

# Crime Pays the Victim: Criminal Fines, the State, and Victim Compensation Law 1964–1984<sup>1</sup>

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What mechanisms allow governments to expand into new areas of social provision and provide new benefits? Integrating theories from sociology and political science and using the case of crime victim compensation, this article shows how the political and moral meaning of policy financing tools affects state boundary expansion. In the mid-1960s, liberal politicians proposed victim compensation as a new public benefit, but conservatives resisted it as too costly and beyond governmental responsibility. Yet a few years later, a Republican-backed federal compensation bill, the Victims of Crime Act (VOCA), passed into law. What explains this puzzling turn of events? Unlike previous taxpayer-funded bills, VOCA was funded entirely from increased criminal fines. The bill's proponents politicized the revenue source as a tax on criminals, rendering questions concerning governmental responsibility moot. Just as important, the state expanded its power to extract revenue from its denizens: victim compensation law was one of the first instances in which lawmakers created new fines to pay for a new public program.

A central question in political sociology concerns the boundaries of the state: What mechanisms allow governments to expand into new areas, take on new roles, or provide new benefits? Existing theories emphasize cultural

<sup>1</sup> Savannah Major, Helene Harmon, Kevan Casson, Anabela Dokic, Michelle Follet, Dwyer Loughran, Marshall Mapes, Jessica St. George, and Jialin Zhang provided essential research assistance. We thank Beth Popp Berman, Katherine Chen, Tony Chen, Lis

factors—such as the salience of race, categories of worthiness, symbolic misrecognition, and policymakers' social skill (Steensland 2007; Brown 2013; Mayrl and Quinn 2016, 2017; Anderson 2018)—and institutional structures, including social movement strength, popular veto points, and policy feedback effects (Tilly 1978; Immergut 1992; Pierson 1993; Tarrow 1998; Mahoney 2000; Meyer 2004; Pearson 2014; Jacobs and Mettler 2018). Welfare state scholars generally find that the moral worth of proposed beneficiaries affects the passage of new benefits (Steensland 2007; Fox 2012; Brown 2013). Policy feedback and hidden state theories in political science suggest that the structure of policy financing affects public perception of new benefits as well as the politics of policy development (Howard 1997, 2007; Mettler 2011; Jacobs and Mettler 2018).

In this article, we integrate recent theorizing and argue that the boundary of the state can additionally expand (or contract) based on *the political and moral meanings attached to particular policy financing tools*. Financing tools are not neutral elements of policy design; they imply moral relationships and define membership, status, and worth in the political community. Just as state boundaries can expand when proposed beneficiaries are viewed as morally deserving, so too can expansion depend on the alignment between policy financing and moral schemas. Policy passage can therefore hinge not only on the moral worthiness of who benefits from a policy, but also on the moral *unworthiness* of who pays.

Empirically, we analyze the historical development of crime victim compensation law in the United States. As crime rates rose in the mid-1960s, liberal politicians proposed victim compensation as a new public benefit. Initial proposals followed a social contract model of government: Society had failed in its duty to prevent violent crime, they argued, and so society should reimburse innocent victims for their medical bills and lost wages. Traditional restitution—mandating defendants to cover the costs of their own victims' injuries—was insufficient because people who committed crimes were either too poor or never caught in the first place. Later, liberals added a social insurance logic, presenting publicly funded victim compensation as analogous to other Great Society social welfare programs.

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Clemens, Dan Hirschman, Isaac Martin, Damon Mayrl, Rourke O'Brien, Sarah Quinn, and participants in CUNY's Organizations, Markets, and the State course for thoughtful feedback on the project. Thank you to the reviewers for your observations and suggestions. Previous versions were presented at the 2020 virtual American Sociological Association Annual Meeting and the 2021 Michigan Journal of Law Reform Symposium, *The Poverty Penalty: America's Overuse of Fines and Fees*. We thank participants at both conferences for their feedback. Please direct all correspondence to Jeremy Levine, Department of Organizational Studies, University of Michigan, 500 Church Street, Ann Arbor, Michigan 48109. Email: levinejr@umich.edu

Conservatives rejected both logics. They did not believe victim compensation was an appropriate governmental responsibility and resisted the idea of a new budget expenditure. The two concerns were inextricably linked: conservative lawmakers from both parties would not expend taxpayer money on a program they believed was beyond the scope of government, no matter how politically appealing it sounded on its face. Dozens of federal bills died at various stages of the legislative process.

As Congress debated victim compensation bills in the 1970s, federal lawmakers stumbled upon a novel source of potential revenue: criminal fine increases. By this point, state legislatures had been more effective at passing compensation laws and had implemented a variety of add-on fines, fees, and surcharges. In 1968, Maryland was the first state to pass a new mandatory add-on fine as a clause within its victim compensation law—a model other states subsequently adopted and expanded upon. Conservatives in Congress liked the idea of so-called tax on crime, and were particularly interested in blanket, mandatory fines that had no relation to individual defendants' alleged offenses. While lawmakers still often referred to the arrangement as "restitution," the actual bills treated people convicted of crime as *collectively* responsible for the outstanding expenses of a select group of deserving victims. Throughout the decade, federal bills gradually incorporated criminal fines into compensation program financing schemes.

Still, it was not until 1984 that the Victims of Crime Act (VOCA) passed into federal law. VOCA subsidized state compensation programs and added tens of millions of dollars for victims' services. Conservative Republicans—some of whom had previously opposed the very idea of victim compensation—introduced the bill and urged its passage. What explains this puzzling turn of events? Unlike previous bills, VOCA was funded *entirely* by criminal fines and proponents *politicized* the revenue source as a way to "restore the balance" in criminal justice. Republicans captured the politics of the law with a powerful slogan: "The criminal—not the taxpayer—will pay for the program."<sup>2</sup>

VOCA proponents took an innovative financing tool, haphazardly adopted by state governments without much debate, and added a political and moral valence. Rather than the state stepping in because defendants were too poor to compensate their own victims directly, as a social insurance or social contract logic would dictate, VOCA instead defined "criminals" as a morally unworthy class of people and imposed new taxes on a variety of felonies and misdemeanors—many of which involved neither violence nor victims. Compared to victim compensation bills from the 1960s and 1970s, the state was relegated to the background; politically, "government" appeared

<sup>2</sup> "Reagan Proposes Giving U.S. Aid to Crime Victims," *Wall Street Journal*, March 14, 1984, p. 3.

as little more than a funding pass-through. Concerns about governmental responsibility all but disappeared from discussions of the law. Yet in reality, the state expanded its boundaries and power considerably, entering a new arena of social provision and issuing massive amounts of new criminal debt.

Our comparative-historical analysis of victim compensation law makes two important contributions to political sociology: (1) We show how the moral meaning of a policy can extend beyond target populations and into its financing structure, affecting policy outcomes; and (2) We call attention to a consequential moral logic of the state. Conservatives rejected liberals' social contract and social insurance arguments in favor of a governance model that divided the citizenry into groups based on moral worth and then provided benefits to the morally worthy using revenue extracted from the morally unworthy. This model of the state, delineating rights for some groups and a corresponding responsibility to pay for others, has significant implications for how we understand the trajectory of state building and state contraction in the United States.

We also extend a growing literature on monetary sanctions and the carceral state (Harris, Evans, and Beckett 2010, 2011; Beckett and Harris 2011; Harris 2016; Haney 2018; Pattillo and Kirk 2021). Today, state and local governments rely on a wide range of fines, fees, and surcharges to fund public programs and agencies—a particularly pernicious form of regressive redistribution (Sances and You 2017; Martin 2018; Martin et al. 2018; Friedman and Pattillo 2019; Singla et al. 2020; Mai and Rafael 2020). Recent scholarship depicts monetary sanctions as a set of tools governments use to overcome budget deficits, particularly under conditions of fiscal austerity (Friedman 2021; Kirk, Fernandes, and Friedman 2020; Martin 2020; Pacewicz and Robinson 2021). We build on this scholarship by showing (1) that governments established monetary sanctions to fund *new* programs, not just existing ones; and (2) that they did so during times of *economic expansion*, not just fiscal crisis. In addition, the case of victim compensation reveals lawmakers' thinking at a critical juncture before the "exponential growth of sanctions" in the 1970s and 1980s (Mullaney 1988, p. 1).

Criminal fines, first introduced in compensation schemes in the 1960s, withstood constitutional challenges and the policy area grew significantly. The Crime Victims Fund established by VOCA peaked at \$13 billion in 2015 and, as of this writing, has a balance of over \$6 billion. In 2018, VOCA transferred approximately \$3.6 billion from people and organizations convicted of crime to 243,281 crime victims and 6,462 victims' service organizations.<sup>3</sup> By placing governments' reliance on legal financial penalties in

<sup>3</sup> This figure is on top of additional state-level fines used to pay for victim compensation, which are on the books in at least 43 states.

historical context, we show how criminal fines became institutionalized as a legitimate source of public program revenue.

We begin this article by reviewing key theories in the welfare state literature and then develop our alternative mechanism of state boundary expansion. After detailing our comparative-historical methods, we describe initial policy debates over publicly funded victim compensation: liberals' insistence that the state has a duty to compensate victims of violent crime, and conservatives' resistance to the idea as an inappropriate use of federal government resources. We then document state governments' discovery of criminal fines as an innovative solution to the problem of program financing, followed by Congress's gradual acceptance of this novel financing tool. Next, we show how VOCA proponents in the 1980s politicized the tool, in part drawing on the co-constitutive racialization of "criminals" and "taxpayers" as social categories. Finally, we put our findings in conversation with existing theories, describe the consequences of victim compensation law for U.S. governance, and discuss how our analysis points to new directions for research.

#### THEORIES OF WELFARE STATE EXPANSION IN THE U.S.

Under what conditions does the state expand its boundaries? Early accounts of welfare state expansion point to macrostructural factors. Political sociologists have long argued that the broader context in which policy change occurs—for example, a polity's level of political oppression, pluralism, or enfranchisement—delimits options for mobilization and, by extension, the trajectory of social policy (Tilly 1978; Tarrow 1998; Meyer 2004). Historical institutionalists focus specifically on the institutional configurations that shape and constrain state action. These include the structure of governmental veto points, path dependency, policy feedback effects, and the ways existing policy configurations determine opportunities for future policy change (Immergut 1992; Pierson 1993, 2004; Tsebelis 1995; Mahoney 2000; Streeck and Thelen 2005; Mahoney and Thelen 2010; Pearson 2014).

In addition, achieving desired policy outcomes often depends on agency: the creativity and social skill of policy makers, policy elites, and other stakeholders in the policy-making process (Clemens 1993; Clemens and Cook 1999; Skrentny 2006; Garrick 2014; Anderson 2018; Pettinicchio 2019). For example, Anderson (2018) shows how policy entrepreneurs played a key role in establishing child labor laws in the 19th century. While institutional context constrained their political agency, these entrepreneurs leveraged creativity and social skill to expand the boundaries of the state into a new area of regulation.

Ideas and cultural processes also shape the trajectory of social policies (Hall 1993; Weir 1993; Béland 2005). Framing, for instance, is an important resource in social movement mobilization (Snow et. al. 1986; Benford

and Snow 2000; Ferree 2003). Cultural categories of worth are particularly powerful ideas. Building on notable prior analyses of “deserving” policy beneficiaries (e.g., Skocpol 1992), Steensland (2007) shows how cultural constructions of the moral worthiness of the working versus nonworking poor caused guaranteed annual income policy proposals to fail in the 1970s—ultimately preventing guaranteed income from becoming culturally accepted as a government responsibility.

Relatedly, the relative salience of race in moments of political struggle tends to shape the generosity of social policies, with less generous policies emerging at times of high racial tension (Fox 2012, 2019; Brown 2013; see also Schram et al. 2009; Soss et al. 2011). In an analysis of welfare reform politics in Georgia and Alabama, Brown (2013) shows how even racialized conflicts beyond the scope of specific policy debates can structure policy outcomes. A racialized debate about the Confederate flag in Georgia led to stricter welfare policy, whereas a tort reform debate in Alabama dampened the salience of race in subsequent welfare debates, leading to increased program benefits.

