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Congressional Record S. 17999 - Justice for Crime Victims

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JUSTICE FOR THE VICTIM OF CRIME

Mr. MANSFIELD. Mr. President, I have long advocated the concept of establishing at the Federal level a program designed to compensate the innocent vic-
time of crime. My bill, S. 750, is now pending before the Committee on the Judiciary, and before too long I hope to see action completed there so that the Senate itself can face this most important

Earlier this year I was honored by the request of the Law Review at the University of Houston School of Law to prepare an article on this subject and to set forth the plea for victim compensation. I did so; and the article, entitled "Justice for the Victims of Crime," has been published in the Houston Law Review. In fact, it was dated September 1971. I read from the concluding remarks the following statement:

In the last one hundred years, the criminal and the State have dominated the scene of crime and punishment to the injurious exclusion of the victim. To revive at this time the proposition that citizens are entitled to compensation and such protection falling, that citizens at least are entitled to be compensated for the losses they suffer from violent crimes, is a move to strengthen the social fiber of our Nation.

It is time, Mr. President, that the attention of the Nation be focused on the innocent victim of crime, on his loss and suffering. I feel that by my bill, S. 750, is addressed.

Mr. President, I ask unanimous consent that the article be printed in the Record.

Then, without objection, the article was ordered to be printed in the Record, as follows:

JUSTICE FOR THE VICTIMS OF CRIME

By Senator Mike Mansfield

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

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

Just as violence in our society has continued from times past so, too, does the concept of compensation with its roots planted firmly in the early history of mankind. It is out of a deep personal concern for the individual that I present to our society today that I seek to revive the concept of victim compensation. In doing so, I have 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-increasing 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.

To the American of today, it may have always suffered the ravages of violent crimes. The earliest reported was Abel's murder at the hands of his brother. The most recent is by press of crimes of the most heinous nature. In the days of old, punishment was meted out primarily to the offender. The concept of justice, as we know it today, was not, 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. State action, which often leaves the victim unapplied, the government bogged down in court and the offender, in jail. 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 punished for his crime, and if found guilty, punished by what lies. The victim, whose situation is often essential to the prosecution process, is precluded from inflicting any type of physical vengeance. That which is, at least within the jurisdiction of our federal jurisdiction is to seek damages by instituting civil action against the guilty criminal. The criminal is entitled to a just and adequate remedy considering the financial condition of most perpetrators of violent crime. In fact, almost all violent crimes indicated a bare 1.8 percent of the victims ever collect anything from their at-torney against crime and violence. Experience economic loss, not to mention the physical damage and suffering involved.

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, the number of all age groups rose by 65.7 percent. An even more alarming aspect of these statistics shows that, when the crime is committed against the person, there is a significant increase across age groups, there are increases of 292.0 percent among the 10-14 year-olds and 162.5 percent among the 15-17 year-olds.

With the crime rate continuing to rise in such immense proportions, the woe of dry law and order has gone unheeded at the level of the federal government. The United States Senate in the last Congress passed at least 18 major crime proposals. In doing so, it increased substantially the assistance to local law enforcement agencies. This assistance helped provide more police and fire fighters 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.

Focusing more attention on the criminal and less on his victim is an inequity of our modern society. The phenomenon is interesting and telling of our English heritage. In early Saxon England there was a twofold crime proposal. In criminal was required to compensate his victim and pay a fine to the king as well. Such a system seems to have worked up to the middle of the century. As affecting public safety, the concept is equally applicable to today's society where crime is still a major problem. In fact, in a recent survey of the Houston police, 77 percent of the respondents agreed with the statement that "crime is the most serious threat to society.

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 crime, he ultimately yielded his responsibility to the state. The state in the form of the king and his minister were investigating this matter. They were deciding, apparently, that doing so limited acts of revenge. This permitted a more effective suppression of planned 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. The state creates any social contract that is thought to exist between the citizen and his society. The average citizen is entitled to the laws and the law is 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-punishment form available other than over apathy. Reflective of this growing apathy has been the significant increase in the number of people who now feel it would be more expedient to become involved; not witnesses, not to assist the prosecution, not in preventing the crime. The usual assumption would be that this reaction is not limited to the immediate victim but is extended to witnesses, the community, friends, and neighbors. This is not surprising; if you recognize the fact that less than 2 percent of the population ever received any type of restitution.

Overt apathy or non-participation by citizens, and the inclination of some to vote, may become a critical problem during the last quarter of the 20th century. Whereas our society has grown, our interactions have increased, and our communications have expanded, an increased need for recognized social responsibility is by-products. To me, it has become a necessity. In the past Horace Greeley's admonition to the reckless and irresponsible citizens, "The Bowery is your country, are elected representatives need to become cognizant of the need for legislation that would permit in fact, facts, which 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 spreading presently, it is my strong feeling that our society will be its own downfall. As Thomas Babington Macaul­ley 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 discord."

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 liability within the present system of criminal justice is its utter failure to consider the individual victim. This is for my interest in reviving the concept of victim compensation. Though employed in the past for the protection of society, the concept of compensation is now equally applicable to today's society where the citizen has come to rely so significantly on safety services, 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 reeducation. How much violent crime, it is asked, is committed by the hands of the recidivist who has been released upon society from a penal institution that served its purpose, only to return to crime and a bitter criminal than he was when first incarcerated? His innocent victim has been doubly victimized. Society now expects the police to protect him with sufficient police and safety facilities, but its penal institutions have neither the budgets nor the power to make the law and order by serving as graduate schools for criminals.

In the number of public policy, social compensatory programs are not revolutionary solutions. Indeed, there is great similarity in number, content and operation with 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

Footnotes at end of article.
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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 acquitted. 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 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. Congress 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. In the last ten years, New Zealand, England, and some provinces in Canada and Australia have all enacted governmental programs of compensation for victims of violent crimes. In addition, our States of California, Hawaii, Nevada, Maryland, Massachusetts, and New York all have enacted a type of compensation program. My colleague, the former Senator from the State of Texas, Ralph Yarbough, introduced a crime compensation bill in both the 89th and 90th Congresses.

The main features of my bill currently before the Senate receive 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, assault, and sexual offenses, all occurring within the federal criminal jurisdiction. There would be a maximum limit of $20,000 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 death 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, 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 reviewable by the appropriate Courts of Appeals. A most important provision would be exclusion, where possible, to recover from a convicted assailant the amount of any awards granted as a result of his type.

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 undoubtably, 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 in the process will be complemented, 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.

FOOTNOTES

*U.S. Senator (D., Montana).


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. 4837 (dally ed. March 24, 1970). The provision was dropped by the Conference Committee on the matter and never became law.

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 5th, with this difference: that the Hun's and Vandals who ravaged the Roman Empire came from without and your Huns and Vandals will have been engendered with-

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