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CRIME COMPENSATION AS AN EMERGING FORM
OF SOCIAL INSURANCE

by

Emil M. Meurer, Jr.

A DISSERTATION

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The Graduate College in the University of Nebraska
In Partial Fulfillment of Requirements
For the Degree of Doctor of Philosophy
Department of Economics

Under the Supervision of Professor George Rejda

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Crime Compensation as an Emerging Form of

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CHAPTER I

INTRODUCTION

Crime is a social problem recognized by most members of society. This chapter will consider the impact of crime, particularly violent crime, on members of society. To this end, a review of (1) the trend in crime rates, (2) the financial losses associated with crime, (3) the areas most adversely affected by crime, and (4) the destitution induced by crime will be considered. The chapter will then discuss the rationale for a plan to compensate victims of crime for their losses. In conclusion, the objectives and limitations of the study will be stated.

Nature of the Problem

The existence of crime in the society is a well established fact; however, the impact of crime on individuals is often ignored. What are the trends in crime? How serious is the loss which results from crime? Where is the rate of crime the highest? How is the victim affected? If the nature of the problem of crime is to be understood, these questions must be resolved.

Increasing Crime Rates

A brief review of the available data compiled by the Federal Bureau of Investigation confirms that crime is increasing nationally. Statistics on the number of offenses are collected by the Federal Bureau of Investigation and published annually in the report, Crime in the United States, Uniform Crime Reports. According to this source, violent crime rose 156 percent between 1960 and 1970, and 90 percent for the five year period from 1966 to 1971. In 1971, over 810,000 violent crimes were reported to the Bureau.¹ This amounts to one crime of violence every thirty-eight seconds. In Figures 1 and 2, the percent of increase in crimes of violence and total crimes is shown. The increase in the crime rate, which makes adjustment for population increase, is also shown. As indicated by these figures, the rate of violent crime has risen faster than the total crime rate.

While the Uniform Crime Reports furnish the only comprehensive national crime statistics, only seven crimes are included. Violent crimes include murder, forcible rape, robbery, and aggravated assault. Many violent crimes are omitted in the statistics. Another shortcoming of the Federal Bureau's statistics is indicated by the Commission on Law Enforcement and the Administration of

¹Federal Bureau of Investigation, Crime in the United States, Uniform Crime Reports 1971 (Washington, D.C.: U.S. Gov't. Printing Office, 1972), p. 5.

