

The Government has accepted the principle that victims of crimes of violence should be eligible for some compensation for personal injury at public expense and proposes to introduce a temporary scheme for this purpose. This scheme is neither an Act nor a Statutory Instrument but is being introduced as an experiment to see how it works. In the light of experience and the legislative difficulties encountered during the initial trial period, a Bill will be presented to Parliament.

# Payment of Compensation *to Victims of Crimes of Violence*

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THE BILL TO BE PRESENTED to Parliament regarding the payment of compensation to victims of crimes of violence will, before its certain enactment, be the subject of parliamentary and national controversy. Any scheme introduced by the Government will bristle with many problems which will have wide repercussions on penal policy, the courts, police, penal establishments, education, and other social agencies.

The form in which the Bill to compensate victims of crimes of violence will finally emerge, no matter what measures are introduced, will provide to some extent some satisfaction to that long felt need for equity between the treatment of the offender and the treatment of his victim, and to that special feeling of responsibility that the public has for the victim of a crime of violence. The architects of our social policy are committed to legislate in an attempt to solve the problem of "victimology."

Victimology has been the concern of the administrators of justice since time immemorial. An eye for an eye, and a tooth for a tooth, was the cornerstone of primitive justice. The Teutonic laws had a tariff for every sort of injury one freeman could inflict on another. Every form of aggression, from a blow which caused death, to a blow which deprived the victim of a single tooth, had a sum fixed for compensation to the victim.

Margery Fry, writing of the early methods of restitution (the Law of Moses, King Ethelbert's Decrees, and the Anglo-Saxon period which made provisions to regulate compensation to victims of criminal acts, all aimed at compensating the aggrieved party) comments that it is probably unfortunate that we have come so far away from these primitive usages. Schaffer, on the historical background of restitution in his book commissioned by the Home Office, writes: "History suggests that growing interest in the reformation of the criminal is

matched by decreasing care of the victim."

The problem of making restitution to the victim of a criminal act has been assiduously explored and exhaustively discussed by distinguished criminologists and penologists at international congresses in the 19th and 20th centuries and, as yet, this knotty problem has not been resolved. In no country in the world is there a scheme to compensate victims of violence to serve as a guide to our social planners. *A Criminal Injuries Act was introduced in New Zealand on the 1st January, 1964, but no claim had arisen under the Act by the 1st May, 1964.* The absence of a precedent is a challenge to Britain's legislative skill to lead the world in yet another field of social reform.

Dr. Peter Schaffer's survey of "Victimology" in thirty countries throughout the world, commissioned by the Home Office in 1960, shows that the general situation in these countries involves the victim of a crime in a more or less hopeless position in a claim for restitution. In many countries the Adhesive Procedure, which allows a civil claim for restitution to be made during a criminal trial, is widely accepted. In practice the criminal trial takes precedence over the victim's claim, thus emphasising the civil nature of the claim although allowing it to be brought during criminal proceedings. In only one country does the State make a contribution to the victim's claim, but insufficient funds makes

the State's contribution little more than symbolic. Whatever provisions are made in any country for the victim to claim against the offender's earnings in prison, the claim is only symbolic since nowhere are prison earnings worth attaching. Civil action, or where a court could make an order, offers little hope of recovering damages or compensation because the criminal is generally a man of straw.

In England provisions for the payment of damages or compensation were made in the Probation of Offenders Act, 1907, but it was rarely put into effect. The legal point of view has always been that the ordering of such payments is a matter for the civil courts, not the criminal courts. The Criminal Justice Act, 1948, cleared any doubts that may have existed as to the legality of such proceedings. If an offender is placed on probation or is discharged, the court may order him to pay such damages or compensation as it considers reasonable.

The Report on the United Nations survey of probation in this country stated that orders for payment of damages or compensation are made in more than ten per cent. of adult cases who are placed on probation. A sample survey carried out by the National Association of Probation Officers indicated that there was little uniformity and the widest possible variations in court practice. Some courts ordered compensation to be paid where loss or damage was concerned as

normal procedure. Other courts made little or no use of their powers in this connection. Some courts took into consideration the offender's attempt or promise to make restitution as mitigating circumstances when passing sentence, and this could be said to influence sentencing policy in these courts, but no provision is made for this in criminal law.

Apart from children under age, the obviously insane, and, to a certain extent, the feeble minded, all persons who have committed a crime are held completely responsible for their acts. The edict has been, and still is, that the offender is to be condemned without any thought given to the possible payment of compensation or damages to his victim. It is only in recent years that any thought has been given to compensating victims of crime and some thought given to the various proposals for that purpose, particularly crimes of violence.

Margery Fry's article in *The Observer*, "Justice for Victims," had a favourable reception and on several occasions was discussed in Parliament. Margery Fry's view was that the responsibility to compensate victims of crimes of violence rests primarily with the State which has failed to protect the victim and the State alone can effectively compensate the victim. She proposed a scheme similar to the Industrial Insurance scheme should be introduced to compensate victims of crimes of violence. This

proposal was presented to Parliament ten years ago as a Private Member's Bill, the Criminal Injuries Bill, which, had it been enacted, would have provided compensation to those persons injured by criminal acts, and would have entitled the victim of a crime of violence to the same benefits provided by the National Insurance (Industrial Injuries) Act, 1946.

