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Victim Compensation in Crimes of Personal Violence

Marvin E. Wolfgang*

The purpose of this article is to explore and support the principle that society has a responsibility to compensate the victim of a criminal assault. The idea is neither new nor a radical departure from prevailing political and legal norms in Western Culture.

Examples of compensation for injuries sustained by victims of criminal assaults may be found (a) in primitive cultures, (b) in the early history of Western civilization preceding state responsibility for adjudication in criminal cases, and (c) to some extent in contemporary law.

I.

The basis of primitive and early Western criminal law was personal reparation by the offender or the offender's family to the victim. When political institutions were largely based upon kinship ties or tribal organization, and there was an absence of a central authority to determine guilt and punishment, some forms of blood-feud, vendetta, or pecuniary compensation were common practices. The social structure was of the Gemeinschaft type. Social relations were familistic, involuntary, primary, sacred, traditional, emotional, and personal. In contrast, contemporary society and law are built largely upon a contractual Gesellschaft system characterized by social interaction that is voluntary, secular, secondary, rationalistic, and impersonal.

Social control in primitive groups was in the hands of the kindred and there was no need for supra-familial authority nor for state control. Even among highly organized hunters, such as the Cheyenne and the Comanches, tribal law was all that was necessary. An offense against the individual was an offense against his clan. Although the determination of the type of punishment exacted from the offender was neither codified nor always standardized by offense, some form of restitution or compensation was invariably involved in the interrelationship be-

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1. **TonNies, Fundamental Concepts of Sociology: Gemeinschaft and Gesellschaft** (Loomis transl. supp. 1940).

between the victim and offender. Injury to the person was scaled in accordance with the seriousness of the trespass and the social evaluation of the aggrieved party. Typically, as among the Ifugao in Northern Luzon, the determination of damages involved five critical factors; the nature of the offense, the relative class positions of the litigants, the solidarity and behavior of the two kinship groups involved in the dispute, the personal tempers and reputations of the two principals, and the geographical position of the two kin groups. There were traditional scales of damages for various offenses and, because of the property and money orientation of the culture, most punitive damages were pecuniary.

Among more simple and primitive societies the blood-feud or revenge was the common form of punishment and the means by which the victim and his family were compensated. However, as the material culture reached a level of higher development and possessed a richer inventory of economic goods, these goods could be equated with blood or physical and mental hurt. Thus, a trend toward composition is a noticeable corollary to social and economic evolution.

As in primitive societies, the mores of early Western culture provided that offending individuals and their families make settlement with the injured and his family. In the Code of Hammurabi (c. 2380 B.C.) the practice of individual composition was established, although it largely was related to property damage and generally did not apply to personal injuries. Only in one known case was it a substitute for the death penalty. Among the early Hebrews, however, compensation did apply to personal injuries. For example, if one man badly injured another, he had to pay for the victim's loss of time and cause him to be thoroughly

3. Id. at 58.
4. Id. at 116.
5. For instance, in the case of rape of a married woman by a married man, both her own and her husband's kin groups were offended. Each collected damages equivalent to those paid in the case of aggravated adultery. If the rapist had been married, he paid not only the woman's and her husband's damages, but also his wife's kin. Id. at 120.
6. Composition was a method by which many early legal systems settled disputes arising from violent wrongs.
7. Among Gatherers and Lower Hunters only twelve per cent allowed compensation for most offenses in place of the feud, whereas compensation to the victim has been found among thirty-three per cent of the Higher Hunters. Among forty-five per cent of the Horticulturalists the acceptance of compensation in lieu of the feud was allowed or made mandatory. Hoebel, op. cit. supra note 2, at 310, 318.
healed. In Arabia, Tyler noted the transition from blood vengeance to compensation. Nomadic tribes outside the cities adhered strictly to the blood-feud, but those living in towns found it necessary to practice compensation for offenses against the person in order to prevent the socially disintegrating effects of the blood-feud.

The practice of compensation is referred to by Homer in the *Ninth Book of the Iliad*. Ajax reproached Achilles for not accepting the offer of reparation made to him by Agamemnon. He reminded Achilles that even a brother's death may be composed by a payment of money and that the murder, having paid his fine, may remain at home free among his own people. Among the ancient Germans, Tacitus stated: "even homicide is atoned by a certain fine in cattle and sheep; and the whole family accepts the satisfaction to the advantage of the public weal, since quarrels are most dangerous in a free state."