CRIME AND POPULATION
1966-1971
PERCENT CHANGE OVER 1966

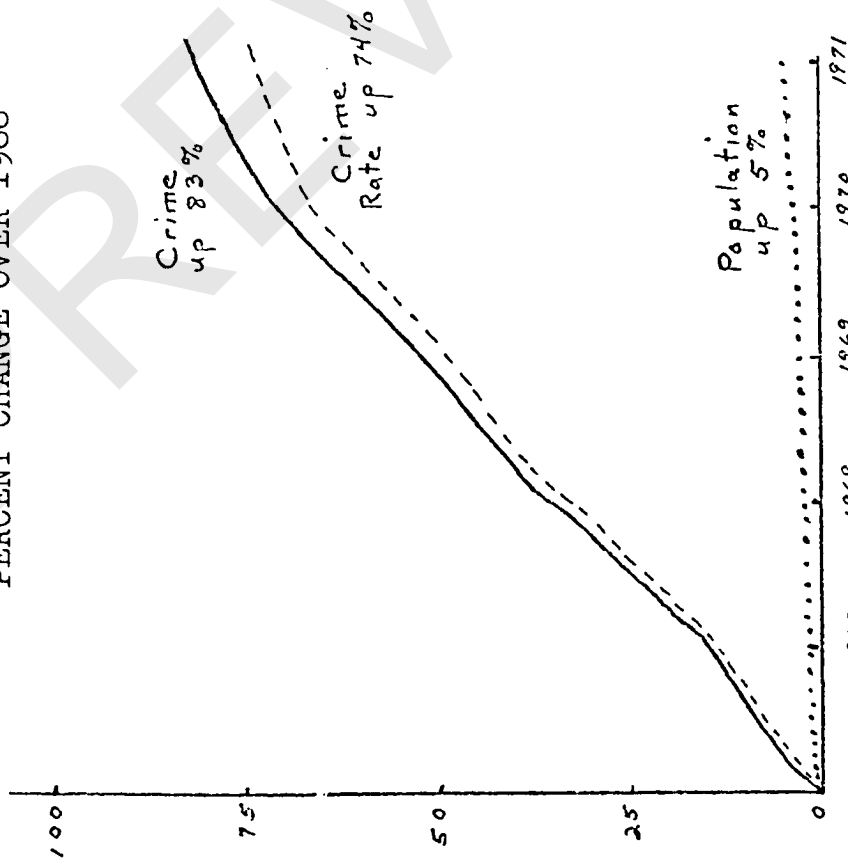


Fig. 1

Source: F.B.I., Uniform Crime Reports
1971.

CRIMES OF VIOLENCE
1966-1971
PERCENT CHANGE OVER 1966

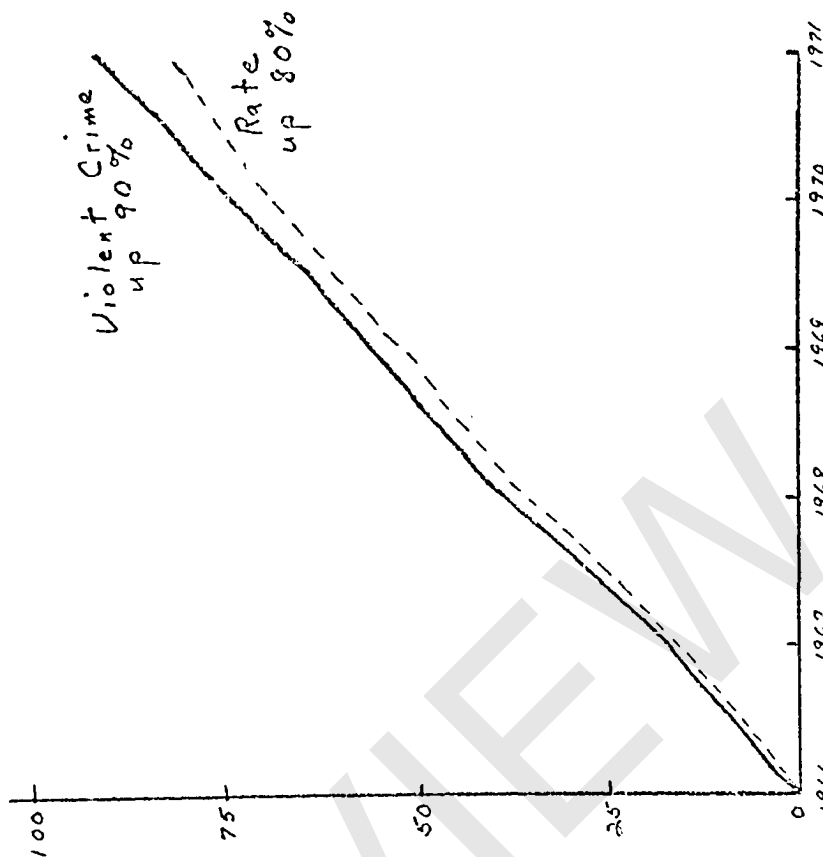


Fig. 2

Source: F.B.I., Uniform Crime Reports
1971.

Justice. The Commission estimated the true number of major violent crimes was roughly twice the reported rate.² This is due in part to the omission of some crimes, but the failure of crimes to be reported to the Federal Bureau, or even to the local police, is a more important explanation. This means the true number of violent crimes is substantially understated. Even so, it is apparent that both the total number of crimes of violence and the rate at which they have increased show a sharp upturn during the decade of the sixties.

