155 of the Eighty-Ninth Congress--The Criminal Injuries Compensation Act," op. cit., p. 265.

TABLE 15

Minimum Loss Required for Compensation

Great Britain[a]	L50[b]
California	no minimum
Massachusetts[c]	loss of earnings or support for two continuous weeks or out-ot-pocket loss of $100. Any award granted is subject to a $100 deduction.
Hawaii	no minimum
New York[d]	loss of earnings or support for two continuous weeks or out-of-pocket loss of $100.
Maryland[e]	loss of earnings or support for two continuous weeks or out-of-pocket loss of $100.
New Zealand	no minimum

[a]Great Britain, Criminal Injuries Compensation Board, Sixth Report, Accounts for the year ended 31st March, 1970, Cmnd. 4494, Oct. 1970, par. 6 (a), p. 20.

[b]"Paragraph 6 makes the minimum amount of compensation L50 in all cases; the provision in original paragraph 5 (c) of an alternative minimum of three weeks' loss of earnings, which has been found to be unsatisifactory in operation and to bring in relatively trivial cases, is discarded." Great Britain, Criminal Injuries Compensation Board, Fifth Report, Accounts for the year ended 31 March, 1969, Cmnd. 4179, Oct. 1969, p. 27.

[c]Massachusetts, Annotated Laws of Mass., ch. 258A, sec. 5.

[d]New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 626.

[e]Maryland, Annotated Code of Maryland, Art. 26A, sec. 7.

Is There a Maximum Payment That Will Be Awarded?

The setting of a specific maximum award per case is primarily a reflection of the concern that the total cost of the compensation

program be kept as low as possible. To some extent, this concern is justified because of the initial lack of information upon which to base cost expectations. There has also been a desire on the part of policy makers to keep the program costs within low program appropriations. "The biggest defect," according to one observer, "in American crime victim compensation plans to date has been the lack of adequate financing."[396] The objects of this criticism are appropriations amounting to five-hundred-thousand dollars in New York for the 1966-67 fiscal year, one-hundred-thousand dollars in California for the 1965-66 fiscal year, and eighty-four-thousand dollars in New Zealand for 1964.[397]

Objectively, considering the stated purposes of crime compensation legislation, criticisms directed against the imposition of rather low maximum payments seem valid. Consider, for example, the following conclusions reached after an analysis of Massachusetts' ten-thousand-dollar maximum payment:

> There are two obvious shortcomings in this provision. First, the hospital and medical expenses could consume the $10,000 in which event the victim or his dependents would be left with no financial aid. If financial aid is one of the motivating factors of the plan, a maximum figure should be set without taking medical expenses into account. Second, a family with several surviving dependents will receive the same maximum award as a family with one surviving dependent. Obviously, the act should allow some leeway in determing the amount of the award conditioned on the number of surviving dependents.[398]

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[396]Michael P. Smodish, "But What About the Victim? The Forsaken Man in American Criminal Law," op. cit., p. 18.

[397]Ibid., pp. 18-19.

[398]Glenn Eldon Floyd, "Massachusetts' Plan to Aid Victims of Crime," op. cit., pp. 367-368.

An alternative maximum to a flat-rate figure is that adopted by New Zealand and described in Table 16. That plan does make allowances for variation in the number of dependents of the victim. Another possibility for consideration is the suggestion that "the average family income of the United States for the last year could be used."[399] Some choice of a maximum, if one is to be imposed, other than a flat-rate set amount would seem to be preferable. The nature of the maximum payments for the jurisdictions examined here is presented in Table 16.

Some interesting work has been done to learn something of popular attitudes regarding the relative seriousness of different offenses and in translating the resulting ratios into money-value ratios. First,

> through interviews of about 1,000 subjects who were asked to give numerical scores of relative seriousness on 141 offenses many of which involved bodily harm to the victims, ratio scales of the seriousness of physical injury were constructed.[400]

Next, there was an assumption made that these ratio scales, representing community evaluation, should mean that "certain ratios of compensation should be maintained."[401]

> One way of viewing these ratios is to plot money values on one axis and seriousness scores on the other axis. The results show absolute money values far in excess of what we believe any state could or would pay. However, the ratios of these money values may be useful guides. . . . comparing the logarithmic increase in money values with the increase in seriousness scores, we note that the money value attached

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[399] LeRoy G. Schultz, "The Violated: A Proposal to Compensate Victims of Violent Crime," St. Louis University Law Journal, X (1965), p. 249.

[400] Marvin E. Wolfgang, "Victim Compensation in Crimes of Personal Violence," Minnesota Law Review, L (1965), p. 235.

[401] Ibid., p. 238.

TABLE 16

Maximum Payment That Will Be Awarded

Great Britain[a]	The rate of loss of earnings or earning capacity will not exceed twice the average of industrial earnings (average weekly earnings for men 21 years and over) at the time the injury was sustained.
California[b]	$5,000
Massachusetts[c]	$10,000
Hawaii[d]	$10,000
New York[d]	$100 a week for lost earnings or support; aggregate award, $15,000
Maryland[f]	$15,000 for total disability $30,000 for death
New Zealand[g]	1. incapacity for work, ten pounds 5 shillings a week plus one pound a week for dependent wife and ten shillings a week for each minor dependent child; aggregate period, six years. 2. death, nine pounds a week plus ten shillings a week for each minor dependent child; aggregate period, six years. 3. other pecuniary loss or expense, one thousand pounds. 4. pain and suffering of victim, five hundred pounds.

[a]Great Britain, Criminal Injuries Compensation Board, Fifth Report, Accounts for the year ended 31st March, 1969, Cmnd. 4179, Oct. 1969, par. 11(a), p. 25.

[b]California, Govt. Code, ch. 5, Art. 1, sec. 13964.

[c]Massachusetts, Annotated Laws of Mass., ch. 258A, sec. 5.

[d]Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-62(b).

[e]New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 631(3).

[f]Maryland, Annotated Code of Maryland, Art. 26A, sec. 12(b). Maryland follows the scale of benefits of the Workmen's Compensation Act, Art. 101, sec. 36, excluding sec. 66.

[g]New Zealand, Statutes of New Zealand, 1963, No. 134, sec. 19(3).

> to a "hospitalization" is 20 times higher than "treated and discharged"; that "forcible rape" is 200 times higher, and "death" is 10,000 times higher than "treated and discharged." Dividing through our absolute money values by a constant, i.e., 100, we see that if an injury labeled "treated and discharged" were compensated with $50, "hospitalization" would be $100, "rape" would be $10,000, and "death" would be $1,000,000. If these ratios seem unreasonable, our only response is that these are the ratios provided by large samples of knowledgeable populations.[402]

Such compensation ratios as these would of course be based upon different considerations than present compensation programs are, but the contrast with current low-level maximum payments is rather startling.

Should Victim Participation Be Considered in Setting The Amount of The Award?

Opinions vary as to whether there should be compensation provided when injuries or death result from victim precipitation of the crime. "It is significant to remember," notes one commentator, "that an injury resulting from violent crime is no less an injury because the offense was victim precipitated. . . . Emphasis should be on the injury and not solely on how it occurred."[403] On the other hand there seems to be a prevailing attitude that the person who provokes attack upon himself or who participates willingly in the commission of a crime should not receive the same consideration as the person who is an innocent victim of personal attack that produces harm. This attitude has prevailed in the enactment of the compensation programs here considered. All but

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[402] Ibid.

[403] LeRoy G. Schultz, "The Violated: A Proposal to Compensate Victims of Violent Crime," op. cit., p. 247.

California's plan include provisions to reduce awards or disallow claims on the basis of victim provocation or participation.[404] "Such a provision included in a victim compensation statute," it has been said, "is analogous to the adoption of a comparative negligence standard for compensation. It should be incorporated in any future victim compensation proposals inasmuch as it would act as a deterrent to provocation of violent acts."[405] Considerable investigation may be necessary in some cases to determine whether and to what extent a crime of violence may have been victim precipitated. The Maryland Criminal Injuries Compensation Board has found that such investigation has been necessary in approximately 20 percent of its cases.[406]

Intensive investigation required in cases where victim provocation is suspected causes delay "due to attempting to locate and interview reticent witnesses."[407] The New York Crime Victims Compensation Board has noted that its "most extensive investigations are those where there is a question of provocation."[408]

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[404]Great Britain, Criminal Injuries Compensation Board, Fifth Report, Accounts for the year ended 31st March, 1969, Cmnd. 4179, Oct. 1969, par. 17, p. 26; Massachusetts, Annotated Laws of Massachusetts, ch. 258A, sec. 6; Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-31 (c); New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 631(5); Maryland, Annotated Code of Maryland, Art. 26A, sec. 12(e); New Zealand, Statutes of New Zealand, 1963, No. 134, sec. 17(3).

[405]Michael P. Smodish, "But What About the Victim? The Forsaken Man in American Criminal Law," op. cit., p. 15.

[406]Maryland, Criminal Injuries Compensation Board, Second Annual Report, (pre-printers copy) July 15, 1971, p. 5.

[407]Ibid., p. 4.

[408]New York, 1970 Fourth Annual Report of the Crime Victims Compensation Board, op. cit., p. 9.

It would seem, based upon the record of claims disallowed or reduced because of victim provocation, that a disproportionate amount of the compensation boards' attention and time is focused upon the question of victim provocation and its significance. Of the claims accepted for decision by the New York Crime Victims Compensation Board in 1968, 202 were disallowed.[409] Provocation by the victim accounted for the disallowance of only 8 of these 202 claims.[410] In 1969, of 490 decisions made by the New York Board in which there were no awards made, provocation by the victim accounted for the disallowance of only 6 claims.[411] Of 632 denials of awards by the New York Board in 1970, victim provocation accounted for only 4 claims being disallowed.[412] Small numbers of claims disallowed or awards reduced because of victim provocation has also been the experience of other jurisdictions. The Maryland Criminal Injuries Compensation Board in 1970, disallowed only 7 claims for victim provocation out of a total of 123 claims disallowed.[413] In 1969,

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[409] New York, 1968 Second Annual Report of the Crime Victims Compensation Board, op. cit., p. 7.

[410] Ibid.

[411] New York, 1969 Annual Report of the Crime Victims Compensation Board, op. cit., p. 11.

[412] New York, 1970 Fourth Annual Report of the Crime Victims Compensation Board, op. cit., p. 11.

[413] Maryland, Criminal Injuries Compensation Board, Second Annual Report, op. cit., pp. 2-3.

the Maryland Board had disallowed only 2 claims for victim provocation out of a total of 63 disallowed claims.[414] In 1970, the Hawaii Criminal Injuries Compensation Commission concluded that there was victim provocation in 13 cases; in 7 of those cases, compensation was denied; in 6 the awards were reduced by percentages ranging from 10 to 40 percent.[415] In Great Britain, the victim's character and way of life are added to the victim's conduct as bases for reducing or denying an award.[416] Out of a total of 2,720 claims disallowed between August 1, 1964 and March 31, 1970, by the British Board, the applicant's conduct, character, or way of life accounted for 421 claims being disallowed; this amounted to 16 percent of the total.[417] The number and percent of claims reduced in amount by the British Board in recent years have been as follows: 1967-68, 148, 4 percent; 1968-69, 232, 4 percent; 1969-70, 340, 5 percent.[418] "The usual close relationship between victim and offender in crimes of violence should lead us to test the extent to which the crime is a product of that relationship and, as such, how much both victim and offender contributed toward its denouement."[419]

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[414] Maryland, Criminal Injuries Compensation Board, First Annual Report, op. cit., p. 5.

[415] Hawaii, Third Report of the Criminal Injuries Compensation Commission, op. cit., pp. 4-5.

[416] Great Britain, Criminal Injuries Compensation Board, Sixth Report, op. cit., p. 22, par. 17.

[417] Ibid., p. 18.

[418] Ibid., p. 9.

[419] LeRoy G. Schultz, "The Victim-Offender Relationship," Crime and Delinquency, XIV (1968), p. 139.

As an aid to this end, it has been suggested that the victim "should be examined psychiatrically along with the offender."[420] Also, "the victim's police record should be checked and his reputation should be determined as a matter of routine."[421] These practices should at least indicate to the compensating authority those cases that deserve particular scrutiny and evaluation prior to the making of an award.

Where compensation is to be reduced or denied because of the victim's contribution to the crime, the manner of such reduction or denial becomes of significance. Of the jurisdictions mentioned above where such action is required, only the Hawaii Criminal Injuries Compensation Act prescribes the manner of reducing awards. There, " . . . the commission shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim."[422] This amounts to a percentage reduction of the award that would otherwise have been made. If the victim is deemed to be fifty percent responsible for the commission of the crime, his award, if any, will be reduced by fifty percent. Through its rule-making power, the Criminal Injuries Compensation Board in Great Britain has adopted the practice of reducing awards also by the precent of fault the victim is deemed to have had in the commission of the crime. There is an adjustment of "the percentage

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[420] Ibid., p. 138.

[421] Ibid., p. 137.

[422] Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-31(c).

in accordance with the particular circumstances of the case."[423] There, no award is made "where the applicant is the aggressor or is provocative or agrees to fight or is party to a quarrel which develops into a fight and sustains injuries which he could reasonably have foreseen were likely to result."[424] The percentage reduction of any award that might be made, based upon the victim's contribution, is one way of handling the reduction but it may not be the best way.

> It is submitted that this may lead to injustice, because the percentage will be fixed in relation to the claimant's "share of responsbility" and not also in relation to the extent of his injury and his loss of earning capacity. . . . A percentage approach results in the victim being punished partly according to the degree of his fault, but mainly according to the extent of his injury; yet the extent of his injury is often fortuitous, and bears no direct relation to the degree of his fault. A better method of dealing with the victim's fault, therefore, would be for the authority to assess the reduction as a specific sum of money, like a fine, instead of a proportion of the actual loss. This "tort fine", could then be determined by the various factors relevant to the assessment of a fine, including the financial position of the offender.[425]

The above suggested method of penalizing the participating victim would seem to offer certain advantages over the percentage reduction method. The same general objective could be attained without the arbitrariness implicit in the percentage reduction. It is suggested that where discretion is allowed the compensating authority, it give serious consider-

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[423]Great Britain, Criminal Injuries Compensation Board, Fourth Report, Accounts for the year ended 31st March, 1968, Cmnd. 3814, Nov. 1968, p. 9.

[424]Ibid., pp. 8-9.

[425]D. R. Harris, "Compensation for Victims of Crimes of Violence," op. cit., p. 62.

ation to the above suggestion before adopting the percentage reduction method of reducing awards.