The Anglo-Saxon legal system was originally based upon kinship, and the old legal codes from the time of Aethelbert (c. 570 A.D.) provide us with a complete record of changes in the legal system. As in preliterate society, so in the early Anglo-Saxon legal system all crime was crime by and against the family; and the family was required to atone for the crimes. Consequently, the blood-feud was common. In time, however, money payments were fixed as commutations for injury. Under feudalism and the influence of Christianity, the organization of Saxon society changed and the blood-feud was replaced by an elaborate system of compensation.

9. 21 Exodus 18, 19.
10. Tyler, Anthropology 416 (1889) (quoted by Gillin, op. cit. supra note 8, at 338).
11. Tacitus, Germania ch. 21 (quoted by Gillin, op. cit. supra note 8, at 338).
13. Id. at 655. See generally Holdsworth, A History of English Law (3d ed. 1923); Kemble, The Saxons in England (rev. ed. 1876); Pollack and Maxwell, The History of English Law Before the Time of Edward I (2d ed. 1923); Seebohm, Tribal Custom in Anglo-Saxon Law (1911); Traill, Social England (1899).
14. The *bot* was paid as compensation for injuries less than death; the *wite* was a public fine payable to the king or lord; the *wergild* was monetary compensation made to a family group if a member of that family were killed or in some other way injured. Wines, Punishment and Reformation 38–39 (1895); see also Jeffery, supra note 12, at 655. The idea of collective responsibility was
The same kind of provisions can be found in the Salic law of the Franks. Compensation was provided in detail for almost every sort of crime from theft and robbery to murder, and, as elsewhere, compensations were graded according to the rank of the person injured.\textsuperscript{15}

These few examples from an abundant literature on primitive and early Western laws reflect the previously wide extent of the practice of compensation. "Have we not neglected overmuch the customs of our earlier ancestors in the matter of restitution?" asked the late Margery Fry. "We have seen that in primitive societies this idea of 'making up' for a wrong done has wide currency. Let us once more look into the ways of earlier men, which may still hold some wisdom for us."\textsuperscript{16} Similarly, American criminologists suggest: "It is perhaps worth noting that our barbarian ancestors were wiser and more just than we are today, for they adopted the theory of restitution to the injured, whereas we have abandoned this practice, to the detriment of all concerned. Even contained in the meaning of \textit{wergild}. By the time of Alfred in 871 the feud was resorted to only after compensation had been requested and refused. In the "Dooms of Alfred" it may be noted that if a man knocked out the front teeth of another, he was to make compensation in the form of eight shillings, or if it was an eye tooth, four shillings, or, if a molar, fifteen shillings. Several aspects of the law of Aethelred, of Edmund, and of Alfred which are of particular interest in this connection are mentioned in Jeffery's article:

Henceforth, if anyone slay a man, he shall himself bear the vendetta, unless with the help of his friends he pay compensation for it within twelve months to the full amount of the slain man's \textit{wergild}, according to the inherited rank. . . . The authorities must put a stop to the vendettas. First, according to the public, the slayer shall give security to his advocate and the advocate to the kinsmen of the slain man, that he, the slayer, will make reparation to the kindred. . . . If a man has a spear over his shoulder, and anyone is transfixed thereon, he shall pay the \textit{wergild} without the fine. If a bone is laid bare, 3 shillings shall be paid as compensation. If a shoulder is disabled, 30 shillings shall be paid as compensation.

Jeffery, \textit{supra} note 12, at 655–56. In some cases a crime was considered "botless," that is, no \textit{bot}, or compensation, was allowed, and then it was necessary for the family to resort to the feud. It will be of further interest later to recall that secret murder was held to be a "botless" crime. \textit{Id.} at 656. These Dooms provided in detail for compensation of a variety of crimes against the person. Gillin, \textit{op. cit. supra} note 8, at 338.

15. Compensation for murder of a free Frank or a barbarian living under the Salic law was 800 denars. In the case of composition for death, the money was to be paid in half to the sons of the slain father and the other half to the nearest relatives on both the mother's and the father's side. If there were no relatives, the money was to go to the royal treasury. Gillin, \textit{op. cit. supra} note 8, at 338.

where fines are imposed today, the state retains the proceeds, and the victim gets no compensation.”

II.

Perhaps, it could be contended that the above compensations correspond to damages paid for civil wrongs in contemporary society, and that a schedule of payments for injuries belongs entirely to the law of tort. However, whether we are referring to tort law or criminal law depends on the use of the terms and the perspective of the social or legal historian. Relative to the principle of reparation, the Italian criminologist, Garofalo, argued that it was more than a matter of civil damages:

Moreover—and it is this very thing that must be particularly impressed upon the law-makers—we are dealing here not with a question of private law, but with a matter of justice and social security. It will be a long step in advance when the State comes to regard as a public function, the indemnification of the person injured by criminal delict. Fellow criminologist Enrico Ferri agreed with Garofalo that penal law should provide for state indemnification to victims and similarly emphasized the necessity to view compensation not as an individual but as a public responsibility.