Cultural conceptions of the state—what it is, what it does, and who it serves—can additionally constrain possibilities for policy outcomes. For Mayrl and Quinn (2016, p. 6), states “are not objects with natural boundaries so much as entities forged through boundary work.” The Elementary and Secondary Education Act of 1965 provides a vivid example. In the mid-1960s, federal policymakers and interest groups attempted to devote federal assistance in the form of books and other teaching materials to private Catholic schools. The political debate that followed centered not on program specifics, but on the boundary separating the state from religious organizations. The Johnson administration’s proposal erased the boundary, violating the public’s desire for a sharp distinction between church and state. In the end, the administration reconfigured the policy to better align with existing cultural schemas: federal resources were funneled through local school boards, which loaned out materials to Catholic schools as necessary. Public oversight gave the semblance of a strong church/state boundary—preventing further backlash—while nevertheless allowing the Johnson administration to achieve its preferred policy outcome.

These approaches to welfare state expansion—emphasizing broader sociopolitical conditions, institutional configurations, agency, and the cultural power of ideas and boundaries—generally describe political struggles in which the primary hurdle is securing stakeholder buy-in for policy ideas (e.g., in Steensland’s [2007] case, support for guaranteed basic income). Notably, these theories place relatively little emphasis on the issue of policy *financing*. But the politics of public finance matter considerably and are often part and parcel of efforts to secure policy approval (Campbell and Morgan 2005; Quinn 2019). As Quinn (2017, p. 78) astutely observes, “officials must confront the budget

when attempting to mobilize the state.” In short, the policymaking process necessarily requires discussions about how new or expanded programs will be paid for.

### The Politics of Public Finance

Policy financing is a common and often underappreciated dilemma of governance. Officials are regularly called upon to do more with less: to create or expand public programs while at the same time decreasing (or at least not increasing) taxes. In this regard, policy design can play a key role in shaping the politics of support. As Jacobs and Mettler (2018) hypothesize in an analysis of the Affordable Care Act, public support for new programs may depend on the visibility of *costs* as well as benefits.

The dilemma of policy financing is central to theories of the hidden or submerged state in political science, which document the proliferation of nontraditional policy tools—that is, tax expenditures, loan guarantees, social regulation, and other schemes that allow lawmakers to provide new or expanded benefits without growing the budget (Howard 1997, 2007; Mettler 2011). These tools are typically financed indirectly through tax credits (i.e., “tax revenue not collected”) or through widening access to the market (Howard 1997, 2007; Robinson 2020; see also Clemens 2006; Krippner 2012; Quinn 2017; Thurston 2018).

Since the 1970s, tax expenditures have become especially popular policy tools for social programs that aid poor families. The advantage of structuring these programs as tax expenditures is twofold: it allows policymakers to expand the bounds of the state in a way that makes costs less visible, and in doing so, it enables policy makers to avoid public debates over the deservingness of the poor (Howard 1997, 2007). Importantly, tax expenditures’ status as unconventional policy tools—as new or innovative solutions to budgetary dilemmas—also lends them a degree of semantic flexibility.

Consider the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC). While both policies are structured similarly as refundable tax credits for poor families, divergent cultural meanings led policymakers to expand the size and scope of one (the EITC) but not the other (the CTC). The EITC expanded during the 1980s era of social policy retrenchment because policymakers strategically distanced the tax credit from existing means-tested direct spending policies. Conservative lawmakers in particular seized on the EITC as “the antithesis of welfare” and an opportunity to “reinforce the nation’s work ethic” (Howard 2007, p. 105). By contrast, the nation’s history of meager support for poor families with children left policymakers little traction in establishing a refundable childcare tax credit that would benefit families who were too poor to owe taxes. Such a program resembled welfare,

violating a tacit logic of appropriateness for tax policies. Debate over the CTC's cultural status ultimately led to a regressive policy outcome: the United States' tax credit is far narrower than that of Canada and other peer countries and does not provide any benefits for the poorest families (McCabe and Berman 2016; McCabe 2018). In 2021, the Biden administration succeeded in expanding the CTC to the nation's poorest families, but for only one year as part of a COVID-19 stimulus package. The administration was unable to contend with conservatives from both parties who criticized the expansion as "welfare assistance."

Monetary sanctions are emblematic of the hidden state. As Thurston (2020, p. 287) argues, these systems are "complex, opaque, and indirect." Fines and fees are "largely invisible" as government expenditures, "potentially attributable to the individual actions that led to one's entanglement in the criminal justice system in the first place, and less to the underlying fiscal and institutional conditions that also operated to produce these outcomes." The financing structure downplays the agency of the state: linking public expenditures to a tax on problematic behaviors foregrounds the behaviors being penalized (crimes) rather than the actor doing the penalizing (the state). As is the case for other hidden state programs, the system of monetary sanctions "gives rise to a plethora of stakeholders, from private profit-seeking probation companies and debt collectors, to state and local governments" (Thurston 2020, p. 287; see also Katzenstein and Waller 2015). For example, fees, sometimes referred to as "costs" or "court costs," have become an essential source of funding for the criminal justice system (Mai and Rafael 2020; Martin 2020). Fines and fees thus endow states with a useful tool to offset budget deficits (Pacewicz and Robinson 2021; Friedman 2021). In one notable study, Kirk et al. (2020) provide evidence that Michigan and Illinois first passed pay-to-stay legislation—charging people who are jailed or imprisoned for the costs of their incarceration—when each state faced acute fiscal crisis in the 1930s and 1980s, respectively.

Like the EITC and CTC, these revenue tools carry meanings above and beyond dollars and cents. By forcing people who are incarcerated to pay for their stay in prison or jail, for instance, state governments placed "the moral imperative of financial responsibility" on criminalized people rather than the state (Kirk et al. 2020, p. 934). In another example, Pacewicz and Robinson (2021) find that local government officials in the Chicago suburbs favored obfuscated revenue sources like fines and fees primarily because, unlike property taxes, it was "OPM, other people's money" (p. 16). Scholars also single out restitution as existing on "a different moral plane" than other monetary sanctions because the money goes directly from people convicted of crimes to victims (Katzenstein and Waller 2015, p. 641). Notably, however, "restitution" overwhelmingly takes the form of a depersonalized fine, fee, or surcharge rather than a direct payment from the person



who committed the crime to their victim (Martin and Fowle 2020). The distinction is confusing but important. Take California. The state distinguishes restitution orders, a defendant's debt to *their own victim*, from the restitution fine, a defendant's debt to *society*—and this latter debt to society is used to fund the public victim compensation program. Unlike restitution orders, the restitution fine “centers a generalized, symbolic victim,” diminishing its ability to serve a restorative justice function (Martin and Fowle 2020, p. 1033). “Although restitution may seem to be the most commonsense and well-justified monetary sanction,” Martin and Fowle (2020, p. 1033) write, “its popular conception differs in important ways from the reality of its implementation.”

The hidden state and monetary sanctions literatures call attention to policymakers' use of nontraditional financing tools when faced with political and budgetary constraints. Existing research also suggests that policy enactment hinges on the meanings applied to these tools—meanings that are especially consequential when financing tools lack institutional precedent and are the product of creative problem solving (Pacewicz 2013; Quinn 2019). To the extent that scholars emphasize *moral* understandings of social welfare policy, the focus is predominantly on the deservingness of target beneficiaries rather than the populations targeted to pay.

We push these literatures forward by showing how moral classifications and financing mechanisms are not necessarily independent; the moral understanding of a policy may be embedded within, and mutually constituted by, the structure of its financing. What matters is not only who benefits from a policy, how it is funded, or how much it costs, but also *who pays for it*—and all the moral and political considerations that go into making sure the “right” people pay.

In the mid-1960s, liberal politicians advocated for publicly funded victim compensation. Victims of crime deserved financial support from the state, they argued, because the state had failed to prevent crime. These efforts floundered at the federal level due to conservatives' concerns that compensation was not a government responsibility and would cost too much. State-level policymakers proved more effective problem solvers and experimented with a range of alternative policy tools to fund crime victim compensation, including criminal fines. In 1984, when Congress enacted VOCA, the act was funded entirely by increased criminal fines. Yet the turn to criminal fines was not itself sufficient to secure the law's passage. States experimented with fines as a potential revenue source in the mid-1960s, and Congress first discovered the funding mechanism as late as 1971, 13 years before VOCA. It was only when criminal fines took on a particular political and moral valence—as “restoring the balance” between criminals and taxpaying victims—that the funding tool gained widespread traction among federal legislators.

## RESEARCH DESIGN

## Data Sources and Analytical Strategy

Through a case study of crime victim compensation law in the United States, we demonstrate how a nontraditional policy tool emerged as an option for policymakers, how this tool became politicized, and finally, how this process expanded the state into a new arena of social provision. We marshal an array of historical documents and employ within-case process tracing (Haydu 1998; Lange 2012; Quinn 2017; Mahoney 2000) to build a narrative account of the events leading to the passage of VOCA in 1984. We argue that the roll out of a federal crime victim compensation program depended on two related developments: (1) policymaker innovation with regard to how the program would be financed and (2) the successful politicization of this financing mechanism. To establish these claims requires two corresponding sets of information: (1) data on the history and development of crime victim compensation legislation in the United States and (2) data on political contestation demonstrating debates over the revenue structure of the policy and showing variations in policy framing or meaning over time. We emphasize primary sources, identified by Mayrl and Wilson (2020) as a methodological standard of today's "third wave" of historical sociology (see also Adams et al. 2005).

To chart the history and development of crime victim compensation policy in the United States, we completed legislative histories of victim compensation law at both the national and state levels. These histories detail all policy proposals related to victim compensation put forth by legislators during the time of study. We supplemented legislative histories with a database of approximately 500 historical newspaper articles depicting policymakers' efforts to pass and implement victim compensation legislation. To get a better sense of behind-the-scenes information exchange and program development, we accessed full transcripts from three biennial conferences on victim compensation held in Los Angeles (1968), Baltimore (1970), and Toronto (1972). Participants at these private conferences included Department of Justice (DOJ) officials, state program administrators, and academics, mostly law professors. We also draw on secondary sources concerning crime victim compensation, including 96 law review articles (some of which were used by lawmakers as motivation for VOCA) and a 1974 monograph, *Public Compensation to Victims of Crime* (Edelhertz and Geis 1974), written by two insider professionals who were involved in early advocacy efforts.

To gain purchase on the politics of victim compensation funding and how various victim compensation proposals took on particular meanings, we analyzed transcripts from all twelve Congressional hearings on victim compensation, as well as all floor debate and discussion published in the *Congressional Record*. In addition to documentation of legislator discussion

concerning specific victim compensation proposals, hearing documents also contain thousands of pages of exhibits, including annual reports and audits from state programs as well as correspondence from interest groups. We also collected Judiciary Committee reports and transcripts from bill markup sessions in the House and Senate. A variety of other primary sources informed our analysis, including reports on crime and victimization commissioned by Presidents Johnson and Reagan, as well as an Oral History of the Crime Victim Assistance Field Archive, funded by the DOJ and previously hosted online by the University of Akron. Taken together, these data provide a rich picture of the political contestation and advocacy efforts surrounding victim compensation legislation during our study period.

To help rule out alternative explanations, we compare cases of successful and unsuccessful victim compensation bills. Specifically, we juxtapose three models of victim compensation law: (1) unsuccessful taxpayer-funded bills from the 1960s and 1970s; (2) unsuccessful proposals in the early 1980s to pay for victim compensation using the excise tax on handgun sales; and (3) VOCA, which passed in 1984 and was funded entirely by criminal fine increases. The comparative design maximizes analytical leverage and allows us to identify the key mechanism behind bill passage.

### Crime Victim Compensation in Practice

Before analyzing the political debate surrounding victim compensation law, it is helpful to describe how the benefit works in practice. Imagine a man walking down the street in downtown San Francisco. An altercation unfolds up the block, someone pulls out a gun, and two shots ring out. The man—an innocent bystander—is shot in the leg by a stray bullet. He is rushed to the hospital where a police officer takes his statement and informs him that the government will compensate him for any costs related to his injury. The officer provides an incident case number which the man will need to include in his application for compensation.<sup>4</sup>

The man's insurance covers his hospital stay, but weeks later, he receives a \$1,250 bill in the mail from the fire department, which had dispatched emergency personnel to the scene. The man calls a number listed on the California Victim Compensation Board website and speaks with a case worker

<sup>4</sup> California law mandates that police officers inform crime victims of the benefit. In many ways this example represents the best-case scenario for a survivor of violent crime. Other victims and their families are never informed about victim compensation, "contributory misconduct" stipulations may disadvantage victims of color who are more likely to be seen as contributing to their own victimization, and police reporting requirements can inadvertently discourage domestic violence survivors from applying (Van Brocklin 2018).

who assesses his eligibility for victim compensation. The key criteria include (1) there was a verifiable crime; (2) the crime occurred in California; (3) the victim suffered injuries as a result of the crime; (4) the victim did not contribute to his or her own injuries (i.e., he or she was not injured while committing a crime); (5) the victim cooperated with the police (as verified by the police); and (6) the victim had documented expenses as a result of the crime—in this case, a bill from emergency responders.

