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Mansfield, Mike 1903-2001, "Article Published by Houston Law Review - Justice for the Victims of Crime" (1971). *Mike Mansfield Speeches, Statements and Interviews*. 998.
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HOUSTON LAW REVIEW

JUSTICE FOR THE VICTIMS OF CRIME

By

SENATOR MIKE MANSFIELD

Reprinted from

HOUSTON LAW REVIEW

Vol. 9, No. 1, September 1971

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OFF THE RECORD

JUSTICE FOR THE VICTIMS OF CRIME

By Senator Mike Mansfield*

If the brigand has not been caught, the man who has been despoiled shall recount before God what he has lost, and the city and governor in whose land and district the brigandage took place shall render back to him whatever of his was lost.

If it was a life [that was lost], the city and the governor shall pay one mina of silver to his people.¹

Just as violence in our society has continued from times past so, too, does the concept of compensating victims of violence find its roots planted firmly in the early history of mankind. It is out of a deep personal concern for violence and its effects upon our society today that I seek to revive the concept of victim compensation. In doing so, I have not approached this issue as a lawyer or as a student of the law. I have endeavored to view the matter as one who is concerned that recent efforts to stimulate new approaches for stemming, and even reversing, the ever-rising rate of crime and violence have focused too little attention upon the innocent victims. It is to these victims that my compensation legislation, Senate bill 750, is directed.²

To be sure, societies have always suffered the ravages of violent crimes. The earliest reported was Abel's murder at the hands of his brother, Cain. Chronicled daily by the press are crimes of the most heinous nature. In the days of old, punishment was meted out under the dubious rationale of "an eye for an eye, a tooth for a tooth." Presently, our system of justice seems to translate this form of retribution into the consistent abstraction of the state versus the criminal, which often leaves the victim unappeased, the government bogged down in court and the criminal more expert at his trade. At one time, retribution was the fashion and strength—the rule. As social order became more sophisticated, retribution yielded to the action of the group, but the concept of satisfaction for insult or injury remained based on revenge.

By the laws of our society today, the accused is prosecuted for his crime, and if found guilty, punished by the state. The victim, whose cooperation is often essential to the prosecution process, is precluded from inflicting

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1. The Code of Hammurabi, §§ 23-24, cited in C. JOHNS, THE OLDEST CODE OF LAWS IN THE WORLD 6-7 (1903).

2. S. 750, 92d Cong., 1st Sess. (1971). A similar bill was introduced on December 10, 1970. S. 4576, 91st Cong., 2d Sess. (1970).

any type of physical revenge. That is as it should be. But his sole recourse within our federal jurisdiction is to seek damages by instituting civil action against the guilty criminal. At best, this has been an inadequate remedy, considering the financial condition of most perpetrators of violent crime. In fact, a recent survey of victims of violent crimes indicated a bare 1.8 percent of the victims ever collect anything from their attackers. Yet 74.2 percent of the victims experience economic loss, not to mention the physical damage and suffering involved.³

The economic loss and physical pain which accompanies crime is no small matter. Indeed, the President's Commission on the Causes and Prevention of Violence documents the alarming increase in the rate of violent crime. Between 1958 and 1967, for example, violent crimes increased for all ages by 65.7 percent. An even more alarming aspect of these statistics shows that, when the arrest rates for violent crimes are broken down into age groups, there are increases of 222.0 percent among the 10-14 year-olds and 102.5 percent among the 15-17 year-olds.

With the crime rate continuing to rise in such immense proportions, the vociferous cry for law and order has not gone unheeded at the federal level. The United States Senate in the last Congress passed at least 18 major crime proposals.⁴ In doing so, it increased substantially the assistance to local law enforcement agencies. This assistance helped provide more training for policemen and more and better police equipment. In short, it afforded to the police some badly needed tools in their fight against crime and violence. However, in spite of all its efforts to provide a safer society, Congress failed miserably to consider those citizens injured by crime.⁵

Focusing more attention on the criminal and less on his victim is an inequity of modern society. The origin of this phenomenon is interesting and telling of our English heritage. In early Saxon England there was a two-fold process whereby a criminal was required to compensate his victim and pay a fine to the king as well. Such a system seems to have been a well-balanced recognition of crime as affecting both society generally and the victim

3. *Hearings on S. 2936 Before the Senate Committee on the District of Columbia*, 91st Cong., 1st Sess., at 127 (1969), quoting A. LINDEN, *THE REPORT OF THE OSGOODE HALL STUDY ON COMPENSATION FOR VICTIMS OF CRIME* 11 (1968.)