Substantial Financial Loss

In terms of mere numbers, crime is a significant social problem in the United States. However, mere numbers do not tell the whole story. More important is the amount of financial loss, both direct and indirect, suffered by victims. The President's Commission on Law Enforcement estimates an \$800 million dollar annual loss in earnings and additional medical expenses caused by crimes against the person. In addition, loss to property is estimated at \$4 billion dollars annually.³ In 1969, the Small Business Administration concluded that property losses to business probably exceeded \$3 billion dollars

²Task Force on Assessment, the President's Commission on Law Enforcement and Administration of Justice, Crime and Its Impact (Washington, D.C.: U.S. Gov't. Printing Office, 1967), pp. 138-56.

³Ibid., p. 142.

annually. This estimate is based on the crimes of burglary, robbery, vandalism, shoplifting, employee theft, and losses on bad checks.⁴ These estimates are based on reported crimes and understate the loss if unreported crimes are frequent. It should be noted that losses arising from pain and suffering, lost earning potential, reduction of personal security and well-being, and increased costs of insurance are not even considered in the estimated costs of crime. It seems that the figures cited are a conservative estimate of the true cost of crime in the United States.

If the \$800 million dollar estimate of the President's Commission is adjusted to reflect the increase in crime between 1967 and 1971 and the inflation which occurred during the period, it would place the personal loss at \$1.6 billion dollars in 1971.⁵ This means the average loss of each violent crime is slightly under \$2,000. However, this includes only extra medical expenses and actual loss of income.

⁴U.S. Department of Commerce, Small Business Administration, Crime Against Small Business (Washington, D.C.: U.S. Gov't. Printing Office, 1969), p. 8.

⁵According to the Federal Bureau of Investigation, as reported in the Uniform Crime Reports, the number of violent crimes in 1967 was 495,000, and by 1971 had risen to 810,000. The Consumer Price Index was used to measure the amount of inflation. In 1967, the index had a value of 100, while in 1971, it was 121.3. A ratio between crimes and dollar loss was then determined and the result multiplied by the price index to obtain the 1971 figure.

Profile of High Crime Rate Areas

Both the number of crimes and the financial loss of the victims are impressive, but the impact of these crimes and losses are much greater in some segments of the society than in others. According to a comprehensive study conducted by the National Commission on the Causes and Prevention of Violence, the profile of high crime areas indicates:

1. Violent crime is a phenomenon of large cities. The twenty-six cities with 400,000 or more population contain about 17 percent of the nation's total population, but contribute about 45 percent of all major violent crimes.
2. Most of the violent crimes are committed by males between the ages of fifteen and twenty-four.
3. People at the lower end of the economic and occupational scale tend to commit a large percentage of violent crimes. A local study of the Philadelphia crime rate, conducted by the University of Pennsylvania, concluded that 90 percent or more of criminal homicides, forcible rapes, and robberies were committed by persons ranging from skilled laborers to the unemployed.
4. Violent crimes in the cities are disproportionately higher in the ghetto slums. The Commission noted that the arrest rate for Negroes was much higher than for whites in all major crime areas, but concluded this

was not racial, but a result of conditions of life in the ghetto slums.

5. The victims of assaultive violence in the cities have the same characteristics as the offender. Victimization rates are generally the highest for males, youths, poor persons, and blacks. Robbery victims, however, are often older whites. The Commission also noted that in two-thirds of the aggravated assaults and homicides in the city, and in three-fifths of the rapes, the victim is a Negro, and that victimization rates for violent crimes are much higher in lower income groups.

6. Homicide, aggravated assault, and rape appear to be crimes of passion among intimates and acquaintances; robbery does not display this tendency.

7. The greatest proportion of violent crimes is committed by "repeaters," that is, those who are not first time offenders.

8. About one of every twenty-seven persons in the United States is a victim of crime each year, while perhaps one of every 200 is a victim of a crime of violence.⁶

Impact on the Victim

Based on the above profile of violent crimes, the following conclusions seems appropriate. By far the

⁶Adapted from the National Commission on the Causes and Prevention of Violence, Final Report of the National Commission on the Causes and Prevention of Violence (Washington, D.C.: U.S. Gov't. Printing Office, 1969), pp. 20-22.

largest percentage of violent crime is centered among those least able to absorb the financial burden of crime, namely, those whose existence is already cloaked in poverty or near poverty. This is true of both the criminal and the victim. While the rate of violent crime has increased, this increase has hit much harder at those who can least afford to bear the burden of such crimes.