In classical theory the criminal law was regarded as originating in torts, although some wrongs were regarded as wrongs against the group as well (such as treason, violations of hunting rules, and so

19. The classical principle that reparation of damages occasioned by crime is a purely civil and private obligation of the delinquent (similar to that based on breach of contract) and that it must be, therefore, entirely distinct from the penal sentence, has resulted in the complete disappearance of reparation in the daily judicial practice; for the victims obliged to bring civil suit with advance of costs, and to under-go a civil trial, abandon the hope of an easy and sure indemnity for the moral and material harm that they have undergone, and content themselves more and more with some poor settlement as a purely voluntary concession on the part of the delinquent; hence, a recrudescence of private vengeance and a deplorable loss of confidence in the reparatory work of social justice. In the realm of theory, both for law and procedure, thanks to the customary complication of scientific tariffs and the illogical and absolute separation between civil and penal law, the penologists have taken no account of reparation in damages, leaving it entirely to the theoretical authorities on civil law. The latter, in their turn, have neglected it in the case of crimes for the practical procedural guarantees, looking upon it as an accessory of little importance, which should be considered by students of penal law.
Ferri, Criminal Sociology 511–12 (1917).
forth). In Anglo-Saxon law, a wrong was not simply the affair of the injured party and his kin, but also involved injury to a king, lord, or bishop.  

The increasing claim of the state to the exclusive right to inflict retributory punishments was made in the interest of peace, but not necessarily of justice. Under the feudal system the grand seigneurs disposed of the property and persons of the common people accused of crime solely at their discretion. They abused their power to fine offenders until the administration of justice became an act of confiscation, if not outright blackmail.

Gradually the social group began to take charge of punishment, and wrongs came to be regarded as injuries to the group or to the state. The king claimed a part of this payment or an additional payment for the participation of the state in the trial and for the injury done to the state by the disturbance of the peace. About the twelfth century the victim's share began to decrease greatly and the exactions of the king increased, until finally the king took the entire payment. The original *wergild*, or personal compensation, was transformed into a fine, or payment to the state, and these payments came to be a principal source of revenue.

Thus, the right of the victim to receive compensation directly from the one who caused him personal harm in an assault was transferred to the collective society where it remains to this day. Individual revenge and individual restitution were incorporated into the larger, impersonal, *Gesellschaft* political institutions. As a result, social retribution and the retaliatory rationale of punishment became de-individualized or socialized, and was manifested in the social structure of the Middle Ages and the Renaissance in the form of “cruel and barbarous” corporal punishments. Mob violence and other extra-legal instruments of treating criminal

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20. Early Germanic justice was based on a folkpeace, a peace of the community. This idea gave way to the *mund*. A *mund* was the right a king or lord had to protect a person or area. At first the *mund* was restricted to special persons or areas; gradually it was extended to include the king's court, army, servants, hundred-court, and finally the four main highways in England. It was now referred to as the 'king's peace.' The kings, lords, and bishops now received the compensation rather than the kinship group. They had a *mund* which had to be protected.

Other Teutonic tribes had a legal system similar to that of the Saxons. The Welsh tribes had a *galanas*, or murder fine, that was allowed in lieu of the blood-feud. Among the Irish tribes the *eric*, or death fine for homicide, was shared by the kin.

offenders were common, projecting themselves into American history through riots and several thousands of recorded lynchings. The continued use of the death penalty is a social anachronism that may in part be due to this legal and psychological transference from compensation for the victim or the victim's family to the collective desire to seek social revenge, involving total loss to the individual victim.

III.

There are cases in contemporary jurisprudence in which a court requires an offender to make restitution for property damages he may have inflicted. At the beginning of the nineteenth century several states in this country had laws which provided that a person convicted of larceny must return to the owner twice the value of the property stolen. In England a criminal court may order restitution if stolen goods can be traced, with some safeguards for innocent holders. Further, the money found in possession of the thief when arrested may be subject to an order for repayment as compensation. In felony cases, if application is made shortly after conviction, the court may order compensation for loss of property up to the sum of one hundred pounds. Reparations are suggested or ordered by the courts chiefly in property crimes, and are often used in conjunction with the suspended sentence and probation.