4. Crime bills passed by the 91st Congress include: Omnibus Crime Control Act of 1970, Pub. L. No. 91-644, 84 Stat. 1880 (Jan. 2, 1971); Comprehensive Drug Abuse and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (Oct. 27, 1970); Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (Oct. 15, 1970); Criminal Justice Act of 1970, Pub. L. No. 91-447, 84 Stat. 916 (Oct. 14, 1970); Postal Reorganization Act of 1970, Pub. L. No. 91-375, 84 Stat. 719 (Aug. 12, 1970); District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473 (July 29, 1970); Omnibus Judgeship Bill of 1970, Pub. L. No. 91-272, 84 Stat. 294 (June 2, 1970).

5. Actually, the Senate passed a victim compensation program for the District of Columbia, including it as a part of the District of Columbia Court Reform Bill. 116 CONG. REC. S. 4387 (daily ed. March 24, 1970). The provision was dropped by the Conference Committee on the matter and never became law.

individually. Gradually a system was substituted which put the defendant's life totally at the king's mercy and removed the victim's right to reparation.

Without entering into a detailed recitation of judicial history, this brief explanation is offered to demonstrate that where once the individual victim was the primary force behind the process of redressing private wrongs, he ultimately yielded his responsibility to the state. The state in the form of the king and his ministers willingly accepted this role deciding, apparently, that doing so limited acts of revenge. This permitted a more effective suppression of unplanned or non-state violence and social strife. Secondly, the state's expanded authority offered wider protection.

Whatever the reason, however, the modern result has established the combination of state versus criminal, to the virtual exclusion of the victim. Such a policy abrogates any social contract that is thought to exist between the citizen and his society. The average citizen pays his taxes and obeys the laws imposed by society. In return he expects, some would argue on a contractual basis, to be protected by those laws from illegal acts which result in injury and suffering to him. In short, if society fails in its efforts to provide basic protection, then the social contract has been breached; the citizen has suffered. To him there is no particular non-punishable recourse available other, perhaps, than overt apathy. Reflective of this growing apathy has been the significant increase in the number of cases where victims refuse to become involved; not as witnesses, not to assist the prosecution, not in preventing the crime, not in assisting a police officer. It should be added that this reaction is not limited to the immediate victim but is extended to witnesses, to the victim's relatives, to his friends, and neighbors. This is not surprising, if you recognize the fact that less than 2 percent of the victim population ever received any type of restitution.

Overt apathy or non-participation by citizens in regulatory functions of society may become a critical problem during the last quarter of the 20th century. Whereas our technology has grown, our interactions have increased, and our communications have expanded, an increased need for recognized social responsibility by *all* citizens has become a necessity. In the past Horace Greeley's admonition to the reckless and irresponsible to go West was an attempt at alleviating social tensions. But today, citizens must recognize that through their plain apathy, they commit crimes against society. The elected representatives need to become cognizant of the need for legislation that would encourage, in fact reward, acts that were socially responsible. Social contracts, as has been the case with most contracts, are much more complicated today than at any time in the past; but if those contracts are to be weakened and violence is to spread at the rate it is speeding presently, it is my strong feeling that our society will help bring about its own downfall. As Thomas Babington Macauley inferred in a letter to an American friend during the 19th century, the United States will not fall by external invasion, but instead will fall by internal dissent, division,

and violence.⁶

It has been said that the institutions of justice have become more concerned with the protection of the rights of the criminal than with the need for law and order in society. To an extent, I would agree. But I feel the major emphasis is misplaced. To me, a major liability within the present system of criminal justice is its utter failure to consider the innocent victim. This is the whole basis for my interest in reviving the concept of victim compensation. Though employed in the past to inhibit the practice of revenge, I believe the concept is equally applicable in today's society where the citizen has come to rely so greatly upon safety and police facilities, as furnished at the local, state, and federal levels.

Another aspect of the problem concerns the government's task of rehabilitating criminals. Though these efforts have been totally inadequate, it is government's failure to succeed in this endeavor which certainly has aggravated, if not generated, the whole problem of recidivism. How much violent crime, it should be asked, is committed at the hands of the recidivist who has been released upon society from a penal institution that served only to mold him into a more hardened and bitter criminal than he was when first incarcerated? His innocent victim has been doubly cheated by society. Not only has society failed to protect him with sufficient police and safety facilities, but its penal institutions have actually created a more serious threat to law and order by serving as graduate schools for criminals.