Sexual Offenses. In Great Britain, so much concern was shown in the parliamentary consideration of the government's compensation scheme[426] prior to its inauguration, that alleged sexual offenses would lead to the bringing of numerous claims, that the British scheme had included in it specific directions regarding the handling of such cases. The scheme provides that:

> The Board will scrutinise with particular care all applications in respect of sexual offences or other offences arising out of a sexual relationship, in order to determine whether there was any responsibility, either because of provocation or otherwise, on the part of the victim . . . and they will especially have regard to any delay that has occurred in submitting the application.[427]

The last requirement above would be met with approval by Mr. Justice Stable, "who observed in a case of rape at the Assizes that he wished that young ladies who got raped would stop getting raped earlier in the proceedings than they do."[428] Since there was no experience upon which projections of classes of claims brought could be made and what little research had been done suggested appreciable victim-offender cooperation

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[426]Cf. Great Britain, "Crimes of Violence (Compensation for Victims)," Parliamentary Debates (Commons, 694 (May 5, 1964), cols. 1166-1167; Great Britain, "Crimes of Violence: Compensation for the Victim," Parliamentary Debates (Lords), 245 (Dec. 5, 1964), cols. 264-265.

[427]Great Britain, Compensation for Victims of Crimes of Violence, Cmnd. 2323, op. cit., par. 16, p. 6.

[428]Great Britain, "Crimes of Violence: Compensation for Victims," op. cit., col. 258 (remarks of Lord Mancroft).

in sexual offenses,[429] the concern evidenced about the potential bringing of fraudulent claims involving sexual offenses is understandable. Since there has been some experience in administering compensation programs it is now realized that most of these early fears were without justification so far as there being a problem with the bringing of numerous fraudulent claims is concerned. Speaking to this point, the Chairman of the British Criminal Injuries Compensation Board remarked that:

> It was obviously thought at the time that the Scheme came into operation that we should be swamped with claims of this type, but this has not proved to be the case. We have examined the first 880 cases which we have disposed of, and there have been only seven cases of rape and fifteen of indecent assault. Obviously, the sexual side of the matter has not produced the number of applications that was expected.[430]

So far as victim provocation or cooperation in sexual offenses is concerned, doubt has recently been cast upon the validity of contentions

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[429]Cf. L. Radzinowicz, Sexual Offences: A Report of the Cambridge Department of Criminal Science (London: Macmillan and Co., 1957), pp. 84-85, 103-104. This systematic scrutiny of sexual crime in Great Britain in the early 1950's involved 1,994 victims of indictable sexual offences. 82% of the victims were children under 16 years of age. In 40% of the cases there was no indication of resentment or objection by the victims. In 60% there was "some objection or resentment by the victims, at the time of the offense or later, but in many of these cases it could not be regarded as positive or active resistance to the offender."; Joseph Weiss et al., "A Study of Girl Sex Victims," The Psychiatric Quarterly, XXIX (Jan. 1955), pp. 2-3. This California study involved 73 girls who were victims of adult sex offenders: 44 were participant victims ("those who took part in initiating and maintaining the relationship"); and a later study, John H. Gagnon, "Female Child Victims of Sex Offenses," Social Problems, XII (Fall 1965), pp. 176-192. This study of 333 females reporting a sexual experience with an adult before the age of 13 showed that in 8% of the cases there was victim collaboration and that for 15.6% of the collaborative victims, the sexual experience was coitus.

[430]Walker Carter, "The Work of the Criminal Injuries Compensation Board," op. cit., p. 49.

that it is present in as many cases as earlier studies would indicate.

Israeli Criminologist Menachem Amir

> believes that fewer than 20% of rapes are precipitated by the woman's being "negligent or reckless or seductive." Philadelphia Psychiatrist Joseph Peters also thinks that the victim of sexual assault is less often at fault than is generally believed. To resolve the controversy, he and his colleagues have just begun a study that calls for exhaustive interviewing of every Philadelphia rape victim over the next four years.[431]

The results of this prolonged investigation should resolve some of the doubt and uncertainty that exists in this area of victim-offender relationships. Regardless of the outcome of this research effort, it would seem to be desireable "to specifically require certain types of evidence such as the report of an attending physician or a later psychiatric examination in order to warrant recovery in sex offense injury cases."[432]

Must Victim "Need" Be Present?

"Need" is a prerequisite to the awarding of compensation in three of the jurisdictions whose practices are examined here. California,[433] New York,[434] and Maryland[435] have need requirements. In California, prior to the hearing of a claim by the Board of Control, the Attorney

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[431]"Is the Victim Guilty?" Time, July 5, 1971, p. 42.

[432]"Compensation to Victims of Violent Crimes," Northwestern University Law Review, op. cit., p. 96.

[433]California, Govt. Code, ch. 5, Art. 1, secs. 13960, 13963.

[434]New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 631(6).

[435]Maryland, Annotated Code of Maryland, Art. 26A, sec 12(f).

General is required to examine, among other things, "the claimant's financial condition."[436] At the hearing, the need of the claimant is one of the items evaluated and unless the claimant is found to be "needy" no award will be made. A need requirement makes a victim compensation program a minimal program and if severely interpreted and applied may make the program so restricted that few who are victims of crime will be eligible for awards from the crime compensation program. A tentative conclusion regarding California's program is "that the program was so tightly drawn that it defeated its own purposes and managed only to absorb within it a few individuals who for special reasons, such as failure to meet residency requirements, had not otherwise qualified for welfare assistance."[437] The language of the need requirements of the New York and Maryland statutes is the same. Both require "serious financial hardship" and a consideration of "all of the financial resources of the claimant."[438] The same provision of the New York statute provides that the compensation board "shall establish specific standards by rule for determining such serious financial hardship." This provision, the Maryland law omits. In compliance with this directive, the New York Crime Victims Compensation Board has adopted rules which make the New York program less restrictive than the language of the statute would

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[436] California, Govt. Code, ch. 5, Art. 1, sec. 13963.

[437] Gilbert Geis, "State Compensation To Victims of Violent Crime," op. cit., p. 174.

[438] New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 631(6); Maryland, Annotated Code of Maryland, Art. 26A, sec. 12(f).

seem to intend. These rules allow "the Board Member, in his discretion, to exempt from the financial resources the claimant's home, his automobile, tools and an amount of his savings not exceeding one year's annual earnings."[439] Other factors given special consideration as the case is thought to warrant are the age of the claimant and the physical and/or mental condition of the claimant and/or his dependents.[440] Given the nature of the New York statute, these rules would seem to modify the "serious financial hardship" requirement somewhat. It is suggested that these rules make New York's compensation program better than it otherwise would be. It would seem that if need requirements are strictly imposed, the net result of a crime compensation program would be to simply give preference to the victim of crime for welfare assistance. The administration of a need requirement adds considerably to the work load of the boards mentioned above. "The most difficult problem," experienced by the New York Crime Victims Compensation Board, "is the question of serious financial hardship."[441] Both the New York and Maryland compensation boards have noted that investigations to verify the financial resources of the claimant delay the disposition of claims and contribute to the backlog of cases.[442] The New York Board has found

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[439] New York, Crime Victims Compensation Board, 1969 Annual Report, op. cit., p. 11.

[440] Ibid.

[441] 1969 Annual Report, op. cit., p. 11.

[442] New York, 1968 Second Annual Report of the Crime Victims Compensation Board, op. cit., p. 10; Maryland, Criminal Injuries Compensation Board, First Annual Report, op. cit., p. 7.

that many claimants are reluctant to discuss or reveal their financial resources to the Board's investigators. If they refuse to divulge such information, the Board has noted that it has "no alternative but to deny an award."[443] In 1969, the Maryland Criminal Injuries Compensation Board accepted and investigated 240 claims; in addition it disposed of about 1,000 inquiries without opening a file or starting an investigation because the Secretary of the Board found in a preliminary examination that the eligibility requirements of the Maryland statute could not be met.[444] "Of the 240 claims accepted and filed, there were 105 decisions rendered, of which 42 awards were made and 63 were disallowed."[445] Among the reasons for disallowance, "no serious financial hardship" accounted for 23 refusals to make awards; "failure to furnish information" accounted for 1 refusal.[446] In 1970, the Maryland Board accepted and investigated 308 claims and rejected in a preliminary fashion mentioned above an additional 1,500 inquiries.[447] "Of the 308 claims accepted and filed, there were 234 decisions rendered, of which 111 awards were made and 123 were disallowed."[448] Of the 123 disallowances, 60 were due to "no serious financial hardship" and 4 were due to "failure to furnish information."[449]

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[443] 1969 Annual Report, op. cit., p. 9.

[444] First Annual Report, op. cit., p. 5.

[445] Ibid.

[446] Ibid.

[447] Second Annual Report, op. cit., p. 2.

[448] Ibid.

[449] Ibid., p. 3.

In 1968, the New York Crime Victims Compensation Board accepted and investigated 519 claims and refused an additional 1,307 inquiries after preliminary examinations showed that the requirements of the New York statute could not be met.[450] "Of the 519 claims accepted and filed there were 442 decisions rendered in which 220 awards were made and 202 were disallowed."[451] Of the 202 disallowances, 54 were due to "no serious financial hardship" and 19 were due to "failure to furnish information."[452]

In 1969, the New York Crime Victims Compensation Board accepted 929 claims; it made "826 decisions in which there were 336 awards made and 490 in which there were no awards made."[453] Of the 490 disallowances, 104 were due to "no serious financial hardship" and 79 were due to "failed to furnish information."[454]

In 1970, the New York Crime Victims Compensation Board accepted 1,594 claims.[455] "There were 1090 decisions of the Board Members in which 458 claimants received awards and 632 claimants received no awards."[456] Of the 632 disallowances, 93 were due to "no serious financial hardship" and 177 were due to "failed to furnish information."[457]

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[450] 1968 Second Annual Report, op. cit., p. 7.

[451] Ibid.

[452] Ibid.

[453] 1969 Annual Report, op. cit., pp. 5, 10.

[454] Ibid., p. 11.

[455] 1970 Fourth Annual Report, op. cit., p. 5.

[456] Ibid., p. 10.

[457] Ibid., p. 11.

As can be seen from the above information, a rather large proportion of disallowances are due to these two reasons, amounting to over 42 percent for New York in 1970.

In California, summary accounts of the actions of the State Board of Control show that of 1,012 claims received by the Board from November, 1967, through August, 1971, there were 531 disallowances.[458] Reasons for disallowances are not given but the relative differences in program magnitude between California and New York are apparent. For example, in fiscal year 1969-70, the California State Board of Control received 369 claims, of which 285 were denied and 130 were allowed.[459] In approximately the same period, as noted above, the New York Crime Victims Compensation Board accepted 1,594 claims, made 1,090 decisions in which 458 awards were made and 632 were denied. Although both of these jurisdictions have statutory "need" requirements, they are so different in application that California might be said to have and apply a strict "need" requirement in the usual sense of the term while New York does not. The latter has noted that while "it might appear on the face that the statute was being read in more liberal term, . . . the Board feels that rules can not be written to cover every situation and that each claim should be decided on the facts of that particular claim, keeping in mind the legislative intent as set forth in the statute."[460] These

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[458] Monthly Activity Victims of Violent Crimes Claims, loc. cit.

[459] Ibid.

[460] 1969 Annual Report, op. cit., pp. 11-12.

two states have populations of nearly the same size and their crime compensation programs are the oldest in the United States, factors that would favor comparisons being made between these jurisdictions.

The California State Board of Control recognizes that there are problems that have resulted from California's "need" requirement. It has proposed a bill to clarify "need," but "it is clear the bill will get nowhere this session."[461] Under this proposed change, the statutory handling of "need" would be as follows:

> "Need" shall mean that the victim suffered pecuniary loss to an extent that he can no longer meet essential obligations or expenses from income or assets available for such purpose or from indemnification or financial assistance that may reasonably be expected to be available from any other source, without serious financial hardship.
>
> In determining need, the Board of Control shall also consider the Victim's financial condition prior to commission of the crime, and shall not grant indemnification to an eligible victim in an amount that would place him in a better financial condition than existed prior to the crime. The board's judgment in determining need hereunder, and the amount of such indemnification, shall be final.[462]

Should this bill be passed and then applied in a manner similar to the administration of the New York statute, these two jurisdictions would be on the same footing so far as the "need" requirement is concerned.

Repayment

None of the jurisdictions here considered look upon compensation to victims of crime as a premium to be received by the victim over and

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[461] Letter from E. F. Veglia, Secretary, State Board of Control, State of California, Aug. 25, 1971.

[462] California Legislature, 1971 Regular Session, Assembly Bill No. 621, Sec. 2.

above what he might receive from other sources in a measure that is the monetary equivalent of damages suffered. Since none of these jurisdictions bar the claimant from proceeding with civil actions against the offender it might result, except for requirements that repayment be made should such efforts be successful, that a given claimant would receive both an award from the compensating authority and from the offender via the courts. To prevent the possibility of any such "unjust enrichment" all of these compensation programs contain provisions that would result in any claimant receiving a net sum equal to the award made by the compensating authority or an amount equal to the difference between a compensation award and a civil judgment award should the latter be larger.[463]

The insignificance of repayments is illustrated by the fact that in the financial year 1968/69, L1,672,958 was paid in compensation through the British scheme while during the same period repayment of L164 was made by claimants subsequently recovering damages in civil actions.[464] The conclusion of the Board was that "less than 1 per cent of offenders would be worth suing, even if we had the power to do so."[465] Recently, Mr. Wilfred S. Pang, Executive Secretary of the Hawaii Criminal Injuries

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[463]Great Britain, Criminal Injuries Compensation Board, Fifth Report, op. cit., par. 24; California, Govt. Code, ch. 5, Art. 1, sec. 13963; Massachusetts, Annotated Laws of Mass., ch. 258A, sec. 7; Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-63; New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 634; Maryland, Annotated Code of Maryland, Art. 26A, sec. 15; New Zealand, Statutes of New Zealand, 1963, No. 134, secs. 23, 25.

[464]Great Britain, Criminal Injuries Compensation Board, Fifth Report, op. cit., pp. 4, 11.

[465]Ibid., p. 11.

Compensation Commission, "pointed out that the law provides for recovery of the payment from the offender and the Attorney General's office was alerted to cases where this might be possible."[466] He noted however, that "to date, . . . no action has been taken to collect any money from offenders."[467]

In Great Britain, the Criminal Injuries Compensation Board obtains an indemnity "from people to whom the Board paid money to the effect that 'In the event of my recovering anything from the defendant, I agree to pay over to you the amount I recover up to the amount of compensation you have awarded me.'"[468] The Chairman of the Board remarked, however, that the collection of repayments "was not likely to represent a serious problem, . . . because in 999 out of 1,000 cases the offenders were not really worth powder and shot."[469] These conclusions would seem to substantiate contentions examined earlier that one justification for creating crime compensation programs is the lack of relief likely to be afforded through bringing civil actions against the offender.