Victims of crimes of personal assault rarely receive compensa-

21. SUTHERLAND & CRESSEY, PRINCIPLES OF CRIMINOLOGY 278–79 (6th ed. 1965). Criminal statistics generally contain no information about the extent to which the powers of ordering compensation are employed. Thus actual determinations of the extent of usage are most difficult.

It is probable that the system of restitution and reparation is used much more frequently than official records indicate. One of the prevalent methods used by professional thieves when they are arrested is to suggest to the victim that the property will be restored if the victim refuses to prosecute. This results in release in a large proportion of cases, for most victims are more interested in regaining their stolen property than in "seeing justice done." Also many persons are protected against crime by insurance. The insurance company is interested primarily in restitution, and in many cases the crime probably is not reported, or criminal prosecution is not urged, if restitution is made. Similarly, there are thousands of cases of shoplifting, embezzlement, and automobile theft annually which are not reported to the police by the victim because restitution or reparation is made.

Id. at 278.

22. Ibid.

tion of any kind. However, a recent case in Detroit indicates that restitution in the sense of financial responsibility to a victim’s widow and children may also be used in a case of homicide:

a 20-year old youth ran a red light while speeding and crashed into another car, fatally injuring its driver. The widow pleaded with Judge Watts: “He is a nice boy, and his family has been kind to me. I know he didn’t mean to kill my husband. It was an accident. He has voluntarily run errands for me. He does so many things to make life easier for us. He has paid $700 of a $2,130 bill at the rate of $16 a week.” Maximum sentence is five years in prison and a $5,000 fine. The Judge fined the youth $500, instructed him to pay hospital and funeral expenses, and placed him on five years probation.24

Because our concern is primarily with criminal assaults against the person, restitution for loss of property is referred to only as a logically sound analogy for state compensation to the victim of crimes of violence.25

IV.

The federal and various state workmen’s compensation laws provide a useful analogy and contemporary precedent for the proposal of victim compensation. The types of injuries and diseases covered, the amount of compensation, the elapsed time period between injury and compensation, the extent of the disability, the inclusion of medical and rehabilitative benefits and burial expenses and the particular forms of administrative procedures should be useful examples for the establishment of a program of victim compensation.26

Even more analogous is Swedish legislation which provides victim compensation in murder cases. In 1864, a penal code reform completely abolished the old wergild system and eliminated the principal difference between punishment and reparations for damages.27 The penal code of 1926 introduced a detailed compen-

25. Perhaps, as has been suggested, increasing prisoner earnings for productive labor in prison to the level of prevailing non-prison wages would make a compensation program for crimes of violence as well as restitution for property offenses possible. Such a proposal does not appear to be politically feasible in the near future. See Penal Practice in a Changing Society, CMND. No. 645 (1959).
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sation scheme, including requirements that a murderer pay reparation to the victim’s dependents.  

The combination of principles inherent in workmen’s compensation and in the Swedish Penal Code provide logical support for the proposal of victim compensation in cases of crimes of personal violence: (a) in workmen’s compensation the victim of an injury is assured compensation by compulsory law; (b) in the Penal Code of Sweden an individual who has suffered damage as a result of a crime should be compensated; and (c) in both legislation recognizes the importance of the victim. Logically extending the principle of the Swedish legislation, we are suggesting the state, rather than the individual offender, should make compensation.

V.

If A seriously and criminally assaults B, there are two major theoretical sources of alleviating B’s injury: either he receives some form of pecuniary compensation for his injury; or, he is convinced that society will take stringent measures to cause commensurate, or even greater, pain to A in the form of punishment. However,

the assumption that the claims of the victim are sufficiently satisfied if the offender is punished by society becomes less persuasive as society in its dealings with offenders increasingly emphasizes the reformative aspects of punishment. Indeed in the public mind the interest of the offender may not infrequently seem to be placed before those of his victim.

As penological theory and practice move increasingly farther away from the classical Beccarian philosophy of making the

28. Section One establishes the general principle of indemnification; Section Two deals with bodily injuries, medical and physician expenses, loss of wages, disabilities, and physical and mental suffering. Section Three refers to indemnity for suffering due to libel or an offense against an individual’s honor or personal liberty; and Section Five, which was added in 1948, states that if several people together commit a crime they shall be jointly responsible for indemnity. See SVENES RIKES LAG (77th ed.) (1955). The author wishes to thank Thorsten Sellin for this translation.