The White Paper, "Compensation for Victims of Crimes of Violence," published in 1959, presented two possible schemes for that purpose. One for a weekly payment analogous to the Industrial Insurance Act, the other for a lump sum to be paid by the Home Secretary which would be decided by the courts in absence of a settlement out of court. Questions considered in the White Paper were; Has the State any obligation to the victim when the State can never wholly prevent wrong suffered by one citizen as a result of criminal action by another? Is it right for the State to punish and enforce retribution? If the offender is to make compensation, does his prison earnings take precedence in making compensation to the victim, to the upkeep of the offender's family, or to the cost of his imprisonment? Would compensation depend on the detection and conviction of the offender? Could the courts, police and penal agencies cope with the extra work which must inevitably fall on them?

Other problems confronting a scheme to compensate victims of

crimes of violence are: can it be justified to compensate victims of crimes of violence and not other crimes? Would the criminal have less regard for the victim in the knowledge that the State would accept responsibility for any injury to his victim that he may cause, and would it lead to an increase in crimes of violence? Would ladies of easy virtue claim assault when in fact it was consent? What would be defined as a crime of violence? To what extent would the victim of a crime of violence be held responsible for his injuries?

Hentig writes in *The Criminal and his Victim*: "In a sense the victim shapes and moulds the criminal." In a case of rape for instance, how far or to what degree does the victim set the stage for her assailant? It is not suggested that because an attractive female uses her charms to entice and it leads her to be the victim of criminal assault she should be barred from claiming compensation. Such a claim would need careful appraisal. The White Paper questions the eligibility of a claimant of bad character who may be partially responsible for his own injuries.

In many cases of assault the victim is not entirely blameless. A person injured in a gang fight would receive little sympathy from any quarter. The 'victim' of an abortion is far from blameless and the abortionist may be far less culpable than the 'victim.' Some

persons lack the moral fibre to exercise restraint under strong provocation and may resort to violence. In these and many other circumstances it can be said that the victims help to shape and mould the criminal. Provisions would be required in any scheme to assess the victim's responsibility for his injury in a claim for compensation.

If the State cannot prevent all loss or injury inflicted on one of its citizens by another, is there a case for the State to accept responsibility for the victim of a crime of violence? The public pay for their protection in the form of rates and taxes which if looked upon as a form of insurance would justify the payment of compensation by the State when it failed to protect one of its citizens. The Riot Damage Act, 1886, gives the right to claim damages from the Police Rate for any damage caused by riot. Citizens can protect their valuable belongings by means of strong-rooms, safes, or other devices but are not encouraged to carry weapons to protect life or limb. In Britain the State accepts responsibility to maintain law and order and frowns upon the use of weapons to do so. It actively discourages the use of weapons for any other purpose than sport, or for the elimination of pests and vermin. In these circumstances, and with the widest possible interpretation, the failure of the State to protect a citizen by social restraint,

and the prohibition of an individual to carry a weapon for his protection of life and limb, it is justifiable for the State to make payment of compensation to a victim of a crime of violence.

The idea of restitution being made by the offender quickens the public's pulse, and some think that the payment of compensation by the offender is the best first step towards reformation. It is argued that it is only right and just that compensation to the injured person should be made by the person responsible for those injuries. It would bring home to the offender the damage he had done. Unfortunately such orders by a court could rarely be for any but small amounts and would not be equitable. Orders of this kind would necessarily depend on the offender's capacity to pay, and if the offender is a man of straw then the victim's chance of receiving compensation from the offender is virtually nil.

It is sometimes said that if prisoners were paid 'the rate for the job,' part of the offender's earnings whilst in prison could be attached and used towards the payment of compensation. Assuming that the labour potential in prisons reached something like full employment, what proportion, if any, could be allocated to the payment of compensation? At present it costs about seven pounds a week to keep a man in prison. Many prisoners are married or have equivalent domestic responsibilities.

In most cases their dependants are a burden to the Exchequer whilst the prisoner is serving his sentence. It has been found desirable in the modern treatment of the offender to give a discharged prisoner a small sum of cash to help in the transition from prison to normal society. If a prisoner contributed to his keep whilst in prison, made an allowance to maintain his dependants and saved a weekly sum to put aside for his discharge from prison, there would be little, if any of his prison earnings left for payment of compensation. It could well be that the prisoner on discharge from prison would be better off than his victim.

If prisoners were paid the rate for the job comparable to industry, the prison would lose the services of those prisoners employed on domestic and maintenance work in the prison. Prison staffs would reach huge proportions with the employment of domestic staff and industrial and technical experts. The cost of keeping a prisoner would increase. If part of a prisoner's earnings were channelled to provide compensation after meeting the cost of his keep, maintenance of his dependants, National Insurance contributions, saving for release, any payment of compensation would be no more than a State subsidy.

Difficulty might be met in defining a crime of violence under a Criminal Injuries Act, but by and large, where the victim of a criminal act or from criminal negligence suffered

injury not covered by statutory insurance, it would be reasonably certain that he would be entitled to claim under the Criminal Injuries Act. To compile a list of crimes of violence for compensation purposes would necessitate listing all the crimes in the criminal calendar. There can be no hard and fast rule in defining a crime of violence. Every offence or crime in which the victim is injured and which is not covered by statutory insurance or where Common Law provisions are inadequate must be included in any Criminal Injuries Act.

It is doubtful to the extreme for the State to enforce retribution *and* punish the offender and equate this with our present penal methods. It could be said that retribution was the punishment and imprisonment was training, but such an argument would require fundamental changes and re-examination of our penal methods and modern penal philosophy.

It would seem that in any amendment to the law regarding the payment of compensation to victims of crimes of violence, the State should accept liability and that administrative machinery is required which would be flexible enough to allow reasonable claim yet rigid enough to counter fraudulent or frivolous claims. Such a scheme which would appear to meet the acceptable criteria of most proposals would be to establish regional Criminal Injuries Tribunals. These Tribunals would

be able to make discretionary awards similar to the Industrial Injuries scheme which treats all claimants according to their injuries and their family responsibilities, and not according to their economic circumstances and prospects.

Criminal Injuries Tribunals would consist of three members composed of a medical assessor, a legal assessor and a lay assessor. All victims of crimes of violence reported to the police would of a right be allowed to lodge a claim. (This would allow claimants where the offender was undetected, acquitted or discharged.) The claimant would be allowed to have a representative of any society or organisation to help him to present his case. If a claimant successfully pursued a civil action after an award by the Tribunal, the sum awarded by the Tribunal would be refunded in full or in part. There would be machinery for appeal.

Tribunals would emphasise informality at their proceedings though they would present an image of authority which exists in a court of law. Criminal Injuries Tribunals would assess the victim's responsibility for his own injuries, and consider cases which might be excluded if a rigid list of crimes for compensation purposes were laid down. Accomplices of a criminal who were injured in the commission of a crime would be reluctant to appear before a Tribunal but might be tempted to claim compensation if, as has been suggested elsewhere,

a scheme to compensate victims of crimes of violence was grafted on to the administrative machinery of the Industrial Injuries scheme.

If the courts made greater use of their powers under Section 11(2) of the Criminal Justice Act, 1948, to order compensation or damages for personal injury, it would bring home to many offenders the justice of being required to compensate the person he had injured and

would act as the best first step to the offender's rehabilitation. Assuming that the courts made greater use of this Section, the persons exercising their right to claim under Criminal Injuries Tribunal procedure would be those people overlooked in previous legislation, and for whom recovery of damages under Common Law would not be equitable or were non-existent.

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## BOOK REVIEW

### Crime and the Social Structure \*

ONE IS IMMEDIATELY AWARE of something refreshingly different about this work; it lacks the usual introductory chapters of definitions whose purpose presumably is to warn the reader of the obtuseness of the promised argument which fill two-thirds of most of the post-war volumes of sociological thought. It is also well written and understood after the first reading.

Mr. Mays' aim is to place crime in its social perspective. He takes the Durkheim theme, that societies have within their vitals an element of crime, a stage further. Crime is endemic to Western societies, the psychological processes necessary to competitive living are essentially the same as those involved in criminal activity. Paraphrasing Taft he says "that a socio-economic system based on free enterprise, capitalist principles, is positively criminalistic both in the way it is organised and in the attitudes of mind it characteristically produces." Criminal acts are normal and permeate all sections of the community. "The lay image of the criminal in contemporary British society is not a Bill Sykes or a Fagin, not a professional dedicated to an anti-social way of life, but a school boy in the act of shoplifting or breaking and entering in his unregulated leisure hours." Or more acceptable, but equally illegitimate, the business man enjoying the benefits of his expense account with his family at the theatre. Mays proceeds to give the lie to the more comfortable theories of individual psychiatric disturbances, anomalies in upbringing, and criminal sub-groups as the causes of major crime, with a clarity, succinctness and charity so seldom found in sociological writing. These are not airily dismissed, they are placed in their true perspective within the total complex social spectrum. Mr. Mays draws together for the first time the great welter of modern criminological thinking and imprisonment into a unified social analysis.

Having drawn his picture with breadth and clarity and left the reader staggering from the implications of his analysis, Mr. Mays withdraws. Having made it obvious that the key to the problem is not to be found in a tinkering with criminal legislation, penal reform or more psychiatrists, but a wholesale revolution in social thinking, he evades the enormity of the issue and his recommendations are slight. But by then he has achieved his aim.

This book illustrates the generic link between unacceptable and acceptable illegality more potently than anything this decade. It is a scientific sermon which forces the reader to examine not only his attitude to offenders, but more important, to his order of social priorities.

B.E.

\* *Crime and the Social Structure*. JOHN BARRON MAYS. Faber. 30s. 0d.