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[466]Helen Altonn, "Victims of Crimes Reminded of Compensation Law," loc. cit.

[467]Ibid.

[468]Walker Carter, "The Work of the Criminal Injuries Compensation Board," op. cit., p. 55.

[469]Ibid.

Exclusions

Property

Of the jurisdictions here considered, only two have made provision for compensating for property losses and both of these are restricted in scope. In addition to its crime compensation program created to aid victims of crime who suffer personal injury or death, Hawaii included what is known as a "citizenship" provision to indemnify those who suffer personal injury or property damage while preventing a crime of apprehending a criminal, or assisting a police officer in doing such.[470] California also has a "citizenship" provision. It adds, as a cause for compensation, "rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe."[471] New Zealand also has a limited property compensation provision, subject to a maximum award to any applicant of one thousand pounds.[472] The applicant must have taken "reasonable steps to avoid or mitigate the loss or damage,"[473] and his failure "to insure against the loss or damage shall, if the Tribunal considers that such failure was imprudent having regard to the circumstances of the case and to normal practice, be treated as a failure to take reasonable steps to avoid the loss or damage."[474]

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[470] Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-51.

[471] California, Govt. Code, ch. 5, Art. 1, sec. 13972.

[472] New Zealand, Statutes of New Zealand, 1963, No. 134, sec. 22A (4).

[473] Ibid., sec. 22A(5)(a).

[474] Ibid., sec. 22A(6).

None of the other programs being examined make provision for compensating for property losses or damage that results from criminal action. Several basic reasons have been put forward to justify the exclusion of property from crime compensation programs. One reason for making a distinction between personal and property injury or damage is the contention that public opinion, while it supports the former as an object of compensation, will not support the latter. "While I am convinced," said Mr. Ian Percival, "that public opinion supports this scheme in relation to personal injuries, I do not think that it would be prepared to see the scheme extended to claims in respect of damage to property, however logical a case one might be able to make out for such an extension."[475] Another suggestion is that:

> the legislature in drafting qualification standards should seek first to compensate the categories of criminal loss which create the greatest impact upon the social conscience. Exactly what categories these are is a matter of legislative determination. In pursuance of this, several standards have been established.
>
> The most prominent standard in current provisions is the general restriction of awards to cover loss due only to bodily injuries or death.[476]

As a practical consideration, reflecting limitations of financial resources, "the limitation to personal injuries arose partly from a

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[475] Great Britain, "Crimes of Violence (Compensation for Victims)," op. cit., col. 1230.
Cf. "Great Britain Approves Compensation Program for Victims of Criminal Violence," Harvard Law Review, op. cit., pp. 1684-1685.

[476] Compensation to Victims of Violent Crimes," Northwestern University Law Review, op. cit., p. 92.

desire to begin cautiously, and partly from considerations of the expenses of the scheme."[477]

For others, the opportunities for fraud if compensation should extend to property loss or damage would preclude its addition to a compensation scheme.

> Yet for no other reason than the hazard of fraud, the category of property indemnification might be completely excluded from compensation. . . . Likewise, there should be greater presumption of personal responsibility with regard to one's possessions, since insurance and other protective means are available. For properties are easily secured. They can be registered; they can be exchanged for securities or cash under the protection of federal deposit, and so on. In other works, properties can be "sheltered" where the person cannot be.[478]

Another aspect of the distinction between property and person, so far as the probability for fraud is concerned, is the suggestion that a person is more likely to protect his person than his property. "The victim's interest in his own physical welfare should prevent him from taking too many chances; few men will enter a brawl for the reason that they know that a broken arm will ensure them of a paid holiday. In the case of injury to property, however, knowledge of compensation for its loss might well encourage carelessness and fraud."[479]

The consequences to the victim and to society are also thought to be less from property loss or damage than from personal injury or death.

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[477] B. J. Cameron, "Compensation for Victims of Crime: The New Zealand Experiment," Journal of Public Law, XII (1963), p. 371.

[478] David J. Bentel, "Selected Problems of Public Compensation to Victims of Crime," Issues in Criminology, III (1968), p. 224.

[479] LeRoy L. Lamborn, "Toward A Victim Orientation in Criminal Theory," op. cit., p. 762.

In drawing a distinction between these two types of loss, "the answer must be," it has been suggested, "that society has a greater interest in compensating victims of personal injury than those whose loss is merely in property or money. The social effects of property losses are usually less than those of bodily injury, especially when a breadwinner is killed or injured."[480] This contention finds support in the conclusion of another investigator who notes that "criminally caused damage to property is never as disastrous as serious injury to the person. Property damage does not destory a person's only indispensable asset, that is, the ability to earn a living."[481] While the contention is made that "most property lost or damaged through crime is recovered,"[482] this can be discounted as a reason for not compensating for property losses. Not only is less than half of property stolen recovered, but the percent of all categories of stolen property that is recoverd is extremely low except for automobiles. According to the value of property stolen and recovered in 1969, the percent recovered was forty-seven percent, and for automobiles, eighty percent.[483] It would seem that there are sufficient differences between the real and felt incidences of crime against

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[480]D. R. Harris, "Compensation for Victims of Crimes of Violence," op. cit., p. 56.

[481]Robert D. Childres, "Compensation for Criminally Inflicted Personal Injury," New York University Law Review, op. cit., p. 460. Cf. A Report by Justice (Society), Compensation for Victims of Crimes of Violence, op. cit., p. 4.

[482]Robert Childres, "Compensation for Criminally Inflicted Personal Injury," Minnesota Law Review, op. cit., p. 272.

[483]FBI, U.S. Dept. of Justice, Uniform Crime Reports, 1969, op. cit., p. 105.

the person and crime against property that the two should be considered separately as objects of compensation. Reasonable alternatives are presently available to secure against property losses; they are not available to secure the person against personal injury or death caused by criminal action.

The national government in the United States has recently made an effort to provide crime insurance protection for urban property in selected areas.[484] At present, this crime insurance is available in Connecticut, the District of Columbia, Illinois, Maryland, Massachusetts, Missouri, New York, Ohio, Pennsylvania, and Rhode Island.[485] The objective of this program is to enable businessmen and residents "to purchase insurance against losses from burglary and robbery at affordable rates, even in high crime areas."[486] The enactment of this program followed the withdrawal of many private insurance carriers from high-crime areas and the charging of prohibitively high rates by those that continued to sell policies in such areas. Under this program "both commercial and residential burglary and robbery insurance is available with maximum coverage of $15,000 for commercial and $5,000 for residential."[487] This program has been operative since August 1, 1971. Reactions to it so far have been negative. "Those who have heard of the program, . . .

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[484] Public Laws 90-448, 91-152, 91-609.

[485] HUD News, HUD-No. 7-450, U.S. Department of Housing and Urban Development (Wash. D. C.: Govt. Printing Office, July 29, 1971), p. 1.

[486] Ibid.

[487] Ibid.

generally consider the rates too high and the regulations too restrictive to be worthwhile."[488] Revisions of the program, which become effective January 1, 1972, seek to make the insurance protection provided through this program more "affordable." Hopefully, this will be accomplished by offering policy buyers more choices in the coverage they wish to have, reducing deductibles, changing protective requirements, reducing rates where crime rates have fallen, and by marketing the policies more aggressively and providing better service.[489] George K. Bernstein, Federal Insurance Administrator, has shown determination to make this program work but results so far are disappointing. Additional causes for concern are "deep distrust of Federal efforts in crime-ridden areas" and lack of interest on the part of the insurance industry, through which policies are sold.[490] If these difficulties can be overcome and if program coverage is extended to other areas, this effort and that to compensate victims of crimes of personal violence have the potential of providing some measure of security for victims of crime in general. If this effort is not successful there may be more of a demand made in the future than has been made in the past to include property loss and damage caused by criminal acts in crime compensation programs. One of the problems, it would appear, in this property insurance scheme is that the base is not broad enough. Since the program focuses upon those who cannot buy

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[488] New York Times, Nov. 13, 1971, p. 1.

[489] HUD News, HUD-No. 1 71-623, U.S. Department of Housing and Urban Development (Wash. D. C.: Govt. Printing Office, Nov. 29, 1971), pp. 1-2.

[490] New York Times, Nov. 13, 1971, pp. 1, 17.

private insurance or can only buy it at high prices because they are located in high-crime districts their policy costs through this program are also likely to be quite high unless subsidies are provided through general appropriations. At present, "there are no plans to ask for an appropriation to cover losses."[491] This would seem to be counterproductive to the sale of policies, since their costs must necessarily remain high if the program continues to be self-financed. Through October, 1971, fewer than eighteen-thousand policies had been sold under this program, "a figure far below that expected and hoped for by the Department of Housing and Urban Development, which administers the program."[492]

Members of The Offender's Family Or "Household" Who Are The Victims?

All of the jurisdictions whose practices are examined here, except California, limit or deny compensation to victims of crime where the offender is a member of the family or household. Under Hawaii's compensation act, if the victim "is a relative of the offender or was at the time of his injury or death living with the offender as spouse or as a member of the offender's household," no compensation will be awarded, except for "expenses actually and reasonably incurred as a result of the injury or death of the victim."[493] New Zealand's

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[491] Ibid., p. 17.

[492] Ibid.

[493] Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, secs. 351-34, 351-33(1).

compensation statute specifies that "no compensation shall be awarded in respect of pain and suffering if the victim is a relative of the offender; or was at the time of the injury living with the offender as wife or her husband or as a member of the offender's household."[494] The language of the New York and Maryland statutes is the same respecting the total exclusion of this class of victims. These statutes provide that:

> A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person or a member of the family of such persons shall not be eligible to receive an award with respect to such claim.[495]

Both statues define "family" to mean:

> (1) any person related to such person within the third degree of consanguinity or affinity, (2) any person maintaining a sexual relationship with such person, or (3) any person residing in the same household with such person.[496]

Massachusetts also totally excludes this class of victims. Its compensation act provides that:

> An offender or an accomplice of an offender, a member of the family of the offender, a person living with the offender or a person maintaining sexual relations with the offender shall in no case be eligible to receive compensation with respect to a crime committed by the offender.[497]

The original provision of the British scheme concerning this class of victims specified that:

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[494]New Zealand, Statues of New Zealand, 1963, No. 134, sec. 18(2).

[495]New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 624(2); Maryland, Annotated Code of Maryland, Art. 26A, sec. 5(b).

[496]New York, Ibid., sec. 621(4); Maryland, Ibid., sec. 2(d).

[497]Massachusetts, Annotated Laws of Mass., ch. 258A, sec. 3.

> Offences committed against a member of the offender's household living with him at the time will be excluded altogether, in view of the difficulty in establishing the facts and ensuring that the compensation does not benefit the offender.[498]

This has since been modified to require that:

> Where the victim who suffered injuries and the offender who inflicted them were living together at the time as members of the same family no compensation will be payable. For the purposes of this paragraph where a man and woman were living together as man and wife they will be treated as if they were married to one another.[499]

Prior to the inauguration of the British scheme there was no mention of the member of the offender's household being excluded only if he was living with the offender at the time of the offense. This stipulation came about after objections were raised in debates in The House of Commons and The House of Lords.[500] Regarding the exclusion of offenses committed against a member of the offender's household living with him, Mr. Henry Brooke, Secretary of State for the Home Department, expressed the feeling that "the difficulties in clearly establishing the facts and ensuring that the compensation does not, in the end, benefit the offender are so great that these offences should be excluded, at least from an experimental scheme."[501] Exclusion is one way of dealing with a class of victims where special administrative problems are anticipated.

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[498]Great Britain, Compensation for Victims of Crimes of Violence, Cmnd. 2323, op. cit., par. 17, p. 6.

[499]Great Britain, Criminal Injuries Compensation Board, Fifth Report, op. cit., par. 7. p. 25.

[500]The Times (London), June 25, 1964, 10b.

[501]Great Britain, "Crimes of Violence (Compensation for Victims), Parliamentary Debates, op. cit., col. 1132.

"It must be realized," however, "that such an arbitrary exclusion is bound to deny recovery to some bona fide victims. An alternative would be to require a more strict burden of proof in these cases in order to rebut a presumption of implication."[502] There are other reasons why it is suggested that the exclusion of this class of victims is not warranted, particularly when compared to the acceptance of claims by victims in other classes where the things objected to here appear just as likely or more likely to happen.

> Collusion is a general problem to be met by denying compensation to those "responsible for" their losses and by strict procedures aimed at reducing the number of successful fraudulent claims. But the risk of collusion within the family seems no greater than in cases of claims based upon offenses committed by a stranger with no witnesses. When we concentrate on the fact that we are talking about personal injury, the argument reduces itself to the question--will the Commission be able to distinguish between accidental or self inflicted injury, and injury caused by the assault of another? To this question, the family relationship seems irrelevant.[503]

Another consideration is that "the offence may take place outside the house and in circumstances rendering the family relationship quite fortuitous."[504]

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[502]"Compensation to Victims of Violent Crimes," Northwestern University Law Review, op. cit., p. 96; Cf. Glenn Eldon Floyd, "Massachusetts' Plan to Aid Victims of Crime," op. cit., p. 364; LeRoy L. Lamborn, "Toward A Victim Orientation in Criminal Theory," op. cit., p. 759; Michael P. Smodish, "But What About the Victim? The Foresaken Man in American Criminal Law," op. cit., p. 15.

[503]Robert Childres, "Compensation for Criminally Inflicted Personal Injury," Minnesota Law Review, op. cit., p. 276; Cf. "Great Britain Approves Compensation Program for Victims of Criminal Violence," op. cit., p. 1685.

[504]D. R. Harris, "Compensation for Victims of Crimes of Violence," op. cit., p. 61.

To exclude such an offense as this appears quite incongruous when "many offences involving strangers take place within a home and are not thereby exluded."[505] Although intra-family assaults might be administratively bothersome to contend with there appears to be no particular reason to suppose they would present insuperable problems. "Other financial or special relationships between the victim and offender will be dealt with under the authorities' discretion, and the difficulty in discovering the exact facts will not be peculiar to family offences."[506] So far as the discovery and disallowance of fraudulent claims is concerned there would seem to be better grounds for excluding other classes of cases than family offenses. Attack by a stranger, where there is no witness, does not automatically exclude the victim from being awarded compensation. Yet, "in the case where the offender is a relative or member of the victim's household, it is more likely that his testimony will also be available to the commission, as opposed to the case where the assailant is a stranger."[507] It thus appears that one of the chief fears, collusion and the bringing of fraudulent claims, that has led to limitations or disallowances of victim compensation in cases involving family offenses is no more justified for this class of cases than for many of those for which compensation is awarded.