29. Laws establishing workmen’s compensation programs are usually classified as compulsory or elective. A compulsory law requires every employer within its scope to accept its provisions and to pay compensation as specified. An elective law permits the employer to accept or reject the law, but if he fails to accept he loses the right to employ the customary common-law defenses (assumption of risk, contributory negligence, and fellow servant). Twenty-seven state compensation laws and two federal laws are of the compulsory type. See HOGAN & IANNI, op. cit. supra note 26, at 437.

30. PENAL PRACTICE IN A CHANGING SOCIETY, supra note 25, at 7.
punishment fit the crime, this form of revenge becomes less efficacious. In our modern emphasis on treatment of the criminal offender we have lost sight of the victim and of society's obligations to him. Yet, no one aware of the history of punishment and the invalidity of the classical theory of retributory punishments would suggest a return to earlier methods of treating offenders. We find it logical to suggest the re-establishment of victim compensation while continuing present progressive efforts toward reformation of the criminal. Society has assumed the role of meting out punishment and of attempting rehabilitation of the offender. It should assume further obligations to the victim.81 Ferri argued:

We can go further, and add that the State should take into account the rights of the victim, paying him an immediate satisfaction, especially when blood has been shed, looking to the offender to reimburse it for its expense, as well as for the expense of trial. Penal evolution, as we have said, is a decisive proof of the necessity of such reforms. At first, reaction against crime was an exclusively private affair; then its severity was mitigated, and it took the form of a pecuniary settlement, one part of which went to the State, which soon took the balance of the compensation, leaving the injured party the poor consolation of demanding and obtaining indemnity before a different court. Nothing, therefore, is more in accord with this evolution of punishment and the reform which we demand for the reparation of damages, which we look upon as a public-private function, the equally juridical and social consequence of the commission of crime. The establishment of a fund to meet the indemnity formed by the interest of the fines and indemnities perhaps, refused by the victims, will be the final and complete recognition of this principle.82

In the case of workmen's compensation, the employee receives compensation because of his membership in a collective laboring group. It is assumed that there are certain risks inherent in his occupation and his employer is obliged to compensate him for injuries sustained while working. The victim similarly is a mem-

81. In his outline of principles suggested as a basis for an international penal code, Garofalo included: "The State will establish a Compensation Fund for the purpose of indemnifying: (1) persons injured by criminal acts who have been unable to obtain compensation from the wrong-doer." GAROFALO, op. cit. supra note 18, at 413.

At the First Congress of Clinical Anthropology in Rome, 1885, a resolution was passed which essentially followed the suggestions of Ferri and Garofalo. The Third International Juridical Congress at Florence, September 1891 approved the proposition made by Garofalo, recommending the institution of a Compensation Fund. See FERRI, op. cit. supra note 19, at 510-12.

82. Id. at 513.
ber of a collective group — society. As a productive member of this group he financially supports the law enforcement machinery designed to protect him and his fellow citizens. The entire social institution of the law — statutes, the police, courts, prisons — helps to reduce the risks of criminal assault. Nevertheless, the presence of other members of this same society who violate the law and commit criminal assaults on others means there are tangible risks inherent in collective life. Society is therefore obliged to compensate him for criminal injuries sustained during the period of time he is placed within the social circle of risk. The lack of adequate police protection or law enforcement, due to negligence, corruption, insufficient appropriations, or simply the obvious inability of the police to be in all places at all times, means the individual victimized by a criminal assault has a legitimate claim. If that claim is not one hundred per cent police protection, it may be at least to compensation for injury. Ferri spoke of the matter thusly:

The State, negligent in not having taken more precautions against the crime and more care for protection of its citizens, arrests the culpable . . . [and] the State, which must defend the superior interests of absolute justice on behalf of the public does not concern itself with the injured party. . . . Thus the State cannot prevent crime, cannot repress it, except in a small number of cases, and consequently fails in its duty for the accomplishment of which it receives taxes from its citizens, and then, after all that, it accepts a reward. . . . It is evident that this

33. The fact that an individual is born into a particular society, and consequently does not by his own volition rationally choose to submit some of his individual rights to the collective body politic (as Locke and other adherents of the social contract theory suggested) is either irrelevant to, or in support of, the principle of social identification with the group. Before the constitutionality of workmen’s compensation was accepted, it was frequently argued that the employee was not compelled to remain in a particular form of occupation and that he could voluntarily change his job to one that involved less danger to his person. Therefore, it followed that no employer should be required to compensate for injuries to an employee who accepted the former’s offer of employment. Negligence on the part of employers, failure to compensate, or to compensate inadequately were among the factors which led the courts to recognize the need for fuller coverage and compulsory compensation regardless of the theoretically assumed voluntaristic behavior of the employee.

