Victims of Crime and Other Victims

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This is an era in which many observers of the social scene claim to have the ability to detect precisely when the time for some idea or other "has arrived." Recently we have been let in on the revelation that the time has arrived for the states to provide compensation for the victims of crime. Some half dozen states have already taken steps to validate the insights of the modern seers, and others (including Illinois) are being pressed to get into line with the times. I find neither the prophecies nor the arguments of proponents to be irresistible.

Let me begin with a hypothetical situation which should appeal to those who favor compensating victims of crime. A thirty-five year old free-lance male typist, who is the sole support for his wife and two young children, is pushed to the ground at a street corner by a dope addict attempting to rob him of a wallet. The victim's head unfortunately strikes the concrete curbing, and despite the best efforts of doctors, he loses the use of his right arm forever. Because of the injury he is hospitalized for a month, he incurs large medical expenses and he never afterwards is able to perform work which is as remunerative as his old specialty. To make matters worse, the victim has no insurance covering his out of pocket expenses or loss of earnings, and he and his wife in fact use up all their savings to pay the medical and hospital charges.

This surely is a case which elicits strong sympathy for the victim. Many things can be said for giving him financial aid. The misfortune was not due to his carelessness and he did nothing to attract the criminal assault. If society had provided better police protection the attack might never have occurred. If society had spent additional resources on treating dope addicts the assailant might not have felt compelled to embark on robbery. If society had better educated the young about the consequences of getting hooked on drugs, this crime might not have taken place. Further, if the victim is not compensated for the economic loss due to the crime, his family—and especially the children—will suffer. The details of that deprivation are easily imagined. Only one with a heart of stone, it might appear, could be indifferent to the downfall of this poor fellow.

But before rushing to endorse a plan for compensating him out of public funds, the plight of some other victims of misfortune should not go unnoticed. I suggest that account needs to be taken of at least the following eight individuals, each of whom fits exactly the description of our victim of crime—in terms of age, family status, occupation, medical expenses, loss of income, and so on. To make the comparisons more vivid, let it be emphasized that each of these persons permanently lost use of his right arm as a result of striking his head against the very same concrete curb that undid the victim of crime. 1. Mr. A fell down as a result of a shove from a policeman who was chasing a suspected robber. The

A presentation by Walter J. Blum, Professor of Law at the University of Chicago.
policeman was acting in the line of duty and was not being careless in administering the slight shove to A, who unknowingly was in his way.

2. Mr. B went down as a result of being bumped by an unidentified cyclist who was peddling negligently and who fled the scene of the accident.

3. Mr. C was decked by a cyclist who, though careful in all respects, swerved into C to avoid running down several children who suddenly emerged in his path.

4. Mr. D was struck and felled by an admittedly negligent cyclist who was wholly impecunious and without liability insurance.

5. Mr. E was sent sprawling by an eight year old boy who was running into the street under circumstances that did not expose his parents to liability for a tort.

6. Mr. F came in contact with the curb when he lost his balance as a result of stepping into a hole in the city street. The hole could not possibly be seen by one in F's position, nor could the municipality be held derelict in not maintaining the street in good repair.

7. Mr. G met his fate as he reached out to grab a young child in an effort to prevent her from being struck by a car rounding the corner. All eyewitnesses agreed that G was acting as a Good Samaritan when he stumbled.

8. Mr. H crashed down when he lost his balance after being momentarily seized with sudden spasms of a painful and non-recurring nature.

Two other individuals, who also match the specifications associated with our victim of crime, should be mentioned, although neither suffered his arm impairment from knocking his head against a concrete curb.

9. Mr. I permanently lost use of his arm at age thirty-five as a consequence of a stroke.

10. Mr. J was struck by lightning and thereafter never again had use of his arm.

Now I ask: among this collection of unfortunates, are you sure that the victim of crime presents the most appealing case for compensation by the government? All are equally blameless for their misfortune. But if anyone is to be given an edge, it is the Good Samaritan who stands out. He alone was acting out of motives of high altruism. The others, we may assume, were going about their business or their pleasure. Surely if we were thinking of awarding an official medal for exemplary conduct, the Good Samaritan would be the most deserving recipient.

Of course it can be argued that the Good Samaritan brought the tragedy on himself by taking positive steps. Such a stance is highly superficial. The man who stepped into the hole also did something positive; and the same can be said for all those who had put themselves in a position of being vulnerable to making head contact with the curb by standing near it. In this respect the victim of crime is no different than the others.

This observation sets the stage for a more basic question: Can you offer any valid reason for using public funds to pay the victim of crime but not the other sufferers? Several possible lines of thought call for comment.

First there is the point that society is much to blame for the tragedy because of its inadequate response to the policing and dope problems. If society is unwilling to allocate more resources to dealing with these matters, ought it not compensate the particular individuals who, by chance, are the victims of crime? In a sense a program for such compensation amounts to spreading these losses among taxpayers generally instead of letting them remain on the unfortunate few who suffer the losses.

This approach, however, does not provide a sound basis for preferring victims of crime over the other victims. Even optimal police protection—to say nothing of maximum feasible police protection—would not eliminate all crimes. More police (and more attention to the whole dope problem) are likely to
reduce the incidence of certain crimes, but elimination of crime is not a sensible or attainable target. Today, moreover, there is no ground for thinking that society's parsimony is greater in respect to crime control than in other areas of life marked by victims of misfortune. There would be fewer holes in streets if more resources were allocated to street repair. There would be fewer collisions of cyclists and pedestrians if special paths were built for riders. There would be fewer children running into the streets if more playgrounds were provided. There would be fewer serious injuries from falling down on curbs if they were covered with rubber. And so on. Resources are scarce; and it should be clear that police protection cannot have first call on everything.