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[505]Alec Samuels, "Compensation for Criminal Injuries in Britain," op. cit., p. 31.

[506]D. R. Harris, "Compensation for Victims of Crimes of Violence," loc. cit.

[507]Robert A. Sandler, "Compensation for Victims of Crime--Some Practical Considerations," op. cit., p. 651.

> We are left with one argument for excluding relatives of the offender from compensation: the offender must not be benefited. This argument raises a technical question: can we design a program which allows innocent relatives to receive compensation while preventing offending ones from receiving any benefit?[508]

Suggestions have been made to support the position that such capabilities can be realized in a compensation program. "The risk of the offender benefiting could be guarded against, for example, by periodical sums payable only to the wife," assuming she is the victim, "by analogy with family allowances, or by investment, subject to release, wholly or in part, at the discretion of the Board on the application of the wife."[509] There is also the possibility that the offender may be convicted and incarcerated. "In order to increase the possibility of convicting such an offender, a provision requiring the claimant to testify in criminal proceedings could be made a condition to eligibility under the compensation act."[510] Such a practice would, however, be potentially dangerous for the reasons mentioned earlier when it was considered whether or not a criminal conviction should be a prerequisite to the making of an award. A more valid approach to reduce or eliminate the chance that the offender might benefit from an award stemming from a family offense would seem to be the limiting of the award to include "no more than medical expenses, loss of earning or other pecuniary losses. As such,

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[508]Robert Childres, "Compensation for Criminally Inflicted Personal Injury," Minnesota Law Review, op. cit., p. 276.

[509]Alec Samuels, "Compensation for Criminal Injuries in Britain," loc. cit.

[510]Robert A. Sandler, "Compensation for Victims of Crime--Some Practical Considerations," loc. cit.

the offender could only benefit from the award if he received state compensation but refused to pay hospital and medical expenses. This 'double recovery' might be avoided by providing that hospitals be given statutory liens under the act."[511] The New York Crime Victims Compensation Board has been doing something similar to this. It obtains from the claimant "a consent which allows the unpaid creditors to be paid directly. This was done when the Board in one instance, found that if the award was made directly to the claimant, he undoubtly [sic] would never pay the hospital bill which was in excess of $3,000.00 . . . . It was felt that this was a necessary step to insure that the state money was received by the persons entitled thereto. The balance, of course, if any, is payable to the claimant directly."[512] Thus there has already been experience with the kind of arrangement that has been suggested as being suitable for preventing the offender from benefiting from an award resulting from an intra-family offense.

Should the Scheme Prevent "Double Recovery"?

Of the seven jurisdictions here considered, five have enacted provisions to bar double recovery of monies by victims of crime.[513] These provisions exclude recovery from the compensation program that would

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[511] Ibid.

[512] New York, 1968 Second Annual Report, op. cit., p. 5.

[513] Great Britain, Criminal Injuries Compensation Board, Sixth Report, Cmnd. 4494, op. cit., pars. 14-16; California, Govt. Code, ch. 5, Art 1, sec. 13963; Massachusetts, Annotated Laws of Mass., ch. 258A, sec. 6; New York, McKinney's Consolidated Laws of New York Annotated, Book 18, Executive Law, Art. 22, sec. 631(4); Maryland, Annotated Code of Maryland, Art. 26A, sec. 12(d).

duplicate any funds received by the claimant from any other source. Should the claimant receive money from any other source to compensate him for personal injury, or his dependents for his death, the amount he would receive from the compensation program would be reduced by the amount of such funds received from other sources. If these funds from other sources equal or exceed the amount that would otherwise be paid through the compensation program, no award from the compensation program will be made.

The other two jurisdictions, Hawaii and New Zealand, also bar double recovery with the exception that funds received from private insurance are not deducted from the award made by the compensating authority.[514] Funds received to compensate the victim that come from all other sources, including public insurance and pension benefits are deducted from the award. This distinction between funds that come from public and private sources has been of some consequence for the British scheme. It originally required that: "Where applicable, compensation will be reduced by the amount of any payments from public funds payable, as a result of the injury or death, to the person to whom the award is made."[515] It was anticipated in the Parliamentary consideration of the British scheme before it became operative that this distinction would cause difficulties:

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[514]Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-63; New Zealand, Statutes of New Zealand, 1963, No. 134, sec. 19(7).

[515]Great Britain, Compensation for Victims of Crimes of Violence, Cmnd. 2323, op. cit., par. 22.

> I suppose the implications of this have been considered. Presumably what it means is this. Suppose, for example, a widow receives a pension under some State scheme, albeit as the result of some contributory scheme, this benefit will have to be deducted from any compensation she gets, whilst a precisely similar benefit she gets under a private scheme--for example, a group life pension as provided and run by many employers--would be outside this provision and no deduction would have to be made for that. It seems to me that to try to draw a dividing line between benefits she receives, as a result of death, from public funds and benefits which she receives from other funds may produce anomalies which will certainly seem unjust to many of the claimants.[516]

This hypothetical situation materialized later and finally led to a revision of the British scheme of compensation concerning the distinction between funds received by a victim of crime or dependents of such from public or private sources. The Criminal Injuries Compensation Board, on August 9, 1966, reversed a decision made by a single member of the board that had awarded Mrs. Margaret Rose Lain, the widow of a slain police officer, L300. Mrs. Lain charged that "no widow of a police officer killed by violence in course of duty or other categories of public employees can ever hope to collect anything: and the Divisional Court granted an ex parte application to review the decision of the board.[517] The Divisional Court "held the Board did not err in refusing to make an award to the widow and 3 children of a policeman because she received a police pension. These are 'public funds' and can be deducted from the amount of the award."[518] Following this decision, it was

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[516]Great Britain, "Crimes of Violence (Compensation for Victims)," Parliamentary Debates, op. cit., col. 1169.

[517]The Times (London), Nov. 2, 1966, 8d.

[518]The Times (London), April 21, 1967, 5a.

announced that "a three party deputation is to meet Mr. Jenkins, the Home Secretary, next week to discuss the working of the CIC Board."[519] The charge was that the board was "treating widows in a shabby and autocratic manner."[520] Another widow had her final award reduced from L7,452 to L401 "because she was drawing a widow's pension" while Mrs. Lain's case was pending in the Divisional Court.[521] The request of the deputation meeting with Mr. Jenkins was for him to "order the Board not to discriminate against the widows of public servants such as police officers, by deducting from compensation any pensions paid to such widows."[522] The Lain case and the indignation it prompted led to the removal of distinctions made between funds received from public and private sources by victims of crime or their dependents. "Changes in the Criminal Injuries Compensation Scheme were announced by Mr. Callaghan, Home Secretary, in a written answer in the Commons yesterday . . . If death results from an injury or duty occupational pensions, whether public or private, will be deducted in part from any award."[523] The British scheme now specifies that:

> Where the victim is alive the Board will determine on the basis of the common law whether, and to what extent, compensation should be reduced by any pension accruing as a result of the injury.[524]

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[519] The Times (London), April 29, 1967, 1f.

[520] Ibid.

[521] Ibid.

[522] Ibid.

[523] The Times (London), Mary 22, 1968, 2d.

[524] Great Britain, Criminal Injuries Compensation Board, Fifth Report, op. cit., par. 17.

> In fatal cases occupational pensions, whether public or private, should be deducted in part from any award: under the original scheme a public sector pension had been offset in full as a payment from public funds. . . but there was no offset for a private pension.[525]

The feelings of inequity that these provisions of the original British scheme aroused would seem to dictate the omission of any such distinction in a compensation plan. The practices of the New York Crime Victims Compensation Board, in this respect, would seem to be preferable:

> In determining the amount for medical expenses, the award is only for those out-of-pocket expenses which the claimant is obliged to pay out of his own pocket. There is no duplication of payment since any and all payments received by the claimant from Blue Cross, Blue Shield, private insurance companies, Workmen's Compensation and disability payments are all deducted.
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> In determining the loss of support, there is also deducted from the wages of the deceased his personal expenses as well as Social Security benefits, Workmen's Compensation and/or pensions. Thus we determine the actual loss of support in accordance with the statute.[526]

"Pain and Suffering"

Compensation for pain and suffering is excluded from all but two of the compensation programs considered here. Hawaii provides for such compensation as does New Zealand which limits awards for such to a maximum of five hundred pounds.[527] It has been suggested that it would be

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[525] Ibid., p. 27.

[526] New York, Crime Victims Compensation Board, 1969 Annual Report, op. cit., pp. 12-13.

[527] Hawaii, Hawaii Revised Statutes, Vol. 4, ch. 351, sec. 351-33(4); New Zealand, Statutes of New Zealand, 1963, No. 134, sec. 19(3)(d).

better for New Zealand to eliminate this category of compensation.[528] There is little support to be found for the inclusion of pain and suffering as an object of compensation in the type of program under consideration. "Pain and suffering," according to one commentator, "cannot be compensated: it is not a dollar loss. Admittedly, it is allowed at least in torts actions in . . . courts. However, (1) it is there primarily allowed to expand recoveries so as to compensate for such disallowed items as attorneys' fees; and (2) public monies are not in those cases usually involved."[529] It has been pointed out also that the awarding of payment for pain and suffering in a civil suit "is undertaken as much to punish the wrongdoer as it is to compensate the victim."[530] There are some crimes against the person deemed to be very serious where physical injury does not usually result that might be thought suitable cases for compensation. "In some crimes such as forcible rape, sex offenses against children, kidnapping, and some robberies pain and suffering may be the only cognizable claim the victim has. To establish a system for compensation of crime victims and then deny recovery because there has been no physical injury seems particularly harsh, especially in view of the great emotional damage inherent in the sexual offenses

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[528]Gilbert Geis, "State Compensation to Victims of Violent Crime," op. cit., p. 174.

[529]New Jersey, Senate Committee on Law and Public Safety, Public Hearing on Senate Bill No. 284--providing for compensation for the innocent victims of crimes (Nov. 30, 1966), pp. 39-40 (letter from Robert Childres).

[530]Robert A. Sandler, "Compensation for Victims of Crime--Some Practical Considerations," op. cit., p. 653.

and kidnapping."[531] The basis of this appeal might itself be more emotional than factual for there are indications that little is actually known about the emotional impact of such crimes. "There is very little information and considerable difference of opinion concerning the moral and emotional effects of sexual misbehaviour on young children. Although reliable information in individual cases was available, it was too slight to justify any general conclusions."[532] The point that compensable physical consequences seldom result from sexual offenses was substantiated by this study. "In respect of 1,815, or 91 per cent, of the victims the offences had no notable physical consequences."[533] If there is to be compensation to victims of crimes such as those mentioned above, that compensation would have to be, it would appear, for something akin to "mental anguish" or "pain and suffering." Otherwise, most such victims, suffering no physical injury, will receive no compensation.

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[531] Michael P. Smodish, "But What About the Victim? The Foresaken Man in American Criminal Law," op. cit., p. 17.

[532] L. Radzinowicz, Sexual Offences: A Report of the Cambridge Department of Criminal Science, op. cit., p. 104.

[533] Ibid.

CHAPTER IV

AN OPINION SURVEY OF THOSE WHO ADMINISTER CRIME COMPENSATION PROGRAMS

In an effort to learn what the opinions of those who administer crime compensation programs are, a mail survey was undertaken. Questionnaires were sent to program administrators in the jurisdictions of New York, California, Maryland, Hawaii, New Zealand, and Great Britain. Massachusetts was not included. There, the compensation program is administered by district court judges. Efforts to identify these judges and to learn which ones have handled the most compensation claims were unsucessful.[534]

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[534] In Massachusetts, there are seventy-one district court judges. A letter from Richard D. Gerould, Executive Secretary, Supreme Judicial Court for the Commonwealth of Massachusetts, September 1, 1971, indicates that only summary accounts are kept of the handling of claims under Massachusetts' crime compensation program. The office of the Attorney General of Massachusetts supplied the following information for publication in the Fourteenth Report of the Supreme Judicial Court for the Commonwealth of Massachusetts: "55 cases were filed in the year ending July 30, 1969; 129, in the next twelve months; 88, in the period from July 1, 1970, to April 26, 1971. As of March 30, 1971, awards have totaled $80,460. Sixty-five cases have been closed. Of this number 62 awards were granted, or an average award of $1,298."

Questionnaires were mailed to twenty-four program administrators in August, 1971. The cover letter and the questionnaire are included here in the Appendix. The jurisdictions of New York, California, Maryland, Hawaii, and New Zealand have three-member boards. Great Britain has a nine-member board. Twenty responses were received, giving a return of over eighty-three percent. Responses came from all of the jurisdictions polled. Anonymity was assured the respondents. Assurance was also given respondents that responses would not be identified by jurisdiction. It was hoped that this would encourage indications of preference by the respondents that would be uninfluenced by considerations other than personally and professionally held viewpoints. The responses are presented in the following tables. In most instances the tabulations of responses require no comment. Where emphasis is thought desirable or where responses are deemed exceptional, attention is directed to specific responses.

First, there was near unanimous agreement among respondents regarding their preference for the creation of a special administrative board to administer the crime compensation program. Only one respondent indicated a preference for an alternative arrangement: the use of an existing administrative body. There was no preference stated for the use of courts. Five of the seven jurisdictions whose crime compensation programs are being considered here have chosen to create a new administrative body for the

administration of their programs.