34. The fact is that we have no adequate means to measure the effectiveness of deterrent, reformative, or protective theories of punishment. Nonetheless, it is almost incontestable that at least the presence and operation of a social organization and of institutional procedure designed to define, detect, judge and treat criminal offenders will reduce the risks of criminal assault to a greater extent than their absence.
manner of administering justice must undergo a radical change. The State must indemnify the individuals for the harm caused them by crimes which it has not been able to foresee or prevent.85

Moreover, at present the behavioral sciences are incapable of providing totally effective predictive techniques for determining the wisdom or failure of probation and parole decisions. Thus, these two institutional practices produce additional risks of criminal behavior for which society is responsible. These practices add to the justification for victim compensation. It would be an indefensibly negative position to contend society should either eliminate or reduce its use of probation and parole. Their advantages have been amply demonstrated. It seems illogical that the victim of a paroled recidivist should alone have to bear the medical, disability, and lost wages expenses resulting from an administrative error or a parolee’s failure to succeed as anticipated.

VII.

The idea of victim compensation is now being nurtured through the tedious task of translation into an operationally administrative reality.66 I shall not here review specific recommendations; but generally, I disagree with efforts to partition victim compensation according to the idiosyncratic family needs, wages, earning capacity, etc., of the victim. I favor a state system, but compensation should be based on the principle that all victims are equal before the law and that the gravity of the harm alone should govern the degree of compensation.

If state compensation to the victim is adopted, then some system for measuring harm is required. If society demands a form of payment to match exactly the total expenditure of each victim, according to his personal needs, the system may never begin to function. Variations in victim resistance—physically to an aggressor, physiologically to a wound, emotionally to the psychological dimensions of the act and post-act consequences—are

35. FERR, op. cit. supra note 19, at 513–14.

enormous. If these variations were somehow calibrated to the currency, this would invariably involve an almost endless debate between the state and the victim. Some relatively simple standards and systems for judging the gravity of harm must be established. The system must be supported by the community and have sufficient expansiveness to allow relative degrees of harm to be calculated.

Recent research, conducted by Professor Sellin and the author, seeking to provide a more valid index of crime and delinquency, offers some suggestions for obtaining measures of gravity of physical injury that can be translated into cost in money values. Psychophysical measures have been used to develop ratio scales of seriousness of criminal acts.\(^{37}\) Approximately 1000 subjects were asked to give numerical scores of relative seriousness on 141 offenses, many of which involved bodily harm to the victims. The 1000 judges, or subjects, included police officers, juvenile court judges, and university students. They were purposefully selected to represent middle class values that predominate in our legislative and judicial systems. These raw scores were converted to means.\(^{38}\) Standard deviations\(^ {39}\) and scores\(^ {40}\) were then obtained, and by use of a constant divisor and rounding, a set of mathematical weights was developed for computing qualitatively meaningful rates of crime and delinquency based on seriousness as adjudged by a random sample of the population. These score values benefit from the attributes of additivity and of being ratio scales; thus, a seriousness score of 14 is twice as serious as a score of 7.\(^ {41}\) The process for deriving the scores was statistically complicated and used some of the most sophisticated psychophysical methodologies. There is, however, simplicity in the final present-
ment and in the operation of these scores by public authorities recording criminal statistics.\textsuperscript{42}

We are not necessarily suggesting that the seriousness scores used for constructing an index of crime and delinquency be used for judging the seriousness of harm and consequently as a basis for the monetary compensation to victims of assaultive acts. They may in fact be usable. However, a new scaling analysis might be made to determine whether the weights presently determined would be consistently derived under new conditions. If the same types of offenses of physical injury were to be examined, we would hypothesize consistency and stability of the rank order and perhaps of the relative weights.\textsuperscript{43}

The final seriousness scores in this study were 26 for criminal homicide, 10 for forcible rape, 7 for a physical injury causing hospitalization, 4 for an injury requiring medical treatment and discharge without hospitalization, and 1 for minor injury without medical treatment. Obviously the medical technology of a society and the social institutions encouraging or discouraging use of medical care may have some bearing on the resort to medical treatment for a wound. However, these are not insurmountable problems. In fact, the more a society encourages use of medical treatment, through medicare plans, out-patient clinics, etc., the more accurate information it has for judging harm from physical assaults. Descriptions of the consequences of physical harm in the illustrative table in the study are as follows:\textsuperscript{44}

\textit{Minor injury}. An injury that requires or receives no professional medical attention. The victim may, for instance, be pushed, knocked down, or mildly wounded — minor cut, black eye, or bruise. (Score 1)