Next there is the point that the victim of crime could not have avoided the encounter with his assailant. It, too, is of limited weight. The fact is that the density of crime varies greatly from place to place. One is much less likely to be a victim of crime in a rural area than in a metropolis; and one is much more likely to be a victim of crime in some parts of the city than in others. Those who advocate compensating victims of crime really are not interested in the matter of avoidability. They would not confine payments to persons who were in low crime areas when injured. Indeed, it is likely they would contend that the victims most in need of compensation are to be found in places of highest crime density.

Then there is the point that the injury and economic loss from a criminal assault is usually sudden and unexpected, and therefore highly disruptive of life plans. The response to this is obvious. The other victims experienced their misfortune with equal suddenness, and the occurrence was equally unexpected. Each of those injured on the curb was running the usual risks of being out on the street in our society. All the victims might have been aware of the dangers to which they were exposed, but no one of them, in all likelihood, thought he would suffer the particular misfortune which did in fact occur at that particular time and place.

There is also the point that it is difficult to buy insurance covering personal (including economic) loss from crime. The most direct answer is that the assertion is misleading. Policies dealing exclusively with injuries attributable to criminal assault no doubt are rarities. However, neither the usual varieties of medical and hospital insurance nor the standard versions of accident insurance exclude such coverage. It is true that most victims of crime are uninsured, especially for their economic losses. But it is equally true that most victims in the other categories are also unlikely to be insured.

Finally there is the point that victims of crime should be compensated by the state because they, unlike the other classes of victims, are often called upon to surrender much time in cooperating with the police and in serving as witnesses in court. It is said that in doing so they assist society in dealing properly with dangerous assailants and thus they merit compensation. Such reasoning is spurious. If devoting time to the legal process, by acting as witness or otherwise, is a sound ground for receiving compensation, a system of payments should be set up which carries out that underlying premise. Such a system should not be confined to victims of crime, nor should it pay crime victims who are not called upon to spend time on legal matters. The fact is that there is very little overlap between the universe of those who are drafted into the legal process and the universe of those who are victims of crime.

All things considered, it is hard to locate any cogent reason for singling out the victims of crime for special treatment. Each of the victims of differing misfortune seems to present an equally good case for being compensated by the state. At this
stage another question is in order: what is wrong with making a small start on compensating victims in all these categories by first providing for only one group—the victims of crime?

No simple answer is likely to be persuasive, perhaps because the first step is not thought of as being a big deal or as involving a large sum of money. Moreover, a plan for crime victims is in harmony with the new middle class concern with law and order and with crime in the streets. The “average man,” in all probability, can now identify quite readily and empathize easily with the victims of crime.

The case against the plan ultimately must rest on either or both of two propositions. One is that it is wasteful (meaning “uneconomic”) to set up separate compensation arrangements for different types of victims. Just think of a potpourri of plans covering such misfortunes as those suffered by 1. victims of cycling accidents; 2. victims of motor boat accidents; 3. victims of Good Samaritan actions; 4. victims of street defects; 5. victims of sudden illness; and so forth. Each plan will require the solution of numerous definitional problems; each will necessitate prescribing procedures for recovery; and each will call for development of practitioners with special skills and expertise, who as a group will then have strong financial and other interests in preserving their own little domain. As the plans proliferate in number the dangers and difficulties of overlaps are bound to increase. To be sure, this line of argument must not be pushed too far. In a wealthy society maybe all these luxuries can be afforded.

The other proposition is much more far-reaching. A piecemeal approach to compensating victims obscures analysis of the proper role of government because the focus tends to be too narrow. My illustrations of misfortune obviously were not intended to exhaust the categories. In addition to those who suffer sudden misfortunes there are those who were born with shortcomings, those who gradually develop physical disabilities, those who become senile early in life, those who succumb to the strains of life for no apparent reason and those who just cannot make the grade in the economic world. I do not pretend to know what compensatory or other arrangement is best for dealing with the many varieties of misfortune in our society. This is a central challenge for government. What is to be noted now is that the path for arriving at a good and defensible solution gets to be more treacherous as we are diverted by ad hoc measures for dealing with particular misfortunes. A piecemeal approach is all too likely to result in helping a few victims at the cost of doing serious injustice to many.

One must be careful not to turn this general proposition into arid perfectionism. It would be patently ridiculous to conclude that no victim of misfortune should be compensated by the state until provision has been made for giving equal treatment to all other blameless victims who are in similar economic circumstances. Conceivably an ideal system would base state payments solely on the distressful economic circumstances of individuals regardless of how these came about; or perhaps it would recognize that the availability of compensation under certain conditions might possibly induce some persons needlessly to increase their exposure to misfortune and thus enlarge the total loss suffered by society as a whole. People surely will differ in their conception of the ideal. But no matter how attractive a particular model for a general compensation plan might appear to be, its virtues cannot be a sufficient reason for not doing anything at all short of enacting only that prescription. Bestism is at war with politics in a democracy; some compromise is always a political necessity. The important thing is for lawmakers and others to frame issues and put forward proposals which generate debate that tends to move us towards the ideal. The greatest weakness of schemes to compensate victims of crime is that by their very nature they work to dampen all such discussion. Their narrow provincialism buries the great problems in a mass of trivia.