The opinions recorded in Table 17 indicate a preference for what might be considered usual prescriptions for an administrative board. The only notable departure that these opinions take from the provisions of crime compensation programs in operation is in the recommendation made by six of the twenty respondents that medical training be made a qualification for one or more members of the compensation board. None of the programs here considered currently require medical training for any board members. The only professional or educational qualifications that have thus far been applied to board members are legal training and experience. All of the jurisdictions considered here that have crime compensation boards have prescribed these qualifications for one or more members on their respective boards. In imposing specific qualifications, the difficulty is in prescribing a certain kind of training or preparation that will, other things being equal, equip the single member better than another kind of training. Staffing practices should be such that they facilitate the working of the crime compensation board. In order to provide continuity and time to develop skill in the handling of cases it is recommended that board members be appointed by the governor to substantial terms (five to ten years), that terms be staggered, and that members be made eligible for reappointment. Whether positions are full-time or

TABLE 17

Opinion Survey: Crime Compensation Board Membership

Respondent	No. of Bd. Members	How Chosen	Length of Term (years)	Staggered Terms	Subject to Re-appt.	Legal Qualifications	Salary	Full-time or Part-time	Other
#1	at least 3	Statute should state	5-7	yes	yes	yes; admitted to practice for at least 10 years.	annual	full-time	medical training qualification for perhaps 1 member
#2	3	not spec.	min. of 4 yrs.	yes	yes	yes; min. of 5 yrs. experience as lawyer	Annual or per working day plus expenses	Depends upon case load	medical training qualifications for members
#3	depends on work load	Appt. by Gov.[a]	Not Spec.	Not Spec.	Not Spec.	Chm. Qualified for judicial offc.	Annual or per working day	Depends upon case load	medical training qualifications for one member
#4	3	Appt. by Gov[a]	3	yes	yes	yes, for one or two members only	per working day	part-time at first; full-time as work load increases	none
#5	3-5	Appt.	5-8	yes	yes	yes	annual	part-time at first; full-time as work load increases	none
#6	3	Appt. by Gov.[a]	3	yes	yes	yes, for only one member	per working day	part-time	medical training qualifications for one member
#7	3	Appt. by Gov.[a]	5	yes	yes	yes	annual	full-time	medical training qualifications for members
#8	Depends upon work load	By Exec.	7	yes	yes	yes	Per working day	Chm: Full-time; Members: Part-time	none
#9	Depends on work load	Govt. legal Officers	5	no	yes	yes	Per working day	Part-time	none
#10	8-12	Central Govt.	Life	no	--	yes	Per working day	Part-time	none
#11	Depends on work load	By Exec.	No limit, save age	no	--	yes	Per working day plus expenses	Part-time	none
#12	Depends on work load	Appt. by Dept. Head resp. for adm. prog.	Subject to determination	no	yes	yes	Per working day	Part-time	none

TABLE 17--Continued

Respondent	No. of Bd. Members	How Chosen	Length of Term (years)	Staggered Terms	Subject to Re-appt.	Legal Qualifications	Salary	Full-Time or Part-time	Other
#13	Depends on work load	Appt. by Exec.	No limit, Save age	--	--	yes	Related to volume of work	Part-time	none
#14	9-12	Appt. by Dpt. Head	No set Term	--	--	yes	Per working Day	Part-time	Members should have experience with personal injury & criminal cases.
#15	Depends on work load	Not Spec.	No set Term	--	--	yes	Per working day	Part-time	none
#16	Depends on work load	Appt. by Exec.	No limit	--	--	yes	Salary, FT Daily fee, PT	As required	None
#17	3	Appt. by Gov. with Senate advice & consent	7	yes	yes	yes	Annual	Full-time	Bi-partisan Board
#18	3	Ex Officio or appt. by Gov. [a]	4	yes	yes	yes, one member only	Per working day	Part-time	medical training qualifications for one member
#19	3 or 5	--	--	--	--	--	--	--	--
#20	3	Appt. by Gov. [a]	At pleasure of Gov.	no	yes	no	Per working day	Part-time	Qualifications: Business Personnel Mgt & Legal

[a] No Confirmation Required

part-time and whether remuneration is on an annual or working-day basis should be dependent upon the workload of the board. Initially, if a light work load is anticipated, operations of the board might begin with part-time members compensated on a working-day basis. This arrangement could continue until such time as an increase in the workload might dictate a change to full-time members compensated on an annual salary basis.

The general procedures of the crime compensation board favored by the respondents tend to conform to practices of operating crime compensation boards. These preferences are noted in Table 18. It is recommended that meetings of the board be public rather than private with the board having the discretion to close meetings to the public when there are extenuating circumstances in individual cases. The program administrators polled in this study favor public over private meetings by twelve to eight.

Program administrators are in favor of deferring board action on a claim if there is a criminal case pending. Such deferral is preferred by a margin of eleven to seven. They also prefer to accept a criminal conviction as sufficient proof that a crime has occurred, in this case by a margin of seventeen to three.

Regarding the review of decisions made upon claims, it is suggested that there be provision for internal and external review. Internal review is desirable as a matter of

TABLE 18

Opinion Survey: General Procedures of the Crime Compensation Board

Respondent	Meetings		Bases for Decisions		Action deferred if criminal case pending	Crim. conviction sufficient proof of crime	Standard of Proof		Review of Decisions	
	Pub.	Private	Pub.Rec.	Med. Exam			Beyond a Reasonable Doubt	Balance of Probabilities	Internal	External
#1		yes	yes	not spec.	yes[a]	yes		yes	yes	yes
#2	yes[b]		yes	yes	yes	yes		yes[c]	yes	yes
#3		yes	yes	not spec.	Not Specified	no	Not Specified		yes	yes[d]
#4	yes		yes	yes	no	yes	yes		yes	yes
#5	yes		yes	yes	no	no		yes	yes	yes
#6	yes[b]		yes	yes	yes	yes		yes	yes	no
#7	yes		yes	yes	no	yes		yes	yes	yes
#8		yes	yes	yes	yes	yes		yes	yes	yes
#9		yes	yes	yes	yes	yes	yes		no	yes
#10	yes		yes	yes	yes	yes		yes	yes	yes
#11		yes	yes	yes	yes	yes		yes	yes	no[e]
#12		yes	yes	yes	yes	yes		yes	--	yes[e]
#13	yes		yes	yes	yes	no		yes	yes	no
#14		yes	yes	yes	yes	yes		yes	yes	yes[e]
#15	yes		yes	yes	no	yes		yes	yes	yes[e]
#16		yes	yes	yes	no	yes		yes	yes	no
#17	yes	yes	yes	yes	no	yes		yes	yes	yes
#18	yes		yes	yes	no	yes		yes	yes	no
#19	yes		yes	yes	--	yes	--	--	--	--
#20	yes		yes	yes	yes	yes	yes		yes	--

[a] If district attorney requests it

[b] Except in rape cases

[c] Favors "preponderance of evidence"

[d] Favors review at least on questions of law if restricted to claims involving a "great deal of money"

[e] But only on points of law

equity and also is particularly suitable for achieving uniformity in claims disposition where there is an initial single-member decision on claims. External review should be limited to points of law. Such review will help assure that the board operates within legally imposed limitations upon its operations. Those program administrators whose opinions are included in this study favor internal review seventeen to one and favor external review thirteen to five.

There are three items of particular interest in the preferences recorded in Table 19. All respondents but one who expressed a preference regarding the submission by the applicant to a compulsory medical examination favored making submission a requirement of the compensation program. Further, all of these respondents but one favored compulsory submission by the applicant to a psychiatric examination, if thought necessary by the board. The latter preference is not a reflection of current practice. Sixteen of the twenty respondents favor giving applicants copies of the rules governing the compensation board's proceedings. Two other respondents would favor giving applicants copies of such rules if requested by the applicant. This is also a recommendation that is not a reflection of current practice. As noted previously, one of the chief difficulties that compensation boards have thus far experienced has been in familiarizing the general public and eligible victims with the provisions of compensation plans and in mak-

TABLE 19

Opinion Survey: The Applicant and the Crime Compensation Board

Respondent	Must Report to Police	Must Submit to a Medical Examination	Deadline on Filing Application	Applicant Given Rules Gov. Bd's Proceedings	False Statement Punishable	Legal Aid		Assistance of Friend
						Permitted	Paid by Bd.	
#1	48 Hours	yes[a]	Two Years	yes	yes	yes	no[c] yes[b]	yes
#2	48 Hours	yes[a]	Six Months[d]	yes	yes	yes	no[c]	yes
#3	Within reasonable Time	Not specified	Twelve Months[d]	Not Spec.	Not Specified	yes	yes	no
#4	Immediately	yes[a]	One Year	Yes	yes	yes	no[c]	yes
#5	48-72 Hours	yes[a]	One-two Years	yes	yes	yes	yes	no
#6	As soon as Poss.	yes[a]	Eighteen Months	no[g]	yes	yes	no[c]	yes
#7	Within Reasonable Time	No	Two Years	yes[e]	yes	yes	no[c]	yes
#8	One Year	yes[a]	no	yes	yes	yes	no	yes
#9	As soon as Poss	yes[a]	One Year	yes	yes[f]	yes	no	yes
#10	At once	yes[a]	Two Years	yes	yes	yes	yes	yes
#11	Immediately	yes[a]	Three Years	yes	yes	yes	yes[g]	yes
#12	With no unreasonable delay	yes[a]	no	yes	yes	yes	yes	yes
#13	As soon as Practicable	yes[a]	Three Years	yes	yes	yes	yes	yes
#14	As soon as Practicable	yes[a]	no	yes	yes	yes	yes	yes
#15	Within a reasonable Time	yes[a]	no	yes	yes	yes	[h]	yes
#16	Without delay	yes[a]	no	yes	yes[f]	no	--	yes
#17	48 Hours[d]	yes[a]	One Year	yes	yes	yes	yes	yes
#18	24 Hours	yes	90 Days[d]	yes	no	yes	no[c]	yes
#19	yes	--	--	--	--	--	--	yes
#20	Immediately	yes[a]	100 Days	yes	yes	yes	yes	yes

[a] including a psychiatric examination, if necessary

[b] only where claimant is indigent

[c] The compensation program should prescribe maximum fees lawyers may receive from claimant.

[d] board should have discretionary power to extend the deadline for cause

[e] if requested, yes

[f] by refusal of compensation

[g] paid by the claimant if the claim is denied

[h] should be on the same basis as in the courts

ing the existence of compensation programs known. There is a consensus here that it would be advisable to make provision for the distribution of the compensation board's rules governing its proceedings. Only one of the program administrators polled objected to permitting legal aid for the victim in board proceedings. Opinion was just about evenly divided however as to whether the costs of such counsel should be paid by the compensation board or by the victim. Most of the program administrators favor close board supervision of fees paid by the victim to a lawyer. Six of eight administrators who favor the claimant paying his own lawyer fees also favor the board's prescribing maximum fees that lawyers may receive from claimants. This reflects an interest that the award will primarily benefit the claimant and not the lawyer.

For compensation purposes the terms "victim" and "crime" must be given definitions. They have not been given the same meanings for compensation purposes as they have been given in criminal cases. Compensation may follow criminal conviction of the attacker. It may also follow an acquittal of the attacker or be made when there is no apprehension or when the attacker has not technically committed a crime for the reasons mentioned earlier. Nevertheless, the jurisdictions considered here make "criminal offense" a necessary prerequisite for compensation. There is some difference of opinion however as to how this term or action should be

defined. Three different approaches have been taken. One has been to state a generic definition of crime. A second has been to draft a list of compensable crimes and include this formulation in the compensation plan itself. A third has been to use an existing list of crimes found in the jurisdiction's penal code. Great Britain, Massachusetts, and New York have adopted a generic definition of crime for their compensation programs. Hawaii and New Zealand have included a list of crimes in their compensation plans. California and Maryland use an existing list of crimes in their penal codes. Of the program administrators polled, ten favor a generic definition of crime. Four favor a list of crimes to be put in the compensation plan. Two favor the use of an existing list of crimes found in the penal code. Two believe that either a list of crimes put in the compensation plan or the use of an existing list of crimes found in the penal code would be equally suitable. One believes that either the use of a generic definition of crime or the use of an existing list of crimes found in the penal code would be satisfactory. Others who have evaluated these alternatives have for the most part also supported a generic definition of crime. It has the advantage of not trying to predict what crimes may produce personal injury or death as the lists of crimes do. The lists permit more control over the scope of the program and this may be thought an advantage by those jurisdictions concerned with keeping costs

down. Other things being equal, the use of a generic definition of crime would seem preferable. The preferences of program administrators regarding the definition of "criminal offense" are presented in Table 20.

Payments to victims of crime can be made in several ways. The total award can be paid in one lump sum or over time in periodic payments. In either case there can also be emergency, interim, or partial payments made before the case is decided. The admonition here is for the greatest flexibility possible in the making of payments. The compensation board should have the discretion to choose the manner of payment that best fits the individual case. For some cases a lump sum payment is most suitable. These cases would include those where the injury is minor or temporary. In other cases, periodic payment is most suitable. Where the injury is serious or there is long-term disability there is a need for administrative supervision of the case. Continued review of such cases should contribute to the prevention of unjust enrichment or inadequate compensation. Although such review would require more involved administrative actions it would not necessarily increase the costs of the compensation program. Review may result in the amount of the award being reduced where circumstances change and compensation is no longer justified. All of the jurisdictions considered here can make lump sum payments. In addition, Hawaii, New York, and New Zealand can also make

TABLE 20

Opinion Survey: The Definition of "Criminal Offense" in a Crime Compensation Program

Respondents	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11	#12	#13	#14	#15	#16	#17	#18	#19	#20
Generic Definition of Crime	yes				yes[a]			yes	yes	yes	yes[b]	yes	yes[c]	yes[c]		yes			--	yes
List of Crimes Put in Compensation Plan		yes[a]	yes	yes		yes	yes[a]											yes	--	
Use of Existing List of Crimes in Penal Code		yes[a]			yes[a]		yes[a]								yes		yes		--	

[a] either of these choices is suitable

[b] with a list of crimes excluded from the compensation plan

[c] limited to "crimes of violence"

periodic payments if they desire to do so. Also, Great Britain, California, New York, Maryland, and New Zealand make interim, emergency, or partial payments before the case is decided, if they think it desirable. Fifteen of the twenty program administrators polled favor giving the compensation board the power to make awards in the form of lump-sum, periodic, and/or emergency, interim, or partial payments as the board thinks best in each case. Seventeen favor giving the compensation board the discretion to make emergency, interim, or partial payments.

For several reasons it is suggested that there be no minimum loss required for the filing of claims. California, Hawaii, and New Zealand at present require no minimum loss before one is eligible for compensation. Seventeen of the twenty program administrators polled do favor a minimum loss requirement. Only two are opposed to such a requirement. The reasons for favoring a minimum loss requirement are that it prevents the filing of numerous claims for small amounts that are alleged to be too trivial to bother with and that consequently it reduces the administrative load of the compensation board. These contentions do not seem substantial. First, the incidence of crime being what it is, a minimum loss requirement would prevent compensation being paid to those who are most in need and for whom no loss is "trivial." The burden of loss is relative and it is relatively larger for those who are most likely to become victims of crime.