\textit{Treated and discharged}. The victim receives professional medical treatment but is not detained for prolonged or further care. (Score 7)

\textit{Hospitalized}. The victim requires in-patient care in a medical institution, regardless of its duration, or out-patient care during three or more clinical visits. (Score 14)

\textit{Killed}. The victim dies of his injuries, regardless of the circumstances in which they were inflicted. (Score 26)

It must be kept in mind, by hypothesis all of these injuries resulted from criminal acts and could occur as separate discrete assaults or as components of a single, complex criminal event like

\textsuperscript{42} The Juvenile Aid Division of the Philadelphia Police Department has been using the score values and the index since January 1, 1964, without administrative or general operational difficulty.

\textsuperscript{43} See SELLIN \& WOLFGANG, \textit{op. cit. supra} note 37, at ch. 19.

\textsuperscript{44} \textit{Id.} at 403–04.
rape, robbery, etc. A criminal event may have more than one victim, and each victim of an assaultive crime is separately scored. In forcible rape, any physical injury is added to the score of 10 for the rape itself. There are, of course, many intricate problems of counting events, victims, and scores; but, once clearly described, the operational aspects appear to be relatively simple.

In this study, it was possible to reduce crimes against the person and against property to a unidimensional base, i.e., the judged seriousness of the offenses. While it was not explicitly suggested that physical injuries could be thereby plotted with money values and that money could be used as a scale of seriousness, that suggestion is not unreasonable. In the scaling analysis the judged pain of loss of money was isolated from certain components of the law violation. That is, the score value for breaking and entering or intimidation, etc., was extracted from a burglary or a robbery and the score value for the money loss due to the theft was obtained. The loss of money through a theft was represented in a mathematical formula which expressed a power function. Thus, for example, losing twenty dollars was not twice as serious as losing ten dollars; the amount lost had to approach one hundred dollars to be considered twice as serious as ten dollars.

Equating bodily harm with monetary loss in scale scores shows harm values high and reflects the community sentiment of greater concern about such harm than about monetary loss. This fact raises one of the basic issues in victim compensation: should the victim of certain types of offenses be compensated for the seriousness of the injury alone or for being injured by reason of a criminal assault as well? Simply paying bills for hospital and physician care, or even for wages lost during recovery from an injury is not compensation. Payments to cover these losses produce a kind of financial equilibrium but do not compensate or make amends for the crime which caused the victim to suffer. Societal negligence, or the offender’s assaultive affrontery, however the crime may be perceived, seems to be the component requiring compensation. This is compensation beyond the costs for repairing the physical wounds.

What is the cost of a life? Although actuarial techniques make excellent analogies, and efforts have been made to compute the cost by reference to occupation, life expectancy at time of death, and so forth, the determination of how much to insure a life is a

45. Such a suggestion has been made in Wilkins, Social Deviance (1964).
46. Details on the power function of money are found in Sellin & Wolfgang, op. cit. supra note 37, at ch. 18.
private decision. Under a state system of victim compensation, society must perceive each individual component of the unit of equal value in the abstract sense of political equality, as in the phrase “equal before the law.” To do otherwise would create a quagmire of personal factors affecting each decision which would render the entire program unbearably cumbersome. Each criminal assault, therefore, should be treated and compensated for in equal measure regardless of age, social status, occupation, sex or other similar social variables.

The reference to scale values of seriousness does not provide a solution to the cost issue. The actual financial remuneration would, after all, be partly a function of the state budget and the amount allocated for victim compensation. The scale values presently available do suggest if compensation for types of harms are to be governed by the community evaluation of seriousness, certain ratios of compensation should be maintained. There are several alternative schemes which could be used in computing relative monetary values of compensation for types of harm. It should be kept in mind that here we are referring to compensation above, or separate from, the amount paid for wages lost, hospital and physician expenses, and other types of medical and welfare benefits. The ratios are points of reference in estimating the crime of violence itself, not its subsidiary consequences.

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. We can ignore injuries classified as “minor” because they probably occur so frequently as to cause more cost and trouble to administer than any society would be willing to bother with. Using the remaining types of bodily injury, and comparing the logarithmic increase in money values with the increase in seriousness scores, we note that the money value attached to a “hospitalization” is 20 times higher than “treated and discharged”; that “forcible rape” is 200 times higher, and “death” is 20,000 times higher than “treated and discharged.”

47 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.