Against this background of the magnitude and cost of violent crime, the tendency of violent crimes to increase, and the financial plight of many crime victims, it is strange to find that only California, Hawaii, Maryland, Massachusetts, Nevada, New Jersey, and New York have enacted legislation to alleviate the financial predicament of crime victims.

These states have passed legislation to compensate crime victims under certain circumstances. When crime compensation is discussed in this study, it will be understood to mean a formally sponsored state plan, designed to compensate victims of violent crimes for losses suffered due to crime. Such compensation may be awarded to the victim on the basis of financial need or the basis of legal right. It is not necessary that the plan reimburse all types of losses, nor does the plan have to reimburse covered losses for the full amount of the loss.

Rationale for Crime Compensation

The U.S. Constitution recognizes the duty of the state to "insure justice" and to "provide for the general welfare" of the constituency. Charged with these responsibilities, it is the duty of the state to prevent crime and to protect the victim if unable to prevent crime. Based on data cited earlier, it is apparent that the state has found it impossible to prevent crime. This failure suggests the rationale for a crime compensation program.

Failure of Existing Methods of Recovery

Existing mechanisms in society do not offer an adequate method for the victim to find meaningful redress from the burden he suffers.

Private insurance.---In most cases, private insurance fails to provide a remedy for losses to the victim. While health insurance coverage of some sort is enjoyed by a majority of the population, it is generally inadequate to cover the medical expenses incurred by the victim of crime.⁷ Disability income insurance for replacement of lost earnings is almost nonexistent among the lower income segments of society. This is true for two reasons: (1) the premium cost of coverage is relatively high compared

⁷While 85 percent of the population is protected by one or more forms of private health insurance, coverage of those with incomes below \$5,000 is inadequate. See Health Insurance Institute, 1970 Source Book of Health Insurance Data (New York: Health Insurance Institute, 1970), p. 18.

with the amount of income available for the purchase of insurance, and (2) the underwriting standards often prevent the insuring of many persons who are adversely affected by crime. The outcome is obvious; victims of crime are not being indemnified for their losses through the private insurance industry. One study indicates that only 9 percent of the victims of crime receive any indemnification for loss.⁸

Restitution.--It would seem logical that the perpetrator should be made to bear the financial burden of his act. Precedent for this can be traced to the Mosaic Law and the Code of Hammurabi and, in more recent times, to the American Indians and several African cultures. While simple justice may dictate this solution, its application is often impractical or impossible. First, it assumes the identity of the criminal is established and, second, he is apprehended. The Uniform Crime Reports of the Federal Bureau of Investigation indicates that the number of unsolved crimes, both violent and nonviolent, is extremely high.⁹ This covers only known crimes reported to the Federal Bureau. When the criminal is apprehended, the state provides for his criminal prosecution, but the victim must resort to the civil court for reimbursement of his

⁸Herbert S. Denenberg, "Compensation for the Victims of Crime: Justice for the Victim as Well as the Criminal," The Insurance Law Journal, No. 574 (November, 1970), p. 629.

⁹Federal Bureau of Investigation, op. cit., p. 47.

damages. Merely conducting a successful civil suit is no guarantee that the victim will be indemnified. Often the criminal is judgment proof since he has no resources which can be used to satisfy the judgment. This lack of financial resources, coupled with a relatively long jail sentence, means that the victim is left with an unexecuted and unexecutable judgment. Due process has been served in the legal sense, but financially the victim is left in the same position he was in prior to the civil suit. If expenses are incurred in bringing the civil proceedings, the victim's financial position may be worsened.

Public assistance and social insurance.--Existing public assistance and social insurance programs may offer some relief to victims of violent crime. As will be discussed in Chapter IV, these programs are ineffective in reaching most crime victims. However, the existence of such programs as a possible means of relief should be recognized.