As for the allegation that claims for small amounts would greatly increase the administrative workload and costs, it appears to have little to substantiate it. Rather, since there has to be an investigation of claims anyway to determine if the claimant is eligible for compensation or not there would seem to be little opportunity for effecting savings here. New York has handled any difficulties that might follow its having no minimum loss requirement by conducting preliminary investigations by phone and letter prior to accepting claims. Enlightened administrative practice, for the reasons mentioned, would seem to be far preferable to imposing a minimum loss requirement.

All of the jurisdictions considered here have provisions prescribing maximum payments in their crime compensation plans. But there are significant differences among the types of maximum payments prescribed. All of the state programs in the United States prescribe a flat-rate maximum. Great Britain's program prescribes a maximum payment rate for loss of earnings or earning capacity. This rate is tied to average industrial earnings at the time the injury was sustained and cannot exceed twice this average. New Zealand's program prescribes a specific maximum periodic payment for a specified maximum period. Since the objective of social insurance is income maintenance, it is suggested that Great Britain's practices are preferable. A maximum payment which takes the form of a flat-rate maximum or one

that prescribes a specific maximum periodic payment for a maximum time period reflect primary concern with cost control rather than income maintenance. It is suggested also that the payment schedule make allowance for variation in the number of dependents of the victim. Ten of the program administrators polled favor a maximum limit on individual awards. Eight do not favor a maximum limit. Of those who favor a mixiмum limit, all but one favor a flat-rate figure. That administrator who does not favor a flat-rate maximum favors maximum periodic payments coupled with a maximum number of payments. The lowest flat-rate maximum favored by any of these program administrators is five thousand dollars. The highest flat-rate maximum favored is twenty-five thousand dollars.

The same public reaction does not follow injury or death occasioned by victim precipitation as follows injury or death sustained by the innocent victim of crime. It is true that the severity of harm may be the same in either case but public opinion attaches a different significance to the injury depending upon whether there is an innocent or a participating victim. This attitude is reflected in the practices of all but one of the programs considered here that cause claims to be reduced or disallowed where there is victim provocation or participation. All twenty of the program administrators polled believe that victim participation should be considered in setting the award.

Sixteen program administrators believe that the compensation board should have the discretion to reduce the award in part or to disallow the claim, depending upon the board's decision regarding the nature and degree of victim precipitation of the criminal attack. One administrator favors reducing the award in part and two believe that victim precipitation should cause no award to be made. The usual manner of reducing awards is to effect a percentage reduction equal to the degree of provocation attributed to the victim by the board. All of the program administrators who indicated a preference for the manner of award reduction favor making a percentage reduction. One of these administrators believes that the board should have the discretion to make either a percentage reduction or to reduce the award by a specific sum. It is suggested that the latter is preferable. If the reduction is made in the form of a percentage reduction it is the extent of injury which determines the punishment as much as or more than the degree of fault. This is true because the degree of fault has no relationship to the extent of injury. It is suggested that it would be better practice, where victim participation is found, to reduce the award by a specific sum. This would allow the board to give consideration to such matters as the victim's loss of earning capacity and financial condition. Such a reduction would amount to a fine levied where victim participation is found.

One basic difference between social insurance and public assistance programs is that the latter requires recipients of benefits to demonstrate that they are poor or "needy." Although interpreted and applied quite differently by different jurisdictions, three of the crime compensation programs considered here have "need" requirements. A "need" requirement is another way of restricting the crime compensation program. There is the danger that a severe interpretation and application will make the crime compensation program so minimal that it may only give poor crime victims priority for welfare assistance. The program administrators polled, by a margin of fifteen to three, do not believe that victim "need" should be made a prerequisite to the awarding of compensation. The preferences of the respondents concerning payments to crime victims are noted in Table 21.

The seven crime compensation programs that have been considered here are more restricted than they otherwise would be due to policy decisions that have excluded various kinds of losses or that have imposed other limitations. The principal exclusions are property losses, members of the offender's family or "household" who are the victims, double recovery, and pain and suffering. The chief motives for prescribing these exclusions include the desire to hold down costs, to reduce fraud, to help assure that the offender will not share or benefit from awards, and to make the com-

TABLE 21

Opinion Survey: Payments to Victims of Crime

	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11	#12	#13	#14	#15	#16	#17	#18	#19	#20
Type of Payment Favored: Lump Sum	X	X	X	X		X	X	X	X	X	X	X	X	X	X		X	X		X
Periodic	X[a]	X	X	X	X	X	X	X	X	X	X	X		X	X		X	X		X
Emergency, Interim, or Partial Payments made before the case is decided	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X		
Provisions for Reopening a case if any party to case deems it desirable?	yes	yes	yes	yes	yes	yes	yes	no	no	no	no	yes[l]	no	yes[m]	yes	yes[m]	yes	no		yes
Minimum loss required for claims?	yes[b]	yes[b]	yes	no	yes	no	yes[h]	yes[j]	yes[k]	yes[j]	yes[j]	yes	yes	yes	yes[n]	yes[j]	yes[b]	yes		yes[p]
Maximum limit on individual awards?	yes	yes	Not Spec.	yes	yes	yes	yes	no	no	yes	no	no	no	no	no	no	yes	yes		yes
Flat-rate figure?	yes[c]	yes		yes[c]		yes[d]	yes[d]			yes[k]							yes[i]	yes[o]		yes[q]
Some other maximum:					yes[f]															
Should victim participation be considered in setting the award?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
If yes, should it reduce award in part?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	--		
Or cause no award to be made?	yes	yes	yes	yes	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes		yes
If in part, should it reduce award by specific sum?						yes				--										
Or result in a percentage reduction?	yes	yes	yes	yes	yes	yes	yes	yes	yes	--	yes	yes	yes	yes	yes	yes	yes			

TABLE 21--Continued

Respondents	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11	#12	#13	#14	#15	#16	#17	#18	#19	#20
Should victim "need" be a prerequisite to the awarding of compensation?	yes	Not Spec.	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	yes		yes
Should compensation scheme provide for repayment of awards if claimant subsequently is successful in a civil action against offender?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes		yes
Should compensation plan permit board to take action directly against offender to recover amount of award?	no	yes	yes[d]	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	no	yes	yes	no	yes		yes

[a] where protracted and/or death claims

[b] $100.00 medical and/or two weeks lost wages

[c] amount depends upon each state legislature

[d] board should have power to require applicant to bring a civil action

[e] $15,000.00 - $20,000.00

[f] a maximum periodic payment and a maximum number of payments

[g] $20,000.00

[h] $50.00

[i] $25,000.00

[j] L50

[k] L20,000

[l] limited to internal review of a single member's decision

[m] a case should be reopened only in exceptional circumstances

[n] L100

[o] $10,000.00

[p] $100.00

[q] $5,000.00

pensation program reflect the public's primary concern with attacks against the person.

The major exclusion is property loss or damage that results from criminal acts. Hawaii and New Zealand offer very limited compensation for such loss or damage in narrowly prescribed categories. None of the other jurisdictions considered here make awards for property loss or damage. The logic that supports crime compensation programs would extend coverage to include property as well as person. But practical considerations, leading to policy decisions, have dictated otherwise. The matter of increased expenses that would follow such inclusion has been influential. There has also been hesitancy to launch more ambitious programs initially. Some feel that such compensation programs should begin cautiously and give initial attention only to bodily injuries or death caused by criminal action. The prospects of property indemnification having more potential for fraud has also been a recurring consideration among policy makers. It is also emphasized by some that the social consequences produced from property loss or damage are less serious, or are viewed as being less serious, than those produced from personal injury or death. The administrators of crime compensation programs favor the exclusion of property loss or damage from the programs by eighteen to two. Preferences regarding exclusions are related in Table 22.

TABLE 22

Opinion Survey: Exclusions

Respondents	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11	#12	#13	#14	#15	#16	#17	#18	#19	#20
Property Loss or Damage: Included?		yes										yes								
Excluded?	yes		yes	yes	yes	yes	yes	yes	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
Should compensation scheme prevent "double recovery"?	yes	yes	yes	yes	yes	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	--	yes	yes	yes	yes
Members of Offender's family or "household": Included?			yes	yes			yes	yes[f]						--		yes[j]			yes	
Excluded?	yes	yes			yes	yes		yes[f]	yes	yes[h]	yes	yes	yes	--	yes		yes	yes		yes
Should all other money received reduce the amt. of the award?	yes	yes	yes	yes	no[c]	no[d]	no[e]	no[g]	yes	yes	yes	yes	no[i]	no[e]	yes	--	yes	yes	--	yes
Should compensation scheme make awards for pain and suffering?	no	no	yes	yes	no	yes	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	no	no	no	no
If yes, should there be a maximum award allowed?			yes[a]	yes[b]		no		no	no	no	no	no	no	no	no	no				

[a] $1,000.00

[b] $5,000.00

[c] coverage provided by private insurance paid for by the injured person and social security benefits should not reduce the amount of the award

[d] insurance benefits and workmen's compensation benefits should not reduce the award

[e] life insurance premiums should not reduce the award

[f] wife excluded; children included

[g] pensions and insurance payments should not reduce the amount of the award

[h] except in fatal cases

[i] gifts of money should not reduce the amount of the award

[j] but the board should have a discretion to withhold compensation or make special provision for its administration if it considers that the money will otherwise find its way to the wrongdoer, directly or indirectly

To some degree, all of the jurisdictions considered here except for California, exclude from compensation the members of the offender's family or "household" who are the victims. The rationalization behind this exclusion is that an administrative finding of facts would be more difficult in cases involving members of the same family or household and that awards, if made, might benefit the offender. It is suggested that this exclusion is unwarranted. Other cases are accepted where the facts are just as difficult to determine. For example, claims are accepted by those injured by strangers where there are no witnesses and the attacker is not apprehended. Claims are also accepted where there are offenses involving strangers that occur within homes. Preventing the offender from sharing the award poses a technical problem but various solutions have been suggested. For one thing the award could be limited to the payment of expenses and unpaid creditors, such as doctors and hospitals, could be paid directly. If there is such an arbitrary exclusion as this it would unduly penalize the innocent members of the family or household. An extreme example would be the denial of any compensation to the children where one spouse kills the other or the spouses kill one another. Program administrators favor exclusion of some or all of the members of the offender's family or "household" by a margin of fourteen to six, as shown in Table 22.

As considered in the review of tort actions, awards from the crime compensation program are reduced or repaid in part or whole depending upon the amount of the judgment in the civil suit. Other kinds of monies received by the crime victims have caused some problems for those trying to decide whether such monies plus awards from the compensation program would amount to double recovery or not. Five of the seven jurisdictions considered here bar awards from their compensation programs that would duplicate monies received by the victim from all other sources. In Hawaii and New Zealand only monies received from private insurance are not deducted from awards. The practice of New York is recommended. There the award is made only for out-of-pocket expenses and net loss of support or earnings. Program administrators polled believe that the compensation scheme should prevent double recovery by eighteen to one. Twelve believe that <u>all</u> other money received should reduce the amount of the award. Five believe that private insurance benefits should not reduce the amount of the award. One believes that gifts should not reduce the amount of awards. These preferences are related in Table 22.

Only two of the jurisdictions considered here compensate "pain and suffering." Although allowed in tort actions, it is generally felt that the reasons for its being allowed there, to punish the wrongdoer and to expand recovery to indirectly compensate for disallowed expenses, are not

suitable reasons for its being allowed in crime compensation programs. Since little is known about the emotional impact of crimes causing no physical injury, and even less about the dollar loss, it is suggested that "pain and suffering" be excluded as a compensable loss from crime compensation programs. Twelve of the program administrators polled favor making awards for "pain and suffering." Eight do not favor such awards. Of those who favor such awards, only two believe that a maximum award should be allowed. These preferences are related in Table 22.

A generalization about the preferences and opinions of those administrators of crime compensation programs considered here is that their preferences and opinions tend to mirror the provisions of their respective programs. There would seem to be an inclination on the part of each administrator to accept, for the most part, the particular arrangements and provisions of his operating program as being ideal and to equate them with "model" recommendations. A review of major policy decisions regarding these compensation programs and the expressed preferences of program administrators supports this conclusion. This is revealed by comparing practices and preferences regarding the definition of "criminal offense," minimum loss requirements, maximum payment limitations, victim participation, victim need, and program exclusions.

Program administrators whose jurisdictions have adopted

a generic definition of "criminal offense" favor a generic definition by nine to two. In the two jurisdictions where a list of crimes has been put in the compensation program, administrators favor this arrangement three to zero. In the two jurisdictions where the compensation program uses an existing list of crimes in the jurisdiction's penal code, two administrators favor this arrangement and two administrators do not. Opinion follows practice then in two of these three practices. Support and opposition is evenly divided in the third. Overall, the preference of fourteen administrators follows the practices of their jurisdictions; the preferences of only four administrators do not comply with the practices of their jurisdictions.

In the three jurisdictions where "need" is a requirement three administrators support it and two do not. In the three jurisdictions where there is no "need" requirement, twelve administrators believe that this is preferable; none support a "need" requirement. Opinion follows practice then in both instances. The preference of fifteen administrators follows practice; the preference of only two does not.

All twenty administrators said that victim participation should be considered in making awards. Only one jurisdiction has no provisions requiring such considerations. In this jurisdiction opinion does not follow practice; in all other jurisdictions opinion does. Individual administrator's preferences follow practice by seventeen to three.

Three jurisdictions have no minimum loss requirement. Three administrators from these jurisdictions believe that there should be a minimum loss requirement and two do not. Opinion does not follow practice here. In three jurisdictions there is a minimum loss requirement. Thirteen administrators from these jurisdictions favor a minimum loss requirement; none favor such a requirement. Here, opinion follows practice. Administrator's preferences follow practices by fifteen to three.

There is some form of maximum payment, flat rate or other, prescribed in the compensation programs of all of the jurisdictions considered here. Ten administrators favor a maximum payment requirement; eight do not. Of those who favor a maximum, nine favor a flat rate maximum and one favors a maximum periodic payment and a maximum number of payments. Of those who favor a maximum payment their preference for a flat rate or other maximum follows their jurisdiction's practices eight to two.

For practical purposes all jurisdictions considered here exclude property from their compensation programs. These administrators favor such exclusion eighteen to two. Opinion thus follows practice here also.

Only one jurisdiction considered here does not exclude members of the offender's family or "household." Administrators of that program favor exclusion by two to one. Opinion does not follow practice here. In all of the other

jurisdictions there are limitations imposed in this area. Exclusion of all of the members of the offender's family or "household" is favored by twelve administrators; inclusion is favored by three administrators. One administrator favors the exclusion of spouses and the inclusion of children and one who favors exclusion favors inclusion only in fatal cases. Opinion follows practice here.