In the scaling analysis, the seriousness score for death covered by a criminal assault was, as expected, the highest of all scores. When plotted by money values, according to the equation expressing the power function of money, death reached the enormous sum of over one hundred million dollars. Two things may be noted about this. First, a subjective value of death does not give it an infinite preciousness, for the mean raw magnitude score was approximately 450 compared to an auto theft which had a seriousness score of 10. Second, people do not view the utility of money as a single arithmetic linear function.\(^4\) Thus, in a graph plotting seriousness score against logarithmic increases of money, the equation shows a curvilinear relationship with the line smoothing out considerably as both values increase. It is not unexpected, therefore, that as individuals perceive loss of life, a sum of money reaching near fantasy proportions is required for equivalence.

These remarks lead to another question about victim compensation relative to criminal homicide. Despite our earlier reference to historical illustrations of compensation to the victim's family in the case of a criminal homicide, there may be sound arguments against trying to compensate the victim's family. Payments for medical bills, burial expenses, etc., could be part of a state system. But the rationale behind victim compensation in our contemporary setting is that the victim himself should receive compensation for a particular kind of criminal assault. Our supportive rationale has not suggested compensating persons other than the victim. We clearly recognize that in many other areas of social welfare and private insurance the wife or other assigned parties may receive payments as dependents or beneficiaries of the deceased. However, the grounds for justification are different from those of victim compensation. Life insurance, forms of social security, aid to dependents, and even workmen's compensation are designed to offer persons related to the deceased some form of protection against the loss of a wage earner and correlative losses. The philosophy of payment in these plans is geared to rights and needs. Most of us concerned with the general area of compensation agree that these are just and should continue to be recognized responsibilities of our social system. Victim compensation for crimes of

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48. Galanter, *supra* note 37, found this to be true with the acquisition of money; and Sellin & Wolfgang, *op. cit. supra* note 37, at ch. 14, discovered the same to be the case of the loss of money through theft.
violence is based on a direct relationship between the victim, as an individual, and the largest collective group to which he has an affiliation. It is obvious that a victim cannot, in fact, be compensated for the loss of his own life. If a state system of compensation elects to provide compensation to the families of deceased victims, it is equally obvious that no amount of money a state will offer can maintain the ratios suggested above. In short, the victim cannot be compensated, and no state can really compensate a victim’s family by trying to transfer compensation from the victim to others. The most a state can do is to provide a token monetary gesture. If this is a gesture of assistance to the deceased’s family, there are institutional procedures and rationales already available for this purpose which could easily be extended to crimes of violence. This is not, however, the rationale of victim compensation.

The ratios of money values relative to seriousness scores for crimes of physical violence were derived from responses to the judged seriousness of offenses and not by asking samples of a population to equate an injury with money. It would be interesting, therefore, to apply the techniques of psychophysical scaling to this issue directly in order to determine what changes, if any, might occur in the ratios. If there is virtue in establishing a state system of victim compensation, there should be virtue in exploring the dimensions of the relationship between money values and physical harm beyond the arbitrary notions of a legislative committee.

CONCLUSION

The victim of a crime has historically and almost universally enjoyed the right to reparations. This right was confiscated by the state in the form of fines without due consideration for the victim. The opportunity for the victim to resort to civil actions for damages resulting from a criminal assault are almost never used because either the victim can not afford litigation or the offender has no assets. There is little likelihood that either compulsory or voluntary restitution to the victim by the offender can be extensively and uniformly used. There is a sizeable core of criminal offenders who would fail to comply with compulsory reparation or to benefit socially and psychologically from it. The victim is a contributing and supporting member of a society which has failed to protect him against certain types of crime. Therefore, society should note the lack of alternative sources of compensa-
tion and undertake the obligation to compensate the victim of a criminal assault. There is analogous precedent in workmen's compensation and in the penal codes of several countries. Experience in handling the former should help in administration of victim compensation. Public welfare in the form of medical care, aid to dependents, and financial assistance are now widely provided in many countries. Therefore, compensation should be provided by the state to victims of certain crimes against the person as an assertion of an individual right as well as a social obligation and not as a form of public charity to the needy and poor.

Recent research in measuring the public's evaluation of the seriousness of criminal and delinquent acts provides a useful perspective on the problems of measuring compensation. We are offering a suggestion, not of specific amounts of money for compensation to victims of violence, but of a rational means for determining relative gradations. The procedure used to obtain attitudes regarding seriousness of various types of physical injuries resulting from crimes of violence can be readily adapted to determine public attitudes regarding compensation. Either the ratios presently discovered or new ratios derived from the same methods of psychophysics are offered as points of departure for the future consideration of these major issues.