As a matter of public policy, social compensation programs are not revolutionary notions. Indeed, there is great similarity in rationale and origin between the notion of compensating workers, assuring them of a reasonably safe place in which to work, and compensating victims of crime, assuring them a reasonably safe society in which to live. Just as rapid industrialization increased hazards for the worker, so did the rapid urbanization of the 20th century create social conditions which set the stage for the substantial increase in recent crime statistics. Furthermore, just as the worker was frustrated in his attempts to recover damages, so, too, has the victim of crime today been frustrated. In many cases the offender is not apprehended. When he is, he is often destitute. Further complicating this latter difficulty is the fact that present penal methods deprive the offender of his ability to make restitution, as he is deprived of any means of obtaining a gainful livelihood.

Along with the worker compensation concept, other steps have been taken in the past 30 years which manifest society's abandonment of laissez faire attitudes when facing matters of collective community need. Social

6. Letter from Thomas B. Macauley to Henry S. Randall, May 3, 1857, on file in the Library of Congress. Macauley said:

Your republic will be as fearfully plundered and laid waste by barbarians in the 20th century as the Roman Empire was in the Fifth, with this difference: that the Huns and Vandals who ravaged the Roman Empire came from without and your Huns and Vandals will have been engendered within your own country, by your own institutions.

security, medicare, aid to dependent children, assistance for the handicapped, the aged and the blind, ideas of no-fault insurance, and national health insurance all reflect a recognition of collective societal responsibility. Fulfilling this responsibility with regard to victims of crime is no easy task. Senate bill 750 attempts to face the problem. If adopted, it would by no means represent the first such step taken within today's family of nations. Within the last ten years, New Zealand, England, and some provinces in Canada and Australia have all enacted governmental programs of compensation for innocent victims of violent crimes. In addition, our own States of California, Hawaii, Nevada, Maryland, Massachusetts, and New York all have enacted some type of compensation program. My colleague, the former Senator from the State of Texas, Ralph Yarborough, introduced a crime compensation bill in both the 89th and 90th Congresses.

The main features of my bill currently before the Senate deserve some explanation. First of all, the bill would create a three-man Violent Crime Compensation Commission. The Commission would compensate innocent victims for injury or death resulting from any one of 18 offenses. The 18 offenses could be grouped generally under the headings of homicide, assaults, and sexual offenses, all occurring within the federal criminal jurisdiction. There would be a maximum limit of \$25,000 for each award. It would be the Commission's duty to examine the evidence presented, both to determine what level of compensation should be granted and whether in fact the person making the claim is an innocent victim.

With some limitation, the Commission could order the payment of compensation on behalf of the injured victim to the person responsible for his maintenance, to his dependents or closely related survivors. The authority of the Commission to award compensation would not be dependent on prosecution or conviction of the accused for the offense giving rise to the injury.

As far as what types of losses are covered, the proposal would provide compensation for expenses incurred as a result of the victim's injury or death, for the loss of his earning power, for pain and suffering and for any other pecuniary losses which the Commission deems reasonable. Compensation would be denied where the victim was, at the time of the injury or death, living with the offender or in any case where the Commission finds that unjust enrichment would result to or on behalf of the offender. Decisions and orders of the Commission would be reviewed by the appropriate Courts of Appeals. A most important provision would allow the Commission, where possible, to recover from a convicted assailant the amount of any awards granted as a result of his crime.

There is also provided a grant program which would encourage States to establish crime compensation systems within their individual criminal jurisdictions. At this stage, the provisions of S. 750 are by no means final. Indeed, at an appropriate time during the legislative process, many of its

features will undergo close examination, and undoubtedly, changes will be made. This is an essential purpose of the legislative process.

Recently, President Nixon recommended a special compensation program for survivors of policemen killed in the line of duty. It would seem appropriate that such a program be considered along with, and as a part of, S. 750. There are additional aspects of victim compensation that deserve greater examination and clarification. For example, the whole matter of the projected costs for implementing crime compensation on the federal level must be examined. The possibility of tying rehabilitation and restitution to compensation also has been raised. That, too, should be explored.

Indeed, many questions need to be clarified before a federal program allowing the compensation of innocent victims of violent crimes can be established. The objective in introducing this proposal is to begin the process. Before this Congress adjourns in 1972, it is my hope that the process will be completed, and there will be established on the federal level the principle that violent crime is a three-party affair which includes the victim, the criminal and the state. In the last 100 years the criminal and the state have dominated the arena of crime and punishment to the injurious exclusion of the victim. To revive at this time the proposition that citizens are entitled to protection, and such protection failing, that citizens at least are entitled to be compensated for the losses they suffer from violent criminal action can only serve to strengthen the social fibre of our nation.