Administrators from the two jurisdictions that compensate for "pain and suffering" favor such compensation by three to zero. Administrators in other jurisdictions also favor inclusion by nine to seven. Opinion follows practice in the first instance but not in the second. Overall however the preferences of ten administrators follow the practices of their jurisdictions; nine do not.

In the sixteen categories and subcategories considered above, a majority of program administrators support their jurisdiction's practices in eleven instances, do not support them in four instances, and divide evenly in one instance. There is an individual-member preference that supports his jurisdiction's practices in one-hundred-forty-four out of one-hundred-eighty-four indications of preference.

CONCLUSIONS

It is appropriate at this point to direct attention to the most significant aspects of performance that might be thought indicative of adequacy or inadequacy so far as the administration of the criminal injury compensation programs is concerned. Two divisions are made here in program performance to evaluate the degree to which these programs are meeting the needs of the victims and the needs of the state.

Meeting Needs of Victims

Types of Payments Made to Victims

Payments to victims of crime can be made in several ways. The total award can be paid in one lump sum or over time in periodic payments. In either case there can also be emergency, interim, or partial payments made before the case is decided. The admonition here is for the greatest flexibility possible in the making of payments. The compensation board should have the discretion to choose the manner of payment that best fits the individual case. For some cases a lump sum payment is most suitable. These cases would include those where the injury is minor or temporary. In other cases, periodic payment is most suitable. Where the injury is serious or there is long-term

disability there is a need for administrative supervision of the case. Continued review of such cases should contribute to the prevention of unjust enrichment or inadequate compensation. Although such review would require more involved administrative actions it would not necessarily increase the costs of the compensation program. Review may result in the amount of the award being reduced where circumstances change and compensation is no longer justified. All of the jurisdictions considered here can make lump sum payments. In addition, Hawaii, New York, and New Zealand can also make periodic payments if they desire to to so. Also, Great Britain, California, New York, Maryland, and New Zealand make interim, emergency, or partial payments before the case is decided, if they think it desirable.

When are Victims Paid?

To best meet the needs of the victims, it is desirable that payments be made to them as soon as practicable. There should be no long delay between the time when a claim is filed and a decision is reached on the claim. If the decision is to make an award to the claimant there should also be no long delay between the making of this decision and making payment to the victim. For various reasons, the investigation of claims may be delayed. For example, the state's attorney may request the board to discontinue investigation until he advises that the board can proceed. It may also be impossible to determine the degree

of permanent disability until maximum physical improvement is reached. In many instances, Blue Cross or Blue Shield benefits are slow in being decided. Some hospitals only file quarterly claims with Blue Cross or Blue Shield. Where it is necessary to know what the amounts of payments from these sources will be before a claim can be settled, payment to the victim by the compensation board will be delayed. In other instances, delay results, particularly in death claims, while Social Security benefits are being determined, as well as Workmen's Compensation claims being decided. Aside from these delays, the usual investigation of claims necessarily takes time. Efforts must be made to verify the factual data supplied by claimants and in some instances witnesses must be located and interviewed, particularly in provocation cases. Factors unique to a particular case will cause the amount of time needed for investigation to vary considerably from case to case but averages are instructive and indicative of performance. For example, in Maryland the average time required for the investigation of a claim and the reaching of a decision on that claim is sixty days, although many decisions are made in less than thirty days.[535] In New York, after a claim is assigned to an investigator, a final report is expected from him within

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[535]Maryland, Criminal Injuries Compensation Board, Second Annual Report, 1971, p. 9.

thirty days.[536] If all of the information necessary for the report cannot be obtained within this period the control system allows an additional fifteen days, or more, depending upon what is known about the likelihood of being able to secure the desired information.[537] Similarly, concern with the desire to complete investigations as quickly as possible is evidenced by British experience. The following accounts of that experience indicate that a large majority of British claims are investigated within a six-month period:[538]

Time taken to investigate cases:	1970-71 Percent	1969-70 Percent	1968-69 Percent
Not more than 3 months	27	39	31
More than 3 months, not more than 6	42	39	42
More than 6 months, not more than 9	20	15	17
More than 9 months, not more than 12	7	5	7
More than 12 months	4	2	3
	100	100	100

The postal strike and a large staff turnover, necessitating training, are given as the reasons for the longer time being required for the investigation of claims in 1970-71.[539] It appears that a conscientious effort is being made by program administrators to expedite the handling of claims and to

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[536]New York, Crime Victims Compensation Board, 1969 Annual Report, Leg. Doc. (1970), No. 97, p. 10.

[537]Ibid.

[538]Great Britain, Criminal Injuries Compensation Board, Seventh Report, Accounts for the year ended 31st March, 1971, Cmnd. 4812, Nov. 1971, p. 4.

[539]Ibid.

render decisions on them as quickly as possible.

There are other time elements than that of investigations present in these compensation programs. There are many variations in the programs respecting these time elements that result in considerable differences in the time that it takes for payment to be made to the victims of crime. In Massachusetts, where the compensation program is administered by the district courts, the clerk of the district court forwards to the state treasurer a certified copy of decisions to make awards. "The state treasurer without further authorization shall, subject to the appropriation, pay the claimant the amount determined by the court."[540] On the other hand, in Hawaii, "the victims and dependents do not receive payment unless and until a legislative bill is enacted specifically approving the awards. In many instances this means a time lag of at least eight months, and in many instances, as many as eighteen or twenty months between injury and compensation."[541] This unsatisfactory arrangement is compounded by there being no provision for emergency or interim payments in Hawaii's compensation program. This combination of practices "has caused serious financial hardship to the victims and dependents."[542] A

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[540] Mass., Annotated Laws of Massachusetts, Chapt. 258A, sec. 6.

[541] Hawaii, Criminal Injuries Compensation Commission, Fourth Annual Report, Dec. 20, 1971, Appendix D.

[542] Ibid.

request has been made of the Hawaii Legislature that it create a revolving emergency payment fund of $100,000.00 "to make emergency payments to victims and dependents who are in immediate need of funds to meet hospital, medical, funeral or burial expenses arising out of the injury or death."[543]

Other jurisdictions are between these two extremes of practice in making payments to victims. After the compensation board reaches a decision to make an award, several other things may delay payment to the victim. For example, in New York, the victim has the right within thirty days following the board's decision to state his dissatisfaction with the decision and request a full board review.[544]

> Assuming that the claimant responds within the 30 day period advising that he is satisfied with the decision, it must then be sent to the Attorney General and the Comptroller who have 30 days from the receipt of the decision to advise the Board whether they approve the decision.[545]

The New York Crime Victims Compensation Board has requested that the Legislature reduce this period in which the Attorney General and Comptroller approve or reject the decision

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[543] Ibid., Request made by Myron B. Thompson, Director, Dept. of Social Services & Housing.

[544] New York, Crime Victims Compensation Board, 1969 Annual Report, op. cit., p. 8.

[545] Ibid.

to fifteen days.[546] Following review by the Attorney General and Comptroller a warrant must be prepared for the Comptroller and it takes another two to three weeks before a check is issued.[547] Similarly, in Maryland, after the compensation board decides to make an award that decision is subject to review by other state officials before payment is made. There, the Attorney General and Secretary of the Department of Public Safety and Correctional Services have thirty days to take an appeal to the appropriate court if they think the award is improper.[548]

The record indicates that claimants to whom awards have been made do get their money. There may be considerable delays in doing so in some instances but there is no record of defaulting on claims payable through these compensation programs. It was necessary for the New York Crime Victims Compensation Board to request an additional $100,000.00 to meet its needs in 1970, but this request was honored and all of the original appropriation plus this deficiency appropriation was used in the payment of awards.[549]

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[546] New York, Crime Victims Compensation Board, 1970 Fourth Annual Report, op. cit., pp. 8-9.

[547] Ibid.

[548] Maryland, Criminal Injuries Compensation Board, Second Annual Report, loc. cit.

[549] New York, Crime Victims Compensation Board, 1970 Fourth Annual Report, op. cit., p. 12.

It is most desirable form the victim's point of view to receive compensation as soon as possible. This need must be balanced however with the needs of the state. Investigations are necessary and do take time. To best meet the needs of the victim and the state there should be a strong effort made to staff and equip the compensation boards to make investigations in the shortest time consistent with the legitimate purposes of investigation. The longer the delay in making payment, the weaker will be the impact of the compensation program.

Minimum Loss Requirements

For several reasons it is suggested that there be no minimum loss required for the filing of claims. California, Hawaii, and New Zealand at present require no minimum loss before one is eligible for compensation. The reasons for favoring a minimum loss requirement are that it prevents the filing of numerous claims for small amounts that are alleged to be too trivial to bother with and that consequently it reduces the administrative load of the compensation board. These contentions do not seem substantial. First, the incidence of crime being what it is, a minimum loss requirement would prevent compensation being paid to those who are most in need and for whom no loss is "trivial." The burden of loss is relative and it is relatively larger for those who are most likely to become victims of crime. As for the allegation that claims for small amounts would

greatly increase the administrative workload and costs, it appears to have little to substantiate it. Rather, since there has to be an investigation of claims anyway to determine if the claimant is eligible for compensation or not there would seem to be little opportunity for effecting savings here. New York has handled any difficulties that might follow its having no minimum loss requirement by conducting preliminary investigations by phone and letter prior to accepting claims. Enlightened administrative practice, for the reasons mentioned, would seem to be far preferable to imposing a minimum loss requirement.

Maximum Payments

All of the jurisdictions considered here have provisions prescribing maximum payments in their crime compensation plans. But there are significant differences among the types of maximum payments prescribed. All of the state programs in the United States prescribe a flat-rate maximum. Great Britain's program prescribes a maximum payment rate for loss of earnings or earning capacity. This rate is tied to average industrial earnings at the time the injury was sustained and cannot exceed twice this average. New Zealand's program prescribes a specific maximum periodic payment for a specified maximum period. Since the objective of social insurance is income maintenance, it is suggested that Great Britain's practices are preferable. A maximum payment which takes the form of a

flat-rate maximum or one that prescribes a specific maximum periodic payment for a maximum time period reflect primary concern with cost control rather than income maintenance. It is suggested also that the payment schedule make allowance for variation in the number of dependents of the victim.

Review of Decisions on Claims

Review of decisions on claims helps to meet the needs both of the victim and the state. It is suggested that there be provision for internal and external review. Internal review is desirable as a matter of equity and also is particularly suitable for achieving uniformity in claims disposition where there is an initial single-member decision on claims. External review should be limited to points of law. Such review will help assure that the board operates within legally imposed limitations upon its operations.

Victims Who are Members of Offender's Household

To some degree, all of the jurisdictions considered here except for California, exclude from compensation the members of the offender's family or "household" who are the victims. The rationalization behind this exclusion is that an administrative finding of facts would be more difficult in cases involving members of the same family or household and that awards, if made, might benefit the offender. It is suggested that this exclusion is unwarranted. Other

cases are accepted where the facts are just as difficult to determine. For example, claims are accepted by those injured by strangers where there are no witnesses and the attacker is not apprehended. Claims are also accepted where there are offenses involving strangers that occur within homes. Preventing the offender from sharing the award poses a technical problem but various solutions have been suggested. For one thing the award could be limited to the payment of expenses and unpaid creditors, such as doctors and hospitals, could be paid directly. If there is such an arbitrary exclusion as this it would unduly penalize the innocent members of the family or household. An extreme example would be the denial of any compensation to the children where one spouse kills the other or the spouses kill one another.

Meeting Needs of the State

Relationship with Courts

Should board action on a claim be deferred if there is a criminal case pending? Should the board accept a criminal conviction as sufficient proof that a crime has occurred? These two practices are related to one another. There are interests of the victim, the criminal, and the state that should be protected. To achieve this it is necessary that the board's actions do not influence the court's actions and vice versa that the court's actions do

not influence the board's actions. To best protect the interests of the victim and the accused attacker, it would seem preferable to neither defer board action on a claim if a criminal case is pending or to accept a criminal conviction as sufficient proof that a crime has occurred. On the one hand the proceedings and action of the board in such a case could be kept under wraps until the criminal case has ended. This would protect the interests of the victim by not forcing him to wait so long for the settlement of his claim and at the same time would not interfere with the interests of the accused attacker. On the other hand, by not taking a criminal conviction as sufficient proof that a crime has occurred and by not deferring action on the claim for compensation for the victim until the criminal case has ended, the victim is not likely to have the same concern that the accused be found guilty. This would best protect the interests of the accused. Such a relationship between the board's and the court's actions would keep their proceedings as separate as possible and minimize the influence that one's actions would have upon the other's.

Preventing Fraud

Several types of safeguards have been incorporated into the compensation programs considered here to protect the interests of the state. Two time deadlines, which must be met by the claimant for him to be eligible for

compensation, have been written into the programs considered here. The first requires that the crime victim must report the occurrence of the crime to the police. In three of these jurisdictions the police must be notified within a specified time. In two others the police must be notified "without delay" and in one the victim must "cooperate" with the police. The time deadline in reporting the crime to the police has the dual objectives of controlling fraudulent filing of claims for compensation and aiding the police by bringing to their attention the commission of crimes. To best meet these objectives, it is suggested that a short, definite time period be specified, with the compensation board given the discretion to waive it for good cause. The other time deadline applies to the filing of a claim with the compensation board. Here too, a specific time period is preferable, with board discretion to waive it for good cause. A considerably longer time period can be specified for filing the claim than for reporting the crime to the police. Four of these jurisdictions have a limitation of one year or longer. Such a long time period is justified due to the fact that latent injuries may not become apparent for quite a while after an attack. In other instances there may be a lengthy investigation of the allegations of criminal attack.

It is in the public interest that the claimants be required to submit to a medical examination, including a

psychiatric examination, if the board thinks it desirable. Reports of such examinations together with police reports will better equip the compensation board to make its decisions and reduce the potential for fraud.

Additional precautions against fraud have taken the form of allowing review of board decisions making awards by other public officials. In Maryland, for example, decisions that make awards on claims are sent to the Attorney General and Secretary of the Department of Public Safety and Correctional Services for review before payment is made to the claimant. Each of these officials has a period of thirty days to take an appeal to the appropriate court if he thinks the award is improper.[550] Similarly, in New York, board decisions are sent to the Attorney General and the Comptroller for their review. They have thirty days to advise the board whether they approve the decision.[551] These reviews have not yet resulted in board decisions not being accepted.