Insure Justice

The insurance of justice has revolved around the apprehension and the punishment of the criminal. Little attention has been given to the plight of the victim. Crime compensation is designed to provide a measure of justice for the victim. In 1963, New Zealand recognized a need for the state to compensate victims of crime. This was followed by England, the Canadian provinces of

Newfoundland and Saskatchewan, and the Australian provinces of Queensland and New South Wales. It was not until 1966 that recognition of the needs of the victim was considered in the United States. In 1966, California and New York passed legislation which became effective in 1967. Subsequently, five additional states have seen fit to pass such legislation. Federal legislation is currently pending, but passage during the present session of Congress seems remote.

Welfare Considerations

Apart from the obligation implied in the Constitution, the humanistic and ethical consideration of the welfare of society must be considered. It is a broadly accepted concept in this society that those members of the society made needy through no fault of their own are entitled to public assistance from the state. When a crime victim is reduced to an intolerable financial position due to a crime over which he had no control, the state should come to the victim's aid. Given the profile of crimes of violence, it is apparent the impact falls heavily on members of society who find themselves in a distressed economic situation. In short, it is "those in need" who are most often the physical and financial victims of violent crime.

Obligation of the State

Crime adversely affects the society as a whole, but the impact of violent crimes falls more heavily on the lower socio-economic segments of society--those least able to bear the financial burden of crime. Furthermore, the present system provides little relief for the financial losses suffered by these victims. The state has a duty to protect the citizenry from crime and has failed to exercise this duty. The absolute number of crimes is large but, even more important, the rate of crime is increasing. Since the state has failed to fulfill its obligation to protect, it has a duty to indemnify innocent victims who suffer losses.

Objectives of the Study

Programs designed to provide compensation for crime victims appear to offer a solution to the problem outlined. The intent of this study is to examine the existing programs of states which have passed such legislation. Attention will then be focused on proposed federal legislation currently pending before Congress. Following this review, empirical aspects of the environment under which crime flourishes and the effectiveness of existing state plans will be considered. Other chapters will deal with the treatment of crime compensation as a form of social insurance or public assistance; the economic effects of

crime compensation plans; and the establishment of criterion for the evaluation of existing plans.

As a result of this study, the problem faced by crime victims will be clarified. The specific objectives of the study include an identification of the financial burden suffered by victims of crime, an analysis of the strengths and weaknesses of existing state and proposed federal laws, and a better understanding of the economic impact of crime compensation plans. To accomplish these objectives, certain specific empirical evidence will be assembled. This evidence includes:

1. an estimate of victims made destitute by crime,
2. total claims filed and their disposition,
3. adequacy of benefits received by crime victims,
4. method of financing and financial experience,
5. incidence of various funding devices,
6. extent to which existing social insurance and public assistance programs provide relief,
7. merits of public assistance versus social insurance,
8. circumstances governing reduction of benefits,
9. claims denied and reasons for denial, and
10. use and justification of deductibles.

Limits of the Study

It is the intent of this study to be comprehensive in nature; however, certain limitations are present. The

empirical data and observations of existing experience are of necessity based on states which have currently enacted crime compensation plans. With respect to federal legislation, all observations in Chapter II are based on bills which have yet to be enacted into law. The bulk of the data embodied in this work is drawn from existing state statutes, pending federal bills, the experience of states whose laws have been in force long enough to establish significant data, the annual reports of the Federal Bureau of Investigation, and the President's Commission on Law Enforcement and the Administration of Justice in the United States.

The methodology employed in the study is direct. It is assumed that existing state law and experience under that law are the logical basis for the determination of the nature of crime compensation programs in the United States. Based on this assumption, copies of the law in each state were obtained and analyzed. (See Chapter II.) To determine the potential direction of federal legislation, a review of bills currently introduced in this session of Congress was made. While six pieces of legislation are currently pending, only three exhibit features substantially different in nature. (See Chapter II.) In an effort to compile data relative to the impact of current crime compensation plans, the operating experience of states having such laws was obtained. The experience compiled by the states of California, Hawaii,