Victim compensation is a payment of last resort. After all other insurance payments and public benefits are accounted for, compensation boards may cover any remaining out-of-pocket expenses. Lost wages and crime scene cleanup costs are also reimbursable, as well as funeral and burial costs if the victim dies. Compensation caps vary; in California, a state with one of the highest caps, the limit is \$70,000. In other states, the caps are as low as \$10,000. Stolen items and property damage are not compensated—only costs associated with bodily injury. Victims do not need to live in the state where the crime occurred and do not need to prove financial hardship.<sup>5</sup> The people who commit the violent acts do not need to be convicted, let alone found or charged.

In this sense, victim compensation is distinct from the traditional understanding of restitution. Compensation is a bureaucratic process funded in large part by standardized fines, fees, costs, or surcharges (depending on the state), such as a \$25 fine or a 10% surcharge, imposed automatically on a wide range of offenses. The dollar amount has nothing to do with the particulars of the crime committed, the actual expenses of the victim, or if the crime involved a victim at all. Restitution, by contrast, is an individualized sanction, determined by a judge and directly related to a victim's injuries and/or costs (Ruback 2015). In a study of six Pennsylvania counties, Ruback and Bergstrom (2006) find that mandatory compensation fines were imposed in 86%–97% of adult cases—a significantly higher rate than restitution orders, which are estimated to be imposed in 18%–63% of eligible cases (Ruback 2015). Scholars generally find low rates of payment across all fines, including victim compensation fines (Ruback and Bergstrom 2006; Selbin 2020; Pager et al. 2022). As we describe in our analysis, the inherent inefficiency of the system has not stopped governments from turning to the revenue source.

The next steps follow the template of other public benefits in the United States: the man primarily interacts with the state bureaucracy in order to prove his individual eligibility. After assembling the necessary paperwork, he faxes an application form and copies of his bills to the California Victim

<sup>5</sup> Most states originally applied a means test to victim compensation law. None do today. Some states apply additional eligibility criteria, including, controversially, disqualifying people with felony convictions. See Van Brocklin (2018).

Compensation Board. Using revenue derived from mandatory criminal fines applied in “every case where a person is convicted of a crime” (California Penal Code PEN § 1202.4), the board pays the outstanding bill on the man’s behalf.

EARLY COMPENSATION DEBATES, 1964–79

In the mid-1960s and 1970s, liberal politicians proposed crime victim compensation as a new public benefit. Their initial proposals mixed social insurance and social contract logics: The state is responsible for the welfare and protection of its citizens, and so the state should provide compensation for injuries when it fails to prevent crime. Victim compensation was also good politics. Democratic bills required eligible claimants to cooperate with the police, allowing proponents to argue that the law helped prevent crime—if only indirectly. Yet Republicans and other fiscal conservatives challenged the notion that victim compensation was a government responsibility and raised additional, related fears about unknown costs. In doing so, they valorized taxpayers as a morally worthy class and framed federally funded victim compensation as an “illogical, arbitrary, and unfair” burden placed on “innocent taxpayers.” Thus, the two conservative counterarguments were inseparable: They opposed victim compensation because it was not a reasonable government responsibility. They also opposed it because it would cost the government too much. And it was not a reasonable government responsibility because it would cost *the innocent taxpayer* too much. No bill passed into law.

The Case for Victim Compensation

The idea for victim compensation first reached the United States in February 1964.<sup>6</sup> Supreme Court Justice Arthur J. Goldberg, a liberal member of the Court, gave the fifth annual James Madison Lecture at NYU School of Law. Of the 53 paragraphs and 101 footnotes in his speech, a single paragraph, buried in a section on the administration of criminal justice and

<sup>6</sup> In the modern era, the idea for victim compensation first appeared in England. In a 1957 essay published in the *Observer*, Margery Fry, a British prison reformer, recounted the case of a man who was assaulted by two other men. A judge ordered the assailants to compensate the injured man for the cost of his hospital stay as well as the wages he lost from missing work. The compensation, five shillings a week, did not come close to covering the victim’s costs. “The victim will need to live another 442 years to collect the last instalment,” Fry wrote. “A bitter mockery! Have we no better help to offer to the victims of violent crime?” (Fry [1957] 1959, pp. 191–92). The essay inspired governments in New Zealand and England to fold victim compensation into their respective welfare states in 1963 and 1964, respectively. For more on the early history of victim compensation in the United States and a comparison with Sweden, see Kim and Gallo (2019).

defendants' rights, referenced victim compensation. Goldberg argued against a punitive approach to victims' rights; in his view, a victim's "burden is not alleviated by denying necessary services to the accused." Rather, crime "is a community problem," and so government compensation for victims deserves "serious consideration." "The victim of a robbery or an assault has been denied the 'protection' of the laws in a very real sense," he concluded, "and society should assume some responsibility for making him whole" (Goldberg 1964, p 224).

Inspired by Goldberg's speech and the ensuing press coverage, Senator Ralph Yarborough, a liberal Democrat from Texas, introduced the first federal victim compensation bill in 1965. He and other proponents argued that modern law explicitly prohibited vigilantism and other forms of retribution for criminal acts. Individuals give up the ability to privately defend themselves in exchange for public protection by the state. But when that social contract breaks down—when "society," meaning the government, is unable to protect victims of crime—then society has a "special obligation . . . to see that these people . . . are protected from the consequences of crime."<sup>7</sup>

Proponents pointed to the practical need for victim compensation as well, adopting a social insurance logic. Alternative remedies, like restitution, were ineffective; many people who committed violent crimes were never caught, and those who *were* tried and convicted often lacked the necessary resources to compensate their victims. Only the most destitute victims could turn to welfare for relief. Private insurance was out of the question because crime victims were a "worthy [class] in need of assistance from society at large" (Yarborough 1966). Publicly funded compensation was "enlightened social policy."<sup>8</sup>

Liberals proposed victim compensation as the War on Poverty transitioned into the War on Crime (Hinton 2016; see also Weaver 2007 and Kohler-Hausmann 2017). Violent crime rates were increasing, particularly in densely populated cities.<sup>9</sup> And high-profile Supreme Court cases—most notably *Gideon v. Wainwright* (1963), *Escobedo v. Illinois* (1964), and *Miranda v. Arizona* (1966), all supported by Democrats—affirmed new legal rights for criminal defendants. Politically, the Great Society's emphasis on poverty's "root causes" and rights for the accused put Democrats on the wrong side of the burgeoning War on Crime.

Victim compensation offered an appealing inroad into crime politics. It spoke to Democrats like Joseph Tydings (D-MD), an otherwise progressive

<sup>7</sup> 89 Cong. Rec. 14031, 1965. Comments are by Senator Yarborough.

<sup>8</sup> Compensation of Victims of Crime, 1969, p. 21

<sup>9</sup> Crime was rising, but likely not as much as statistics suggested. Crime *reporting* by local police departments increased above and beyond *actual crime* because federal funding was tied to evidence of crime. See Weaver (2007) and Hinton (2016).

senator who nevertheless supported some of President Nixon's punitive anti-crime policy agenda in the late 1960s. For Tydings, victim compensation was "an important measure or tool in the arsenal for war against crime."<sup>10</sup> Compensation also spoke to supposedly "soft on crime" liberals who viewed crime as a product of social and economic circumstance. To Congressman Abner Mikva (D-IL), victim compensation "puts the problem of criminal conduct in proper perspective: it shows it as a social problem which all citizens have a stake in solving rather than a problem of 'bad guys' or 'congenital criminals' who are the worry of the policy and no one else."<sup>11</sup> In general, Democrats adopted a framing that combined both conservative and liberal approaches to crime: criminal justice policy had, to date, focused only on the rights of criminal defendants, ignoring victims in the process. Victims were referred to as "the forgotten man" and, it was felt, they should get *just as much* support as criminal defendants.

There was no grassroots social movement pressure for victim compensation, though the idea was popular and enjoyed bipartisan support. A nationally representative Gallup poll from October 1965 indicated a solid majority of respondents—62%—supported government-provided compensation for the family of an innocent murder victim.<sup>12</sup> Interest groups like the American Bar Association (ABA) drafted model legislation. Progressive and conservative Democrats supported the idea, as did conservatives like William F. Buckley and at least some Goldwater Republicans.<sup>13</sup>

### The Case Against Victim Compensation

Despite broad appeal, conservatives in Congress nevertheless rejected both the social contract and social insurance arguments for victim compensation. In terms of the state's obligation to its citizens, Senator Sam Ervin (D-NC), a segregationist from North Carolina, compared crime victims to people who lost money gambling or suffered broken bones in accidents. None of those victims of unfortunate circumstances deserved any special consideration from U.S. taxpayers, he argued. Nor did Republicans find the connection to crime prevention compelling. "This is, in fact, a new and specialized social program rather than one that has any logical nexus to crime or

<sup>10</sup> Compensation of Victims of Crime, 1969, p. 1.

<sup>11</sup> Compensation of Victims of Crime, 1969, p. 68.

<sup>12</sup> The Gallup poll asked, "Suppose an innocent person is killed by a criminal—do you think the state should make financial provision for the victim's family?" Sixty-two percent of respondents supported state compensation and only 29% opposed ("Favor Crime Victim Aid," *Washington Post*, October 29, 1965, p. A2).

<sup>13</sup> Glynn Mapes, "Pay for Crime Victims: Uncharted Path," *Wall Street Journal*, January 17, 1966, p. 14.

criminal justice,” Representative Charles E. Wiggins (R-CA) said to his colleagues during a 1977 bill markup session in the House. Wiggins argued further that there was no actual need for the law because crime victims could find support in any number of existing social programs. “I think it is fair to say that the first justification is pure politics and rhetoric.”<sup>14</sup>

A central concern for Republicans was cost. They feared victim compensation would be an ever-growing drain on the federal budget, not unlike other public benefits designed primarily for the poor. For example, Wiggins compared victim compensation to the Food Stamp Program, “which started out as a \$25 million program and is now escalated to about \$6 billion.”<sup>15</sup> He voiced even stronger objections during debate on the House floor in 1978, calling victim compensation “the food stamp program of the Department of Justice” that would “[bring] the Department of Justice to a standstill.”<sup>16</sup>

These debates unfolded as the nation faced a crisis of governance. A collective hangover from mass social upheavals in the 1960s, combined with fiscal strain and austerity politics, caused Americans to question postwar assumptions about the role of the state in ensuring prosperity (Kohler-Hausmann 2017; Phillips-Fein 2017; Berman 2022). Above all else, political struggles in the 1970s reflected a crisis of *social citizenship*. “The central debate” that emerged, the historian Julilly Kohler-Hausmann (2017, p. 8) writes, “was not over the size of government but whom the state should serve.”

For conservatives, the state should serve “the taxpayer,” a social category implicitly associated with whiteness (Henricks and Seamster 2017; Walsh 2018; Wilmott 2022; see also Kidder and Martin 2012). Serving taxpayers meant protecting them from paying for new government programs. As such, opposition to victim compensation intertwined critiques related to government responsibility and program costs. Senator Ervin made the connection explicit during Senate floor debate in 1972. He pointed to the growing national deficit and said a better case could be made for taxpayer-funded victim compensation if the United States were a charitable institution—which, he argued, it was not—and if the treasury had a surplus—which, he argued, it did not: “If the United States were created to be an eleemosynary institution and if its Treasury was full of moneys instead of containing nothing except a hole \$450 billion deep, a better case could be made for the proposition that the American taxpayers, who are innocent parties, ought to

<sup>14</sup> Markup on H.R. 7010, 1977, p. 24. A markup session occurs after a hearing on a bill. During the session, the committee or subcommittee members discuss the bill in light of the hearing and vote on any proposed amendments. The members then decide whether to table the bill and take no action or to report it out to the full chamber.

<sup>15</sup> Markup on H.R. 7010, 1977, p. 41.

<sup>16</sup> 95 Cong. Rec. 38272, 1978.



be compelled to assume the obligation of criminals and compensate the victims of their crimes."<sup>17</sup>

Senator Ervin chided his colleagues for succumbing to "Potomac fever" and burdening taxpayers—"who are just as innocent as the victims of crime"—with a new spending program. For Ervin, the issue was *both* the overall cost *and* the specific financing structure that used one person's taxes to pay another person's victim.

Senator Strom Thurmond (R-SC) agreed with Ervin and called the bill "dangerous grounds."<sup>18</sup> Notably, Thurmond had in fact testified *in favor* of victim compensation the previous year—before he "had a chance to read [the] bill."<sup>19</sup> When it came time to mark up the bill in August 1972, however, Thurmond reversed his position. "I cannot support this bill," he said. "I will vote against it here and vote against it on the floor of the Senate." He objected to both the cost and the implication that victim compensation was a federal government responsibility. "There is just no end of spending by this government," he grumbled.<sup>20</sup>

Victim compensation was good politics. But throughout the 1960s and 1970s, opponents in Congress argued that it was not a government responsibility and that it would cost too much—two issues that were inextricably linked. While innocent crime victims were certainly morally worthy, taxpayer-funded victim compensation took money away from another morally worthy class. As Senator Ervin succinctly argued, "The taxpayer is innocent in this, too."<sup>21</sup>

#### FISCAL INNOVATION IN THE STATES AND THE EXPANSION OF FINES 1965–1983

State legislatures were more effective at passing victim compensation laws. Like debates at the national level, cost and financing were key concerns. Forced to contend with this political pressure, state lawmakers experimented

<sup>17</sup> 92 Cong. Rec. 31002–31005, 1972.

<sup>18</sup> Executive Session, United States Senate, Committee on the Judiciary, August 1972, p. 22.

<sup>19</sup> During 1971 Senate Judiciary hearings, Thurmond thanked Senate Majority Leader Mike Mansfield, the bill's sponsor, for "his appearance here and the splendid statement he has presented." He then admitted: "I have not had a chance to read his bill yet" (Victims of Crime, 1971, p. 131). Writing about the hearing in the *Washington Post*, journalist William Greider listed Thurmond as an endorser of the bill. See Greider, "Aid to Crime Victims Gets Support on Hill," *Washington Post*, December 25, 1971, p. A1.

<sup>20</sup> Executive Session, United States Senate, Committee on the Judiciary, August 1972, p. 26.

<sup>21</sup> "Senate Passes Bill: Aid to Crime Victims OKd," *Los Angeles Times*, September 18, 1972, p. 2.

with an innovative source of supplementary revenue: increases to criminal fines and fees. Throughout the decade, states created new fines of varying size to fund compensation programs. Yet state-level fines could not fully cover program costs. As programs ran out of money, state officials needed Congress's help to keep their compensation programs afloat.<sup>22</sup>

### Geographic Spread of State Compensation Programs and Funding Problems

Victim compensation laws first passed in high-income, high-crime states with liberal legislatures, including California (1965), New York (1966), Massachusetts (1967), Hawaii (1967), and Maryland (1968). There was little, if any, social movement pressure for victim compensation. California, the first state to pass a compensation law in 1965, offers a case in point. The law was the product of a letter from San Francisco Superior Court Judge Francis McCarty to his childhood friend, State Senator J. Eugene McAteer. Judge McCarty had presided over a case in 1962 in which an 18-year-old man had assaulted a 50-year-old woman in San Francisco. After accounting for medical bills and lost wages, the woman was out \$1,285 in total expenses. The case incensed Judge McCarty. If the state was willing to pay for the detention and imprisonment of the person convicted of the crime, he believed the state should also pay for the innocent woman's losses. Eleven days after receiving McCarty's letter, McAteer introduced a compensation bill in the state legislature. It passed into law shortly thereafter with no debate.<sup>23</sup>

Early adopters in the states followed Senator Yarborough and Congressional Democrats' logic and framed victim compensation as a collective social responsibility. Massachusetts's law is instructive. A 1966 study precipitating the law concluded that "the state owes compensation to the people it fails to protect from crime." Victim compensation was "in keeping with ideals of modern democratic government's role in society, it is merciful, wise from the standpoint of preventing crime, overwhelmingly desirable politically, and of significant importance in the preservation of belief in democratic

<sup>22</sup> There is some evidence that monetary sanctions, as a general funding tool for public programs, are inefficient and cost nearly as much money than they generate. Some convicted offenders cannot pay even a nominal fine and there are also costs associated with debt collection. In 2014–15 in Santa Clara County, e.g., county officials paid more to collect juvenile court fines than they received from the fines (Selbin 2020, p. 409; see also Ruback (2015) Menendez et al. (2019) and Pager et al. (2022)). In the case of victim compensation, policy makers have attempted to increase fines or create new fees rather than reconsider the practice.

<sup>23</sup> Other early adopters moved just as swiftly. Massachusetts, e.g., passed a victim compensation law "without debate and on a voice vote. . . . The House suspended its rules and passed the measure through all three readings in one sitting." See "House Passes Bill to Pay Crime Victims," *Boston Globe*, September 12, 1967, p. 2.

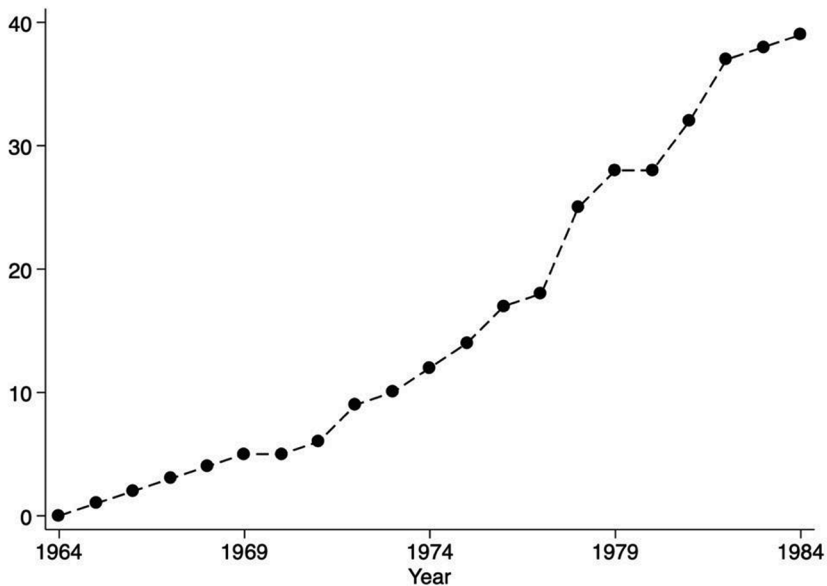


FIG. 1.—Number of states with crime victim compensation programs, 1964–84. As of 1993, every state and U.S. territory provides crime victim compensation.

government.”<sup>24</sup> The idea spread quickly. By 1979, 38 states had passed victim compensation laws (see fig. 1).

As states debated the merits of victim compensation, cost was a central impediment. In Massachusetts, for instance, Ways and Means chairman Anthony M. Scibeli (D-Springfield) “felt his committee should move slowly on the proposals, because they might involve ‘tremendous amounts of money.’”<sup>25</sup> And in Maryland, the state’s first compensation bill failed because “the estimates of the cost ran so high.”<sup>26</sup> When the bill finally passed into law, “the only opposition . . . came from Sen Frederick C. Malkus, Jr. (D-Lower Shore) . . . [who] told the Senate that such a bill would be too expensive.”<sup>27</sup>

State lawmakers pursued several strategies to keep costs down. They restricted eligibility to only “innocent” victims of certain violent crimes and

<sup>24</sup> Commonwealth of Massachusetts, “Report of the Special Commission on the Compensation of Victims of Violent Crimes, July 1967” (Boston: Wright & Potter, 1967).

<sup>25</sup> Stephen Zorn, “Mixed Reaction Greet Crime Victim Aid Bill,” *Boston Globe*, February 11, 1966, p. 10.

<sup>26</sup> *Victims of Crime*, 1971, p. 137.

<sup>27</sup> Richard Homan, “Crime Victims’ Compensation Bill Advances: Ethics Measure Game Laws,” *Washington Post, Times Herald*, March 5, 1968, p. B2.

excluded crimes committed by family members.<sup>28</sup> They excluded nonresidents and victims of minor driving accidents. Most states initially limited eligibility to people exhibiting “severe financial hardship” or similar criteria. Hawaii was the only state to provide compensation for pain and suffering—a costly addition rejected by other state lawmakers. All states excluded property crimes. Lawmakers experimented with different administrative structures to reduce overhead; Massachusetts, for instance, initially placed its compensation program in the courts because a new state agency would add “burdensome administrative costs to taxpayers.”<sup>29</sup> Another way to keep expenditures low was to limit public knowledge about the new benefit. “Victim compensation,” New York State Assemblyman Moses M. Weinstein (D-Queens) explained to an interviewer in the early 1970s, “provides a service to the people and therefore *costs* the State money. To publicize it only costs them more” (Edelhertz and Geis 1974, p. 46). States also established minimum loss provisions and set caps on awards which were “arbitrary, completely arbitrary,” according to one program administrator.<sup>30</sup>

Importantly, state legislators also experimented with the revenue side of the budget. Subrogation clauses—giving the state the right to recoup expenses from defendants—were especially popular. Administrators viewed these as insufficient, however, for the same reason state compensation was necessary in the first place: defendants were generally too poor to cover compensation costs. As Joseph Pickus, Chairman of the Maryland Criminal Injuries Compensation Board, explained, “collecting from the offenders might be courting the friendship of Don Quixote.” “We do have something in our act that helps to fund it; this idea of subrogation or making violators help to pay. . . . I would suggest to you that up to this point in time, that has not been very successful. I think for the same reason that the Statutes are created. There just is not any money . . . Subrogation and collecting from the offenders might be courting the friendship of Don Quixote, because I don’t think that is going to amount to a lot of money by way of recovering.”<sup>31</sup> Charles Inman, Massachusetts assistant attorney general, summarized the issue more pointedly: “You can’t get blood out of a stone.”<sup>32</sup>

<sup>28</sup> Early advocates and policy entrepreneurs were concerned about fraud as well as offenders benefiting monetarily from the law. Excluding crimes committed by family members seemed to reduce the potential for fraud. There was also an underlying 1960s-era sexist logic that made domestic violence victims ineligible: if a man assaulted his wife, her hospital bills were *his* expenses, as men were generally heads of households. The restriction no longer exists in any state today, thanks in part to domestic violence activists.

<sup>29</sup> Liston, “Crime Victims’ Aid Bill Gets Strong Backing,” p. 2.

<sup>30</sup> Second International Conference, 1970, p. 56.

<sup>31</sup> Crime Victim Compensation, 1975, p. 19.

<sup>32</sup> Second International Conference, 1970, p. 185

The Development of Fines as an Alternative, but Insufficient,  
Revenue Source

An alternative to subrogation was criminal fines and fees. Here, rather than the state suing the specific defendants to cover victims' out-of-pocket costs, the state instead empowered the courts to fine certain people convicted of crimes as a class. In 1965, California was the first state to statutorily require courts to impose additional fines as part of its new compensation law. "Upon conviction of a person of a crime of violence resulting in the injury or death of another person," the law read, "the court shall take into consideration the defendant's economic condition, and . . . shall, in addition to any other penalty, order the defendant to pay a fine commensurate in amount with the offense committed."<sup>33</sup> The fines, determined at judges' discretion, would be deposited into an Indemnity Fund and used to pay for the new benefit.

In 1968, Maryland was the first state to increase fines by a specific dollar amount—\$5 added to every criminal fine, excluding motor vehicle violations—to pay for its compensation program. Three years later, Martin I. Moylan, executive director of the state's victim compensation board, claimed (erroneously, as we will discuss below) that the new fine made the program "basically self-supporting."<sup>34</sup>

States' use of fines to fund victim compensation persisted and escalated throughout the 1970s. In 1974, Delaware was the first state to impose a surcharge on all fines rather than a discretionary fine or flat dollar fee.<sup>35</sup> Montana and Delaware went beyond Maryland and applied add-on fines and surcharges to all offenses, including traffic violations. Tennessee's 1977 compensation law imposed a \$21 add-on fine to any crime "committed against person or property"—thus partially paying for the benefit through a tax on crimes (property crimes) that were excluded from the benefit. Tennessee was the first state to fund its program entirely through new fines and fees, a model also adopted in Virginia (1977), Florida (1978), and Texas (1980). In addition to fines, states experimented with a variety of fees; Tennessee, for instance, charged all people on parole, probation, and work release an extra \$5 monthly fee to help cover compensation program costs.

Despite cost-cutting strategies and the development of innovative financing tools, compensation programs nevertheless faced significant fiscal strain. In the first decade of California's program, the state paid nearly \$10 million to victims but collected only \$80,145 through subrogation and court-ordered fines (Blackmore 1979). Of that total, district courts had transferred less than

<sup>33</sup> 1965 Cal. Stat. 3641.

<sup>34</sup> "Compensation Unit Aids Crime Victim," *Washington Post, Times Herald*, May 13, 1971, p. B2.

<sup>35</sup> The surcharge was applied even if the fine was suspended, and judges also had discretion to impose additional fines on top of the mandatory surcharge.

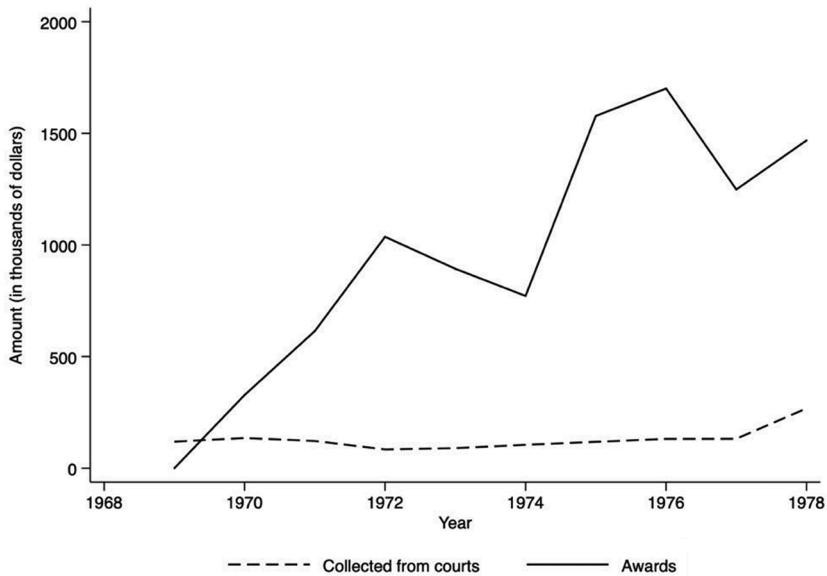


FIG. 2.—Annual compensation awards and revenue collected from \$5 court fine in Maryland 1968–78. Data are from Carrow (1980); authors' image.

\$15,000 to the Indemnity Fund.<sup>36</sup> Maryland's \$5 add-on fine generated more revenue than California's courts, but similarly failed to account for total program costs: Annual awards over the first decade of the program averaged \$963,882 whereas fines collected from the courts averaged a mere \$130,541 (see fig. 2).

Officials blamed deficits on their programs' novelty: judges and court clerks were unaware of the fund and had rarely, if ever, been asked to fine criminal offenders to pay for a new public program (Hoelzal 1980, p. 493). Lawmakers responded by increasing fines and aggressively pursuing collections. Maryland increased its \$5 mandatory add-on fine to \$10 in 1976. After a program audit in 1977, California replaced its discretionary fine with a mandatory \$5 add-on fine for all misdemeanors and a \$10 add-on fine for all felonies. Delaware's compensation board entered fiscal year 1983 with a deficit of \$196,000; the general assembly subsequently raised the surcharge on criminal fines from 10% to 15%, reducing the deficit to \$21,000.<sup>37</sup>

Two years after becoming the first state to fund its compensation program entirely from new criminal fines and fees, Tennessee's program had a deficit

<sup>36</sup> First International Conference, 1968, pp. 161–65; Crime Victim Compensation, 1976, p. 491.

<sup>37</sup> The Victims of Crime Assistance Act of 1984, 1984, p. 89.

of \$43,144.25. “Whether through lack of will or knowledge, or the indigency of the people convicted, the clerks have just not been collecting all the money,” State Representative Steve Cobb (D-Nashville) complained.<sup>38</sup> Cobb and other lawmakers pushed corrections officials to aggressively pursue the monthly fees from people on parole, probation, and work release and surveyed the accounts of prison wages to try and recoup the \$21 conviction fees from once-indigent offenders. Financing troubles did not dissuade Tennessee officials from continuing to rely on criminal fines. “This is an innovative program the way we are funding it,” Cobb said. “I believe the program can succeed on the funding plan.”<sup>39</sup> An assistant attorney general recommended taking it a step further: “Taxing every criminal offender would be the best answer. We would be awash in money if we could tax them all” (Hoelzal 1980, p. 493).

States’ experience with victim compensation law in the 1970s illustrates the political appeal of criminal fines as a revenue source for crime victim compensation—even when those fines were imposed on people convicted of victimless crimes. When initial fines proved insufficient, states increased fines and instituted more aggressive collection efforts rather than turning to general fund appropriations. At the same time, state-level fines, fees, and surcharges could not fully support compensation programs. By the early 1980s, several state programs were at risk of collapsing.<sup>40</sup>

#### CONGRESS DISCOVERS FINES AS A POTENTIAL REVENUE SOURCE 1971–1979

Federal lawmakers learned about the use of criminal fines from state administrators—an example of state innovation and “boomerang” or “bottom-up” federalism (Shipan and Volden 2006; Fisher 2013; Merriman 2019)—and throughout the 1970s, gradually incorporated the novel financing mechanism into victim compensation bills. Initially, in the early 1970s, Democratic bills proposed a fund comprised of all existing federal fines to be used as a *supplemental* source of revenue; the bills would still “marginally increase the burdens of our taxpayers”—a non-starter for conservative opponents. Conservatives did in fact support paying for compensation with new taxes; the question was who should bear the burden. They advocated for an approach that treated criminal fines like a tax that was unrelated to the alleged conduct of the defendant. Throughout the decade, some Democrats questioned

<sup>38</sup> “A Fund to Compensate Crime Victims,” Associated Press, September 14, 1979.

<sup>39</sup> Dennis Montgomery, “Tenn. Officials Fail to Collect Aid for Victims,” *Atlanta Constitution*, October 23, 1979, p. 2A.

<sup>40</sup> Some states, such as Louisiana and Rhode Island, passed victim compensation laws *contingent on federal funding*; no program was allowed to operate *until* a federal law was passed.

the wisdom of creating new criminal fines to pay for the program. Still, the politics of crime and austerity made the innovative revenue source especially appealing. Although no bill passed into law, some came close, and criminal fines became standard as a proposed revenue source.

### One Source of Useful Revenue

The first mention of fines occurred during Senate Judiciary hearings in 1971. Senator John L. McClellan (D-AR), a conservative segregationist, questioned Marvin Mandel, the Democratic governor of Maryland, about the state's victim compensation program. "How do you say you are supporting it?" Senator McClellan asked. "Partially by increasing the costs in the criminal courts of our State," Governor Mandel replied. Senator McClellan, a former prosecutor, was confused; he was not familiar with defendants being forced to pay their own court costs. Governor Mandel clarified: "If they are given a fine or a jail sentence and then upon release, have to pay those court costs, they are very glad to pay them and get out." That innovative practice piqued McClellan's interest, prompting him to say, "That is one source of revenue that I think should be utilized to its maximum."<sup>41</sup>

The exchange was pivotal in changing Senator McClellan's mind about victim compensation. Before the hearing, McClellan "was automatically suspicious of any bill promoted by a liberal . . . and further resented the inference that somehow society was to blame for crime and should start paying the tab." Indeed, as chairman of the Judiciary Subcommittee on Criminal Laws, he had buried previous compensation bills that relied on tax revenue. The 1971 bill's financing scheme, drawing on Maryland's experience with mandatory fines and allowing the government to "sue criminals to recover a victim's losses," helped turn him in to "a recent convert."<sup>42</sup> Still, the bill would only "reduce the amount of funds to be provided through appropriations," not *replace* appropriations; a portion covering federal crime victims would be paid for using federal fines, but a subsidy for state programs would come from general fund appropriations.<sup>43</sup> On the Senate floor, Senator McClellan conceded that the bill would "marginally increase the burdens of our

<sup>41</sup> Victims of Crime, 1971, p. 138.

<sup>42</sup> Greider, "Aid to Crime Victims Gets Support on Hill," p. A1.

<sup>43</sup> The bill had two levels: The first, paid for using a fund of federal fines estimated to be between \$8 and \$11 million a year, focused exclusively on federal crime victims. The second level would involve appropriations by funneling federal dollars through the Law Enforcement Assistance Administration to subsidize up to 75% of state compensation programs. The bill authorized a \$15 million appropriation (\$5 million for federal crime victims and \$10 million for the state black grant program) for the first year, until the Indemnity Fund was fully operational.



taxpayers.” Senator Mike Mansfield of Montana, a liberal Democrat, defended the appropriation as “modest.”<sup>44</sup> Hard-line fiscal conservatives objected to any appropriation, modest or otherwise, and the bill died.

In 1975, Senator Mansfield proposed a new compensation bill that explicitly responded to cost concerns. He abandoned claims of a modest appropriation and instead proposed an indemnity fund of federal fines “designed to provide the centerpiece for the financial base of this program.” Additionally, the bill included a new 10% tax on all federal prison labor—that is, an additional fee for people who have already been sentenced and fined for their crimes. “This approach would place the bulk of the victim’s economic burden directly on the criminal—where it belongs,” he said while introducing the bill on the Senate floor.<sup>45</sup>

Administrators in states with compensation programs were generally skeptical of relying on people convicted of crimes for program revenue, however. During House Judiciary hearings in 1976, Eugene Veglia, executive secretary of the California Board of Control, explained that California’s indemnity fund had little effect on overall program costs; one year, it collected only \$60.<sup>46</sup> In 1977, Carl Jahnke, chairman of the New Jersey Violent Crimes Compensation Board, similarly questioned financing based on restitution. “While it is certainly an area to go into, at least theoretically, as a practical matter it is not a solution to the problem, because there are so few offenders finally brought to justice to whom a victim may look for restitution.” Lee C. Falke, a district attorney from Ohio, argued further that imposing a new fine to pay for a new program “may be unconstitutional.”<sup>47</sup>

Republican lawmakers defended the proposed use of fines against each criticism. Wiggins, a former law clerk, did not agree with “the assumption that everyone who pulls the trigger is broke. . . . If your answer is that the people wouldn’t pay it, they can’t pay it, well, that has not been my experience. When persons have the option of going to jail or coming up with \$300, they come up with \$300; and it happens every day. Even though they’re broke, they come up with \$300.”<sup>48</sup> And in terms of the arrangement’s questionable constitutionality? “I understand. I like it anyway,” Representative Henry Hyde (R-IL) responded. The hearing room erupted in laughter.<sup>49</sup>

<sup>44</sup> 92 Cong. Rec. 31005, 1972.

<sup>45</sup> 95 Cong. Rec. 9727, 1975.

<sup>46</sup> *Crime Victim Compensation*, 1976, p. 393.

<sup>47</sup> *Victims of Crime Compensation*, 1977, p. 157.

<sup>48</sup> *Victims of Crime Compensation*, 1977, p. 51.

<sup>49</sup> *Victims of Crime Compensation*, 1977, p. 157.

## Treating Fines Like a Tax

Republicans treated the fine more like a tax than a criminal penalty or form of restitution. In doing so, they implicitly invoked a rights and responsibilities model of governance: Some groups had a right to benefits, others had a responsibility to pay for them, and government's role was to define those social categories of deservingness and responsibility. "Well, if you forget about restitution, and think more in terms of a tax, you start, perhaps, getting to some point that makes sense," Wiggins argued. Imposing a "\$10 tax on people who are before the criminal justice system and found guilty . . . would raise a lot of money." Speaking to Chairman Jahnke of New Jersey, he said, "Your proposal involves . . . a broad range of people, all of the taxpayers, to get this amount of money; and I think that a better case could be made at least for narrowing the contributing group to those who have had some involvement in the criminal justice system as defendants."<sup>50</sup> Wiggins put it plainly on the House floor: "[If] ever there was a program that cried out for a user's tax, this is it."<sup>51</sup>

To work as a tax, the fine had to be decoupled from any relationship to individual offenders' conduct. "I am thinking in terms of a fine that is earmarked but is not necessarily related to the conduct of the defendant to the victim," Wiggins said while questioning Mr. Veglia, the administrator from California. Wiggins acknowledged that "the [defendant] may not in fact owe the money on that kind of compensatory theory" and so he favored "a 5-percent override on criminal dollar fines which is earmarked for a fund and utilized to help finance your program." Mr. Veglia observed that other states' programs, like Maryland's, received funding from add-on fines. "Yes, they do," Wiggins responded. "And [the fines] may well finance your program. Or come close to it."<sup>52</sup>

House Democrats, by contrast, doubted both the utility and constitutionality of tying federal subsidies to a requirement that states fund compensation programs through new criminal fines. Nevertheless, Wiggins introduced an amendment requiring states to impose mandatory fines during the bill markup session for H.R. 7010 in 1977. Wiggins echoed the liberal Senator Mike Mansfield and argued that a mandatory fine would "take a long step in lifting this burden off the backs of the taxpayers—who may be the true victims of this legislation—and put it on the backs of the tortfeasors or criminals, where it belongs."<sup>53</sup> But Representative James Mann (D-SC) raised a constitutional issue: Nebraska, Mann noted, would be ineligible for subsidies

<sup>50</sup> Victims of Crime Compensation, 1977, p. 51.

<sup>51</sup> 95 Cong. Rec. 29195, 1977.

<sup>52</sup> Victims of Crime Compensation, 1977, p. 96.

<sup>53</sup> 95 Cong. Rec. 29195, 1977.

because its state constitution stipulated criminal fines could only be used for school funding. The amendment failed.<sup>54</sup>

Over time, as bills continued to die, Democrats nevertheless gradually incorporated financing from criminal fines into their compensation bills. In 1978, the House Judiciary Conference Report on H.R. 7010 questioned the practicality of fines, but theoretically agreed “that it is important that to the extent possible criminal wrongdoers ought to help pay for the losses sustained by their victims.”<sup>55</sup> That same year, a Senate bill restricted federal subsidies to states that encouraged judges to seek restitution from criminal defendants. And in 1979, a House bill required “that [to be eligible for a subsidy] a State impose upon convicted defendants court costs of at least \$5.”<sup>56</sup> While most defendants were too poor to fully compensate victims, Representative Robert Drinan (D-MA) called the \$5 fine “the initial fee, so that we do not have people convicted of crime who are paying zero.”<sup>57</sup>

#### CONGRESS DEBATES TWO COMPENSATION MODELS, 1982–84

By the 1980s, no victim compensation bill had passed into law. But the issue of crime—and crime *victims*—remained on the national political agenda (Weaver 2007; Simon 2009). In 1982, President Reagan appointed the Task Force on Crime Victims, staffed predominantly by Republicans and other conservatives. The Task Force’s final report listed victim compensation as a top federal priority. Daniel McGills, a research fellow at Harvard Law School, told a reporter, “It’s an attractive argument. It’s sort of like mom and apple pie. . . . Nobody can argue against it, except on funding.”<sup>58</sup>

In response to cost concerns, the Task Force detailed a plan “requiring no funding from tax revenues.”<sup>59</sup> The plan included doubling or tripling all federal criminal fines (including fines for drug offenses), improving fine collection procedures, imposing an additional mandatory fee on top of all federal fines, and shifting all federal fines and forfeitures into a victim compensation fund.

Notably, the Task Force’s plan also included diverting revenue from the excise tax on handgun sales. Since 1970, revenue from a 10% excise tax on handgun sales and an 11% excise tax on rifle sales had been combined in

<sup>54</sup> Markup on H.R. 7010, 1977.

<sup>55</sup> “Victims of Crime Act of 1978,” House Conference Report No. 95-1762, p. 9.

<sup>56</sup> “Victims of Crime Act of 1979,” House Judiciary Report No. 96-753, p. 7.

<sup>57</sup> Markup on H.R. 1046 and H.R. 4257, 1979, p. 49.

<sup>58</sup> Keith Gave, “Today’s Topic: The Growing Practice of Paying Victims of Crimes,” Associated Press, July 5, 1982.

<sup>59</sup> “President’s Task Force on Victims of Crime Final Report,” December 1982, p. 44.

a fund and used to support a variety of wildlife conservation efforts.<sup>60</sup> It was understood at the time as a tax on hunting that would fund hunting-related activities. The Task Force argued there was “little if any relation between handguns and hunting or wildlife activity. There is a substantial relationship, however, between handguns and the commission of violent crime.” Leaving the revenue from the excise tax on *rifles* for conservation efforts and shifting revenue from the excise tax on *handguns* to a victim compensation fund would “direct the proceeds of this tax to a goal more closely related to the items that give rise to the revenue.”<sup>61</sup>

Two models of victim compensation emerged from the Task Force report. The first, introduced and supported by House Democrats, relied exclusively on revenue from the handgun excise tax. The National Rifle Association (NRA) strongly opposed the idea, as did a bipartisan group of lawmakers. The second, introduced and supported by Senate Republicans, relied exclusively on revenue from federal fines and forfeitures. Neither proposal involved any new appropriations; the only question was which special tax—the excise tax on handgun sales or increased criminal fines—would be put into a victim compensation fund.

#### Revenue from the Handgun Excise Tax: A Path Not Taken

In 1982, Representative Marty Russo (D-IL) introduced a victim compensation bill funded by shifting revenue from the handgun excise tax.<sup>62</sup> “Without any new taxes or appropriations,” Russo proudly proclaimed, “we’ve got the money for the victims compensation program.”<sup>63</sup> He portrayed the existing use of the tax revenue to be both illogical and inappropriate, especially in an era of fiscal austerity. “At a time when the budgetary ax falls on programs throughout the federal government . . . we cannot afford . . . essentially a subsidy for hunters,” he said on the House floor. Moreover, because crime often involved handguns, it was “just and appropriate that the taxes on this weapon should be used to help victims.”<sup>64</sup>

During House hearings on the bill in 1983 and 1984, witnesses supported the idea of victim compensation but did not support the handgun excise tax

<sup>60</sup> More controversially, the fund also supported hunter safety programs and shooting ranges.

<sup>61</sup> “President’s Task Force on Victims of Crime Final Report,” p. 44.

<sup>62</sup> Representative Wiggins was the first to propose the idea in Congress during a 1977 House Judiciary hearing. With the exception of the Task Force report, however, Republicans never formally endorsed or even debated the idea.

<sup>63</sup> Dorothy Collin, “Handgun Tax Proposed to Help Crime Victims,” *Chicago Tribune*, April 20, 1982, p. A4.

<sup>64</sup> Legislation to Help Crime Victims, 1984, pp. 31–32.

financing mechanism. Writing on behalf of the NRA, Wayne LaPierre testified that “the NRA has no quarrel with the thrust of the recommendations of the Task Force. There is one area, that of financing a victim assistance effort, that we must oppose.” He argued that hunters and other gunowners “willingly accepted being taxed once given assurances that the money would be exclusively used for” conservation and hunter safety programs. He also rejected the assumption that people who purchase handguns are “collectively responsible for their criminal misuse.” And if they are not responsible, then they should not pay a tax “for the activities of our society’s criminal element.”<sup>65</sup> Congressional Democrats like Representative John Dingell (D-MI) also preferred alternative revenue sources: “Without discussing whether victims of crime ought to be compensated . . . I’m simply saying that . . . you ought not to be raiding a fund which has worked well, does enormous good, not just for hunters, not just for handgunners, but for every citizen in the country.”<sup>66</sup> Representative John Breaux (D-LA) added: “We make a commitment to sportsmen when we pass laws that place taxes on items they purchase. . . . Their volunteering to support conservation programs is a conscious, unselfish and, indeed, a noble act. To divert funds they have raised to other purposes, no matter how noble, would be a betrayal.”<sup>67</sup>

As was the case with other compensation bills, the worthiness of crime victims was never in question. The Russo bill also relied on funding from a pre-existing special tax, thus avoiding a debate about new government spending. But opponents latched on to the moral and political meaning of “taxpaying hunters” as a potential revenue source. In their morally charged words, hunters voluntarily, willingly, unselfishly, and nobly accepted the handgun excise tax and therefore deserved to benefit from (and even dictate) its use. Despite Russo’s hope that a compensation bill without any new taxes or appropriations would be successful, multiple bills funded by the handgun excise tax failed to make it out of committee, much less pass into law.

#### Revenue from Criminal Fines: A Bipartisan Solution

Republicans leveraged the Task Force report—and the issue of victims’ rights more generally—into a broader, punitive criminal justice agenda. They appropriated Democrats’ framing of victims as “the forgotten man,” but articulated the relationship between victims and offenders in zero-sum terms (Gottschalk 2006; Simon 2009). For instance, at an April 1983 White House ceremony honoring crime victims and the Task Force, President Reagan said crime was “a cumulative result of too much emphasis on the protection of

<sup>65</sup> Crime Victims’ Assistance Programs, 1983, pp. 99–101.

<sup>66</sup> Legislation to Help Crime Victims, 1984, p. 225.

<sup>67</sup> Legislation to Help Crime Victims, 1984, p. 245.

the rights of the accused and too little concern for our government's responsibility to protect . . . our law-abiding citizens."<sup>68</sup> The following month, Senate Republicans introduced a victim compensation bill funded entirely by criminal fines and forfeitures. Senator Thurmond used the same zero-sum framing and called it "the latest in a series of administration initiatives aimed at correcting the imbalance in our system in favor for the heinous offender, at the expense of the innocent victim."<sup>69</sup> It was a sharp departure from the 1960s, when liberals like Justice Goldberg framed compensation as supporting victims without necessarily taking away rights for criminal defendants.

The punitive undertones carried over into Senate Judiciary hearings. Assistant Attorney General Lois Haight Herrington, former chair of the Task Force, depicted support for victims in explicitly transactional terms. Victims, she testified, were innocent taxpayers who pay for "the upkeep of the prisoner" but get no help with their own bills. Recounting testimonials she heard while serving on the Task Force, she personalized victims by using the word "I" and depicted rights for "the prisoner" as a costly affront to "the victims":

One of the things that I think was most impressive to us when the victims said to us time and time again, you know, the taxpayer—it was an innocent taxpayer that was victimized. I pay for the upkeep of the prisoner. I pay for his housing, his support, his job rehabilitation. I pay for his medical bills, his psychological treatment. I pay for the public assistance for his family if they are on welfare, and I pay for his attorney and his attorney on appeal. But I, as a victim, receive nothing. I have to pay my own medical bills; I have to pay everything. I have to pay my own psychological help, and I am the one that was innocently victimized.<sup>70</sup>

In her written testimony, Herrington added, "It is not just that the victim should have to sell his car to pay bills while the defendant drives to his probation appointment."<sup>71</sup>

Republicans presented funding for victim compensation as a choice between two mutually exclusive options: taxing "criminals" or taxing "innocent taxpayers." The slogan they developed was clear, direct, and consistent: "Criminals—not innocent taxpayers—will provide the money for the fund."<sup>72</sup>

<sup>68</sup> "Remarks at White House Ceremony Observing Crime Victims Week," April 18, 1983. <https://www.reaganlibrary.gov/archives/speech/remarks-white-house-ceremony-observing-crime-victims-week>.

<sup>69</sup> 98 Cong. Rec. 5349, 1984.

<sup>70</sup> Crime Victims' Assistance Programs, 1983, p. 13.

<sup>71</sup> Crime Victims' Assistance Programs, 1983, p. 19.

<sup>72</sup> Testimony from Assistant Attorney General Lois Haight Herrington (Legislation to Help Crime Victims, 1984, p. 34). Numerous administration officials and legislators repeated some variant of the slogan in Congressional testimony and the press.

Republicans dismissed alternative revenue sources as unnecessary and imprudent in a context of fiscal austerity. “As it appears now,” Herrington testified in 1984, “we will be able to get the total funding from criminal fines without dipping into an already earmarked fund which does go to wildlife preservation and environmental issues.” Representative Rick Boucher (D-VA) asked her if “the administration considered whether or not general funding at some level would be appropriate, and is there a position concerning that?” Herrington responded, “I am certain you realize the incredible deficit we have. We felt it was very important that the criminal, and not the innocent taxpayer, pay for this program.”<sup>73</sup>

Many Republicans, such as Senator Thurmond who in the 1970s opposed victim compensation as “dangerous” and outside the bounds of government responsibility, supported the bill. The actual program did not change. What changed was the bill’s particular financing mechanism and the meaning it carried. As former Representative M. Caldwell Butler (R-VA) explained during Senate Judiciary hearings in 1984, “When I was in the House, I opposed victims’ compensation bills, primarily on fiscal grounds.” Now that he was out of office, he was no longer in a position to judge whether “the federal government can afford any new programs. . . . If, however, you choose to provide federal funding for programs compensating and assisting victims of crime,” he testified, “this, in my judgment, is the best approach I have seen. I do think it particularly appropriate and just to tie expenditures to criminal fines.”<sup>74</sup>

Interest groups—some of which were funded by the Department of Justice and other criminal justice agencies (see also Page 2011)—largely agreed. On behalf of the National Association of Crime Victim Compensation Boards, Herbert Parker endorsed the use of criminal fines, suggesting fines were a more stable source of revenue than appropriations. Partly for politically pragmatic reasons, Mary Ann Largen of the National Coalition Against Sexual Assault similarly endorsed “a crime victims assistance fund which is not reliant upon the uncertainties of the annual appropriations process.” Fines also appealed to victims’ rights advocates’ desire for punitive retribution. Marlene Young, executive director of National Organization for Victim Assistance (NOVA), testified that “the source of the funds is, quite bluntly, what I consider to be a justifiable tax on convicted offenders.”<sup>75</sup>

With help from Democratic co-sponsors like Senator Joe Biden (D-DE),<sup>76</sup> VOCA easily passed into law, and Representative Russo withdrew his

<sup>73</sup> Legislation to Help Crime Victims, 1984, pp. 159–60.

<sup>74</sup> The Victims of Crime Assistance Act of 1984, 1984, p. 26.

<sup>75</sup> The Victims of Crime Assistance Act of 1984, 1984, pp. 106, 57, 81.

<sup>76</sup> In fact, Biden, minority leader of the Senate Judiciary Committee, wrote to the assistant attorney general, “I strongly support the concept of using criminal fines to establish a victims assistance fund” (The Victims of Crime Assistance Act of 1984, 1984, p. 47).

competing bill in the House. VOCA passed within the Comprehensive Crime Control Act of 1984, which increased federal fines (an extra \$25 for every misdemeanor and \$50 for every felony), imposed stronger fine collection efforts, and shifted all federal fines and forfeitures into a victims' fund. The fund was split between subsidies for state compensation programs and a competitive grant program for victims' service organizations.<sup>77</sup>

The key to passing the bill was the political meaning of fines as a morally just financing tool. According to proponents, victim compensation “restored the balance” in criminal justice—a balance that tipped too far in favor of rights for criminals. Financing the program through criminal fines and forfeitures, they argued, provided a benefit to innocent taxpayers without burdening them with more taxes. Critically, it placed the financial burden on a morally unworthy class of people. As one expert succinctly put it at the time, “People don’t care what criminals pay.”<sup>78</sup>

#### RACISM AND THE POLITICAL MEANING OF FINES AS A REVENUE SOURCE

Though no one mentioned it explicitly, racism and cultural categories of worth helped give criminal fines a larger political meaning. Here, we build off the welfare state literature, which suggests public benefits are less likely to pass (or expand) when program beneficiaries are framed as morally unworthy and/or racialized as predominantly people of color (Katz [1989] 2013; Quadagno 1994; Gilens 1999; O'Connor 2001; Steensland 2007; Fox 2012, 2019; Brown 2013). In the case of victim compensation, beneficiaries were consistently depicted as diverse and therefore cannot explain why VOCA passed and dozens of other bills failed. What changed was the policy financing tool and how the politicization—and implicit racialization—of the proposed sources of revenue gave that tool political meaning.

Newspaper coverage and Congressional testimony consistently described proposed beneficiaries as racially and ethnically diverse. Many proponents, such as Senator Mike Mansfield (D-MT), focused on the case of Kitty Genovese, a white woman murdered by a Black man in New York City in 1964.<sup>79</sup> Others emphasized Black victims. Senator Tydings (D-MD) opened the first Congressional hearing on victim compensation by arguing that “the great majority of” innocent victims “lived in the inner city and the great

<sup>77</sup> The VOCA bill, S. 2423 passed the Senate with a voice vote in August 1984. It was folded into the Comprehensive Crime Control Act of 1984, which passed 316–91 in the House (210 Democrats and 106 Republicans in favor, 43 Democrats and 48 Republicans opposed) and in the Senate (voice vote). It was signed into law as Chapter XIV of Public Law 98-473 (Title II).

<sup>78</sup> Gave, “Today’s Topic.”

<sup>79</sup> Victims of Crime, 1971, p. 128.



majority of them were black.<sup>80</sup> Similarly, between 1973 and 1979, Representative Rodino (D-NJ) repeated numerous times that his interest in compensation stemmed from the case of a “young black man . . . brutalized by a bunch of street ruffians when he went to the aid of a young white lady.”<sup>81</sup> In the 1980s, beneficiaries continued to be described in diverse terms. During Republican-controlled Senate Judiciary hearings in 1983, for instance, three crime victims testified in support of victim compensation: Wanda Melton, a white woman, George Babb, a Guyanese national, and Chiquita Bass, a Washington D.C. resident from “an inner-city neighborhood.”<sup>82</sup>

Unlike beneficiaries, the proposed sources of revenue—“criminals,” “taxpayers,” and “taxpaying hunters”—were distinctly racialized social categories. By the 1960s, stereotypes about race and criminality were widespread and “tough on crime” policies served as intentional and unintentional racist dog whistles (Beckett 1997; Weaver 2007; Murakawa 2014; Hinton 2016).<sup>83</sup> By contrast, the valorization of “taxpayers” the historian Camille Walsh (2018, p. 4) argues, carried “a hidden symbolic meaning premised in whiteness” (see also Wilmott 2022). This “barely hidden code” was as much about defining ingroup membership as defining “the ‘nontaxpaying other’” (e.g., *welfare queen* or *illegal immigrant*) “who is implicitly less entitled to protections and rights.” Crucially, the rhetoric of protecting taxpayers from intrusive government programs first appeared in the mid-1930s,<sup>84</sup> when wealthy white men bore the brunt of New Deal tax reforms.

In the lead up to VOCA, racism therefore infused the politics of program revenue without anyone ever mentioning race. Because “criminals” and “taxpayers” (or “taxpaying hunters”) were treated as nonoverlapping and diametrically opposed categories, the racialization of one as “nonwhite” necessarily racialized the other as “white” (and vice versa). Racist beliefs and stereotypes likely embedded both the rhetoric and design with a larger political meaning. What made VOCA distinct from other compensation bills was not perceptions of beneficiaries, which were constant, but the political meaning attached to the financing tool: the cultural worthiness of who was (and who was *not*) perceived as paying for the new program.

<sup>80</sup> Compensation of Victims of Crime, 1969, p. 2.

<sup>81</sup> *Victims of Crime Compensation*, 1977, p. 132. Rodino gave similar testimony in 1973, 1975, 1976, and 1979. He never referenced the man by name.

<sup>82</sup> Crime Victims’ Assistance Programs, 1983, p. 30. Another 4 women testified as victims of sexual assault and domestic violence. We were only able to identify racial identities for two women, both white. A third identified as a resident of Fort Dupont in southeastern D.C. The demographics of the neighborhood suggests she was likely Black.

<sup>83</sup> The racialization of “criminals” in the 1960s was not new, but rather “extended a long tradition of racially biased understandings of crime” (Hinton 2016, p. 19).

<sup>84</sup> Lawrence Glickman, “Stop Worrying about Protecting ‘Taxpayers.’ That Isn’t the Government’s Job,” *Washington Post* (online), August 3, 2020.

DISCUSSION AND IMPLICATIONS

VOCA sponsors succeeded, while others failed, because they imbued the bill’s financing with a particular political and moral valence. When bills in the 1960s and 1970s proposed paying for victim compensation with general tax revenue, opponents depicted it as a costly program beyond the scope of government. Yet when VOCA proposed paying for victim compensation with criminal fines—when “criminals, not innocent taxpayers” would pay for the new benefit—some of the very same opponents of earlier bills changed their position. They dropped their concerns about governmental responsibility when the source of revenue was effectively politicized as a tax on a morally unworthy class of people. The state expanded its boundaries into a new area of social provision and, just as important, expanded its power to extract new revenue from its denizens.

Table 1 compares the three key moments in the history of victim compensation law. Existing theories of the state and its boundaries offer only partial explanations. Interest groups consistently supported the idea regardless of bill success, and bottom-up social movement pressure was consistently

TABLE 1  
COMPARISON OF THREE KEY MOMENTS IN VICTIM COMPENSATION LAW

	S. 2155 of 1965 (and related bills)	H.R. 2470 of 1983 (and related bills)	S. 2423: Victims of Crime Act of 1984
Funding tool . . . . .	General tax and transfer	Excise tax on handgun sales	Criminal offender fines and forfeitures
Who pays for policy benefits? . . . . .	Taxpayers	Handgun owners	Criminals
Cultural constructions of financiers . . . . .	“Taxpayers are innocent victims too”	Taxpaying handgun owners and hunters, conservationists	“A justifiable tax on convicted offenders”
Cultural constructions of recipients . . . . .	Morally worthy innocent victims of crime	Morally worthy innocent victims of crime	Morally worthy innocent victims of crime
Bill sponsors . . . . .	Senate Democrats	House Democrats	Senate Republicans
Congress partisan division . . . . .	Democratic	Split control	Split control
President Partisanship . . .	Democratic	Republican	Republican
Grassroots social movement pressure . . . . .	Absent	Absent	Absent
Interest group support . . . . .	Strong	Weak	Strong
Interest group opposition . . . . .	Weak	Strong	Weak
Racialization of program recipients . . . . .	Multiracial	Multiracial	Multiracial
Outcome . . . . .	Failed to pass into law	Failed to pass into law	Passed into law

absent.<sup>85</sup> Interest group opposition from the NRA may have doomed bills relying on the excise tax from handgun sales, but it cannot explain earlier bills' failures. Crime was racialized and program beneficiaries were portrayed as racially diverse throughout the entire time period. The intended program beneficiaries—innocent crime victims—were just as morally worthy in the 1960s as they were in the 1980s. Republican-backed VOCA passed under a split Congress, whereas Democratic-backed compensation bills failed during two periods of full Democratic control of Congress and the presidency (1965–69 and 1977–81, respectively). As compared to these alternative explanations, we argue that the key difference was *how* the bills were financed, *who* would be taxed, and *the political meaning* attached to the financial arrangement.

### Implications for Political Sociology

Sociologists have shown how moral understandings of target populations affect policy development. Political scientists have shown how innovative policy financing tools can hide, submerge, or obscure state boundary expansion. Our study builds on this research by integrating the two theoretical mechanisms: the political and moral understandings of policy financing can also affect the structure of policies and their successful passage. In short, the moral meanings embedded within public finance decisions—defining and communicating the “right” people who should pay—can expand the boundaries of the state.

Our theorized mechanism adds to, rather than replaces, existing perspectives. In particular, we see useful synergies between our analysis and theories emphasizing the politics of race, cultural categories of worth, and symbolic misrecognition of the state (Steensland 2007; Brown 2013; Mayrl and Quinn 2016, 2017). Racism is very much a part of the story of victim compensation. By extracting revenue from “criminals, not innocent taxpayers,” VOCA benefited from the co-constitutive racialization of “criminals” and “taxpayers.” Cultural categories of worth also played an important part: Crime victim compensation was appealing because crime victims were morally worthy beneficiaries, and VOCA was *especially* appealing because it paid for the new benefit by taxing a morally unworthy class of people. Criminal fines additionally obfuscated the heavy hand of the state—a form of “structural obfuscation” (Rossman 2014) or “reconfiguration” (Mayrl and Quinn 2016). The slogan “criminals, not taxpayers will pay” rhetorically transformed government’s role in the policy from benefactor to regulator: government did not provide benefits to those in need but simply made sure

<sup>85</sup> It is additionally notable that key victims’ rights organizations like NOVA were founded in the mid-1970s, when bills had failed.

that the “right” groups paid for certain goods and services. Indeed, opponents like Senators McClellan and Thurmond and Representative Butler initially argued that victim compensation was too costly and fundamentally not a federal government responsibility. Yet all three went on to support bills that would cost just as much (if not more) and would expand the role of government just as significantly. The difference was who bore the cost, and how fines were described as something criminals pay rather than something the state extracts.

The trajectory of victim compensation legislation therefore reflects competing conceptualizations of the state-citizen relationship. Embedded in questions of who deserves support and who should pay is the question of what the state owes its citizens. Opponents contested the social contract argument (the state owes its citizens compensation when it fails to uphold peace and order) as well as the social insurance argument (the state should collectivize risk in order to compensate those who are injured through no fault of their own). In both of these models of governance, the state is an active party in upholding the social contract or redistributing resources. The fines and fees approach to policy financing relies on a distinct understanding of the state-citizen relationship. Here, the state merely defines deserving and responsible parties, ensuring that the “right” groups pay for public benefits. The state is not responsible for redistribution or social order, but rather has a more limited duty to enforce social categories and moral classifications. Appealing to conservatives and liberals alike, this model views government less as a party to exchange than as an arbiter of exchanges.

We can see this model of governance play out in several additional cases of interest to political sociologists. In housing policy, for instance, some cities use real estate transfer fees (a special tax on high-end real estate sales also known as a “mansion tax”) and “linkage fees” (a tax on market-rate housing or commercial development) to help fund affordable housing. Both taxes explicitly target for-profit developers and affluent homeowners who are portrayed as responsible for the lack of affordable housing in cities. In Boston, linkage policies were first developed in 1983 as a political tactic to appease neighborhood activists who opposed public subsidies for the city’s business community. By “linking” downtown development to funding for affordable housing, the fee “symbolized . . . a new balance between downtown and the neighborhoods” (Dreier and Ehrlich 1991, p. 361).

Superfunds for environmental protection provide another example. Congress established the Superfund Trust Fund in 1980 to pay for hazardous waste site cleanup. Much like victim compensation, the law came about because it was difficult to determine individual culpability for long-term pollution. Nevertheless, a “polluters pay” principle had political appeal (Landy and Hague 1992). As a result, most of the funding comes from “potentially responsible parties”—what is effectively a tax on certain industries that

produce hazardous waste. Initial proposals activated opposition from the chemical industry, which found the idea “abhorrent in its scope and price tag.” “If this is a matter of public concern, we ought to use the public money to solve the problem,” one industry representative complained.<sup>86</sup> A compromise bill, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, reduced the burden placed on “potentially responsible parties,” supplemented costs with general revenues, and removed chemical companies’ liability to pay personal and property damages.

Perhaps the sharpest parallel can be drawn with marriage license fees that are used to pay for domestic violence services. What is most relevant for our discussion is the fact that political debates over these fees center on the appropriateness of the revenue source, not the worthiness of beneficiaries. For example, the Illinois Supreme Court struck down the state’s \$10 marriage license surcharge in 1986 because it violated married couples’ due process. “The virtues of the domestic violence shelter program are not at issue in this case,” Justice Howard Ryan wrote for the majority. “We consider the relationship between the purchase of the marriage license and domestic violence to be too remote to satisfy the rational-relation test of due process.”<sup>87</sup> Illinois reinstated the fee in 2008 with narrower language that limited beneficiaries to victims of *marital* domestic violence—unintentionally denying resources to the overwhelming majority of domestic violence survivors, who are unmarried (Truman and Morgan 2014). When Oregon debated a similar fee in 1999, one lawmaker argued that it should be attached to divorce filings instead, because “that’s where marriages are falling apart.”<sup>88</sup> In 2009, Utah lawmakers failed to advance a domestic violence surcharge bill out of committee because pro-marriage conservatives were “hesitant to point fingers at the institution of marriage.”<sup>89</sup> The \$10 fee is now listed as “optional” on the state’s online application.

Our findings, alongside these comparable cases, open up new avenues for research in political sociology. This model of the state-citizen relationship—in which the state divides the citizenry into categories and then assigns a right to benefits for some and a responsibility to pay for others—is rarely acknowledged in the literature but has important implications. For instance, how does this logic reconfigure opposition to new public programs? Gun advocates, chemical companies, and promarriage conservatives had no reason

<sup>86</sup> Maryann Bird, “Issues and Debate—Battle of Toxic Dumps: Who Pays for Cleanup?” *New York Times*, July 11, 1980, p. B4.

<sup>87</sup> Carol Knowles, “Illinois Court Strikes Down Fee for Domestic Violence Shelters,” *United Press International*, February 22, 1986.

<sup>88</sup> “Bill Would Hike Marriage Fees to Support Domestic Violence Programs,” *Associated Press*, April 5, 1999.

<sup>89</sup> Cathy McKittrick, “Marriage License Fee Hike Fails Panel,” *Salt Lake Tribune*, February 17, 2009.

to oppose victim compensation, toxic waste cleanup, or domestic violence services, respectively—except, that is, on funding sources. Do these arguments proliferate during periods of austerity, and if so, does this lead to expanded but insufficiently funded programs? If every new program required a morally responsible group to pay for it, to what extent would the financial burden disproportionately affect marginalized groups with fewer resources to mobilize against new fees? While chemical companies have the institutional power to resist or reduce new fees, people convicted of crimes do not.

More generally, what kinds of opportunities does this logic portend and forestall for the development of the U.S. welfare state? Some social problems do not have obvious or agreed upon responsible parties. Others are more costly than any one group can reasonably pay for. Large-scale investments in social welfare require a collective responsibility in which we are *all* expected to pay. To what extent, then, are such investments possible when this model of governance becomes taken-for-granted in political debates? How might alternative models of *collective* responsibility gain widespread cultural acceptance? Our case study of victim compensation invites these and other related questions, pushing political sociologists to develop a more comprehensive understanding of the state, social welfare, and the moral meanings of public finance.

#### Implications for Research on Monetary Sanctions and the Carceral State

The existing literature largely focuses on the consequences of monetary sanctions for racial and socioeconomic inequality (Harris et al. 2010; Beckett and Harris 2011; Harris et al. 2011; Harris 2016; Haney 2018). Our study adds to more recent research that shines a light on the political appeal of criminal fine revenue, particularly under conditions of neoliberalism and fiscal austerity (Kirk et al. 2020; Friedman 2021; Martin 2020; Pacewicz and Robinson 2021). The case of victim compensation reveals lawmakers' thinking at a pivotal moment in U.S. history, before the rise of austerity politics, when centuries of stability in sanctions ended and two decades of exponential growth began (Mullaney 1988). All 50 states passed compensation laws by 1993; the vast majority rely at least partially on state fines, fees, surcharges, or taxes on prison labor to pay for compensation benefits. The federal subsidy through VOCA, amounting to about 40% of states' total program costs, is funded entirely from federal fines and forfeitures. The amount of money involved through VOCA is not trivial: In 2018, the federal Crime Victims Fund paid out approximately \$3.6 billion for victim compensation and services and currently has a balance of over \$6 billion.

Notably, victim compensation law helped establish legal precedent for governments' use of fines and fees to fund new programs. Consider the Florida Supreme Court ruling in *State v. Champe*. In 1978, Larry Champe pled

nolo contendere to shoplifting, and Jeffrey Wright pled nolo contendere to reckless driving and driving without a license. As part of the state's 1977 victim compensation law, a \$10 fine was added to Champe's sentence and two \$12 fines were added to Wright's sentence, as well as a 5% surcharge. The trial court ruled that the fines and surcharges amounted to illegal taxation and violated the defendants' rights to equal protection and due process. Yet the Florida Supreme Court reversed the lower court's decision. The court ruled that add-on fines were an appropriate form of punishment and therefore not illegal taxation. And even though the crimes did not result in victims who would be eligible for the compensation program, "laws which classify violent and non-violent offenders together for purposes related solely to the prevention of violent crimes have consistently been upheld against equal protection attacks." Most notable was the ruling on the defendants' due process claims. Using circular logic, the court argued that the law served a legitimate public purpose, and that deriving revenue from fines did not deny due process, *precisely* because the financing "shifts a financial burden that would otherwise fall on all Florida taxpayers." Put simply, the fines were ruled constitutional because the program served a public benefit, and the program served a public benefit because it relied on fines (373 So. 2d 874 [Fla. 1979], pp. 879, 878; Bragdon 1984).

Our study also adds to a growing literature documenting the parallel transformation of penal and social welfare policy in the United States (Beckett and Western 2001; Garland 2001; Wacquant 2001; Gottschalk 2006; Weaver 2007; Simon 2009; Lara-Millán 2014; Hinton 2016; Stuart 2016; Kohler-Hausman 2017;). Between the 1960s and 1980s—roughly, the same period covered in our analysis—social policy shifted toward harsher anticrime measures and more punitive social welfare institutions. Victim compensation law exemplifies what historian Elizabeth Hinton (2016) calls the transition from the War on Poverty to the War on Crime: A bipartisan coalition of Democrats and Republicans took what was intended to be a public benefit and turned it into a tool for punishment.

Relatedly, victim compensation law played a key, if under-appreciated, role in the development of the carceral state. As the political scientist Marie Gottschalk (2006, p. 89) persuasively shows, "compensation and other federal programs were pivotal . . . in transforming the politics surrounding victimization and shifting the broader penal climate in a more punitive direction" (see also Campbell and Schoenfeld 2013). With funding for victims' services, the number of victims' organizations and lobbying groups grew substantially: Before VOCA, there were approximately 200 victims' rights organizations in the United States; by the end of the 1980s, there were approximately 8,000 (Young and Stein 2004). VOCA funding aligned victims' rights advocates with the bill's conservative sponsors and steered the nascent movement toward more punitive policy goals. Most importantly,

VOCA made these organizations dependent on a robust system of monetary sanctions. Fines are only stable and less uncertain than appropriations—as advocates in the 1980s testified—if mass incarceration and punitive criminal justice policy remains the status quo.

#### Additional Directions for Future Research

We present some evidence that obfuscated revenue instruments are regressive and increase inequality—another area we think deserves more systematic investigation. For instance, using state lottery revenue to fund public education is politically popular but can disproportionately disadvantage the poor, who are more likely to buy lottery tickets (Borg and Mason 1988; Rubenstein and Scafidi 2002; Oster 2004). With respect to fines and fees, many government programs rely on revenue from monetary sanctions, some of which have nothing to do with criminal justice (Sances and You 2017; Martin 2018; Martin et al. 2018; Friedman and Pattillo 2019; Singla et al. 2020; Pacewicz and Robinson 2021). This financial arrangement creates perverse incentives: It makes public programs dependent on higher rates of incarceration, larger financial penalties for crime, and more people in legal financial debt.

In the end, we think it is useful for future research to understand how these tools become taken-for-granted and, if appropriate, challenge the assumptions that make them politically appealing. For in the case of victim compensation, criminal fines are neither obvious nor logical as a source of revenue. The argument for state-managed victim compensation is that defendants are generally too poor to compensate their own victims; individual restitution orders do not solve the collective social problem of crime victims' outstanding expenses. Fines are argued to be an appropriate source of revenue because monetary sanctions target the people responsible for creating victims in the first place: people who commit crimes. But if those people by and large lack the assets to compensate their victims directly, relying on fines to pay for victim compensation only makes the underlying problem worse; extracting revenue through mandatory add-on fines by definition makes defendants poorer and therefore individual restitution *even less likely*. And then there is the problem of culpability. Compensation laws imposed new blanket fines, fees, costs, and surcharges that have no relation to particular offenses. Even if we believe defendants are financially responsible for their own victims' losses, it does not follow to impose special taxes on people convicted of *victimless* crimes, such as traffic offenses. Only through a particular political framing of "criminals" as an undifferentiated class of morally unworthy people does this arrangement make sense.



APPENDIX

Archives, Congressional Hearings, Conference Proceedings, and Court Decisions

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