Requiring Repayment to State by Compensation Victims

Crime compensation programs have not emerged as replacements for traditional remedies. Rather, they represent an

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[550] Maryland, Criminal Injuries Compensation Board, Second Annual Report, op. cit., p. 9.

[551] New York, Crime Victims Compensation Board, 1969 Annual Report, op. cit., p. 10.

alternative remedy. If the victim desires, he can still seek relief through traditional routes. He does not have to rely upon the crime compensation program in any of these jurisdictions considered here. In fact, even if he does file a claim with a compensation board and receives an award, he may still bring a civil suit against his offender. Although the experience of these compensation boards indicates that it is of little practical significance, it has been indicated that public opinion demands that the compensation plans include provisions to prevent "unjust" compensation. The effect is that repayment must be made by victims who receive awards from the compensation program and from the offender through tort actions in the courts. The amount of repayment would depend upon the relative amounts received from each source. The victim would be left with a net amount, after repayment, equal to the board's award. If the civil judgment is larger, the entire amount of the award from the compensation board would be repaid.

Problems

If there has been a major problem in administering crime compensation programs thus far it has been one of making known the existence of the programs, the benefits, and terms of eligibility. Studies of crime records in several jurisdictions have revealed that not nearly all of those who would be eligible for compensation have filed

claims. It is felt that this failure to file claims is due to the victims not knowing that they can do so. Two areas need attention here. Efforts need to be made to inform the general public so that it might become a matter of general knowledge that the compensation program exists and efforts need to be made to specifically inform the crime victim of his eligibility to file a claim for compensation. By making the compensation program generally known and by requiring a reporting to the police of the criminal act as a condition of eligibility for compensation it seems likely that the gap between reported and committed crime could be reduced. When there is a reporting of the crime to the police it is recommended that it become a requirement for the police to inform the victim of the existence of the crime compensation program, to furnish him a form for filing a claim, and to give him information regarding the proceedings of the crime compensation board. An effective means of directing the crime victim to the compensation board, that is being used in New York, is to secure the cooperation of physicians and hospitals in referring the victim to the board.[552] Most of the programs lack such practices as these and this deficiency has become the object of considerable criticism.

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[552] Ibid. p. 17.

Evaluations

In reviewing the general themes and theoretical foundations of criminal injury compensation programs, several tentative conclusions can be made at this time regarding expectations and performance. First, these programs, where operational, have been readily accepted and supported by the public and established agencies of government. The latter have displayed an attitude toward these programs that has been characterized by cooperation and a willingness to lend assistance.[553] Harmonious working relationships stemming from this favorable inter-agency assistance has no doubt enabled these programs to be implemented more effectively and more quickly than would otherwise be the case should inter-agency conflict or competitiveness characterize the relationship. This would seem to support the conclusion that there has been an acceptance of the uniqueness of these programs and the thought that they should administratively take their place alongside other special-purpose agencies previously created to administer social insurance programs.

While the immediate objects of concern for these programs are the victims and/or their dependents, there is

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[553]Cf. New York, Crime Victims Compensation Board, 1968 Second Annual Report, op. cit., p. 12; Maryland, Criminal Injuries Compensation Board, First Annual Report, op. cit., p. 9; Hawaii, Criminal Injuries Compensation Commission, Fourth Annual Report, op. cit., p. 14.

also interest in realizing more general societal benefits. Chief among these are social stability, victim cooperation with the police and public prosecuting attorneys, and the encouragement to the individual to become physically involved in helping to prevent crime or corral lawbreakers. This last objective is sought through the Good Samaritan provisions of several criminal injury compensation programs. There have been varying degrees of success and failure realized in the efforts to achieve these objectives in practice. First, regarding social stability, it is believed that these programs have made a positive contribution toward its maintenance. Since there has been no research of victim opinion as yet, conclusions that have been reached have been based upon the voluntary responses of victims, mostly via letters to governors and compensation boards. These responses have been quite positive. Random comments from victims indicate feelings condusive to the maintenance of social stability. Comments such as, "programs such as this help to restore one's faith in his fellow man," or "it is indeed gratifying to find that someone does care," seem to be typical claimant responses.[554] There has also been experience in observing that the existance of such programs "not only serves as a great boost to the victim's morale but also to the members of his family."[555] There are

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[554]New York, Crime Victims Compensation Board, 1970 Fourth Annual Report, op. cit., p. 16.

[555]New York, Crime Victims Compensation Board, 1969 Annual Report, op. cit., p. 18.

indications that except for these programs many victims of crime would face the severe prospects of having to go into debt for several years to pay the medical expenses alone, the retirement of which would reduce future spendable income and be detrimental to the victim's family. Other victims could be expected to lose their homes, having no funds with which to meet mortgage payments. Others would have to go on welfare to continue to exist.[556] Compared to these alternatives, which would be very real for many victims of crime, without a criminal injury compensation program, such programs do have a stabilizing influence. They thus benefit the victim and/or his dependents directly and, through their maintenance, also benefit the larger society.

The suggestion was encountered earlier in this study that economic incentives should make the crime victim more willing to cooperate with the police and public attorneys and enable them to be more effective in apprehending, prosecuting, and convicting criminal offenders. There are indications that this objective is being realized by tying compensation from these programs to such victim cooperation.[557]

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[556] Cf. Ibid., pp. 18-19.

[557] Cf. New York, Crime Victims Compensation Board, 1968 Second Annual Report, op. cit., pp. 11-12; Maryland, Criminal Injuries Compensation Board, First Annual Report, op. cit., p. 9.

"In this respect the victim who was an unwilling and uncooperative witness now becomes a willing and cooperative witness."[558] Because of the realities of crime and the problems of law enforcement related above, there is a great societal need for improving the administration of justice. The administration of justice does appear to be aided by these compensation programs. The economic incentive to report the occurrence of criminal acts and to divulge factual knowledge regarding the crime appears to be effective in producing such victim cooperation.

If the expectation in creating Good Samaritan programs or including provisions for such in more comprehensive compensation programs was to markedly increase the number of Good Samaritans, this expectation is not being realized. Nevada, it has been noted, which has only provisions for compensating the Good Samaritan, has made only four awards. Likewise, "Hawaii's experience does not support the conclusion that the provision increases the involvement of its citizens in the prevention of crime or apprehension of criminals."[559] In Great Britain in 1970-71, "21 awards were made to persons injured while assisting the police

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[558]Maryland, ibid.

[559]Hawaii, Criminal Injuries Compensation Commission, Fourth Annual Report, op. cit., Appendix C, p. 10 (letter from John Jubinsky, Hawaii Criminal Injuries Compensation Commission to Bertram T. Kanbara, Hawaii Attorney General).

compared with 15 in the previous year. 150 awards were made to persons attempting to prevent crime or to arrest an offender, compared with 132 in 1969-70."[560] These awards amounted to only a small portion of the 5,893 cases resolved in Great Britain in 1970-71.[561] Similarly, few awards have been made under California's Good Samaritan program. In five years of operation, between 1965-66 and 1969-70, only 33 awards were made.[562] It may be considered good "public relations" to make special provisions for compensating the Good Samaritan and there is an element of equity in after-the-fact compensation for the Good Samaritan who is injured or killed but the record so far indicates that such provisions cannot be expected to multiply the instances where individuals will initiate Good Samaritan actions.

In reviewing the efforts made in this paper, it may be asked, "What has been done here?" In response, several things that have been done might be noted. One objective has been, through an integrative and synthesizing effort, to provide a better understanding of the place and role of

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[560] Great Britain, Criminal Injuries Compensation Board, Seventh Report, Cmnd. 4812, Nov. 1971, p. 14.

[561] Ibid., p. 3.

[562] California, State Board of Control, Yearly Activity: Good Samaritan Program Claims (Mimeographed).

criminal injury compensation programs in the larger scheme of things. They have been viewed as an addition to other social insurance programs designed to achieve a greater measure of stability for the individual beneficiaries and for society as well.

Much of the attention of this paper has been directed toward making an administrative analysis of operating programs. Recommendations for changes in these programs have also been made so that they might be improved and strengthened. These recommendations have also been made for the purpose of providing guidelines to other jurisdictions that will consider the adoption of programs in the future. It is felt that something of value has been made available both to jurisdictions that have crime compensation programs and to those that will be considering the adoption of such programs in the future.

Program administrators have revealed themselves to be consciencious and pragmatic regarding their programs. They have continued to consider these programs as experimental and subject to improvement. They have therefore welcomed critical evaluations of their programs. Several have expressed appreciation for the efforts made in conjunction with this paper to gather opinions and judgments of program administrators and to make this information available to them.[563]

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[563]Letter from Walker Carter, Chairman, Criminal Injuries Compensation Board, Great Britain, Jan. 31, 1972; letter from

These additions to the understanding and knowledge of criminal injury compensation programs represent the contribution of this investigation. It is hoped that what has been undertaken here will be of value and use in the advancement of the further study and administration of these programs.

Joseph Pickus, Chairman, Criminal Injuries Compensation Board, Maryland, Feb. 29, 1972; letter from Stanley L. Van Rensselaer, Chairman, Crime Victims Compensation Board, New York, Jan. 31, 1972.

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APPENDIX

NEW MEXICO STATE UNIVERSITY
BOX 3BN, LAS CRUCES, NEW MEXICO 88001
AREA 505 646-4935

Department of Government and Philosophy

August 16, 1971

Dear Sir:

The attached questionnaire is being sent to members of crime compensation boards in Great Britain, New Zealand, New York, California, Hawaii, and Maryland. This attitude survey seeks to learn the opinions that have been formed as a result of the member's work in this new area. This project is being conducted in conjunction with the preparation of a doctoral dissertation for the Department of Political Science at The University of Oklahoma, Norman, Oklahoma. The responses will be consolidated and will not be identified by jurisdiction or respondant. From the responses, it is hoped that "model" recommendations can be suggested for those jurisdictions that may adopt crime compensation programs in the future.

Your assistance will be most highly appreciated.

Please indicate whether you desire a summation of the responses: Yes _____; No _____.

Sincerely,

James Brooks

James Brooks
Asst. Prof.

I. To administer the crime compensation program, would it be preferable to create a special compensation board _____, use an existing administrative body _____, or use the courts _____?

II. Where a special compensation board is created to administer the compensation program:

A. What number of board members is preferable? _____.

B. How should the members be chosen? _____.

C. What should the length of term of office be? _____.

D. Should the terms be staggered? Yes _____; No _____.

E. Should the members be subject to reappointment? Yes _____; No _____.

F. Should legal qualifications be prescribed for members? Yes _____; No _____.

G. Should medical training qualifications be prescribed for members? Yes _____; No _____.

H. Should other qualifications or limitations be prescribed for members? Yes _____; No _____.

1. If yes, what? _____.

I. Should the positions of the members be full-tim _____, or part-time _____?

J. Should members be paid only expenses _____, per working day _____, or a set annual salary _____?

III. Procedures of the Crime Compensation Board:

A. Should meetings of the board be public _____, or private _____?

B. Should the bases for decisions by the board include public records (Yes _____, No _____), and/or medical reports (Yes _____, No _____)?

C. Should action of the board be deferred if a criminal case is pending? Yes _____, No _____.

D. Should a criminal conviction be taken on its face as sufficient proof that a crime has been committed? Yes _____, No _____.

E. Should the standard of proof used by the compensation board be "beyond a reasonable doubt" _____, or "balance of probabilities" _____?

F. With respect to the review of decisions, should there be provision for internal review (Yes _____; No _____), and/or external review (Yes _____; No _____)?

IV. The Claimant and the Crime Compensation Board:

A. Should the claimant be required to have reported the alleged criminal offense to the police? Yes _____; No _____.

1. If yes, during what period of time? _____.

B. Should the claimant be required to submit to a medical examination? Yes _____; No _____.

C. Should the claimant be required to submit to a psychiatric examination? Yes _____; No _____.

D. Should there be a deadline on filing a claim after the occurrence of the alleged criminal offense? Yes _____; No _____.

1. If yes, what should the deadline be ? _____.

E. Should the claimant be given a copy of the rules governing the board's proceedings? Yes _____; No _____.

F. Should false statements by the claimant to the board be punishable? Yes _____; No _____.

G. Should legal aid for the claimant be permitted? Yes _____; No _____.

1. If yes, should it be paid for by the state? Yes _____; No _____. By the claimant? Yes _____; No _____.

2. If yes, should maximum fees or a maximum percentage of the award be prescribed by the compensation program? Yes _____; No _____.

H. Should the claimant be allowed to have the assistance of a friend in the proceedings before the board? Yes _____; No _____.

V. The definition of "criminal offense":

A. Should the compensation program use:

1. A generic definition of crime? _____.

2. A list of crimes put in the compensation plan? _____.

3. An existing list of crimes in the state's penal code? _____.

VI. Payments:

A. Should payments be made in the form of lump sum awards _____, periodic payments _____, or the board allowed to decide in each case _____?

B. Should the board be allowed to make emergency, interim, or partial payments before the case is decided? Yes _____; No _____.

C. Should there be provisions for reopening a case that has been decided should any party to the case deem it desirable to do so? Yes _____; No _____.

D. Should there be a minimum loss required for claims? Yes _____; No _____. If yes, what? _____.

E. Should there be a maximum limit on individual awards? Yes _____; No _____.

1. If yes, should the maximum limit be: a flat-rate figure (Yes _____; No _____), or some other maximum (Yes _____; No _____).

a. If yes, what? _____.

F. Should victim participation be considered in setting the award? Yes _____; No _____.

1. If yes, should it reduce the award in part _____, or cause no award to be made _____?

a. If in part, should it reduce the award by a specific sum _____, or result in a percentage reduction _____?

G. Should victim "need" be a prerequisite to the awarding of compensation? Yes _____; No _____.

H. Should the compensation scheme provide for repayment of awards should the claimant subsequently be successful in a civil action against the offender? Yes _____; No _____.

I. Should the compensation plan permit the board to take action directly against the offender to recover the amount of an award? Yes _____; No _____.

VII. Exclusions:

A. Should property loss or damage resulting from a criminal offense be included _____, or excluded _____, in/from the compensation program?

B. Should members of the offender's family or "household" be included _____, or excluded _____, in/from the compensation program?

C. Should the compensation scheme prevent "double recovery"? Yes _____; No _____.

1. If yes, should <u>all</u> other money received reduce the amount of the award? Yes _____; No _____.

a. If no, what monies should not reduce the amount of the award? _____.

D. Should the compensation scheme make awards for pain and suffering? Yes _____; No _____.

1. If yes, should there be a specific maximum award allowed? Yes _____; No _____.

a. If yes, what should the Maximum be? _____.

The following space may be used for additional remarks: