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The 9/11 victim compensation fund : a case study

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THE 9/11 VICTIM COMPENSATION FUND: A CASE STUDY

By

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I certify that I have read this thesis and find that, in scope and quality, it satisfies the requirements for the degree of Master of Disaster Science.

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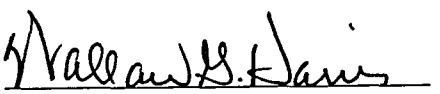

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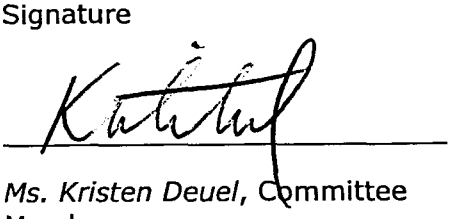

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ABSTRACT

The 9/11 Victim Compensation Fund was the largest victim compensation fund in U.S. history, disseminating more than $7B federal tax monies directly to survivors, victims and their respective families following the terrorist attacks of that day. This represented an unprecedented effort on the part of the U.S. government to fully fund terrorism victim compensation within a no-fault framework intended, first and foremost, to protect the airline industry from potential economic ruin. But in so doing, the Fund compromised legal, ethical, economic and sociological principles on which victim compensation had been based since the inception of government. This interdisciplinary exploratory case study of the 9/11 Victim Compensation Fund analyzes the Fund from a holistic perspective and evaluates the complex forces contributing to global victim compensation theory. The 9/11 Victim Compensation Fund should not serve as a model for governmental assistance but instead highlights the need for universal consistency of nomenclature and intention. Globally, government's role in victim compensation has become normative, but a lack of equivalency across national boundaries undermines the social solidarity required by such initiatives. Toward this end, the U.S. government, working in concert with the EU and CoE must strive to develop a single-minded model for this victim class.

TABLE OF CONTENTS

I. INTRODUCTION

Less than two weeks after the September 11, 2001 terrorist attacks on the World Trade Center twin towers in New York, Congress established the largest victim compensation fund in U.S. history. The September 11 Victim Compensation Fund's primary goal was to protect the airline industry from liability through a taxpayer-funded no-fault compensation scheme and the secondary goal was ostensibly to provide some measure of financial aid to victims of the attack and the families of those who perished (Feinberg, 2006). The Fund was an unprecedented effort on the federal government's part to fully fund victim compensation in response to a specific disaster event. Although certainly a unique solution, it nonetheless raises future policy questions crossing legal, ethical, economic and social disciplines. The Fund was never intended as a "model" for future compensation; but make no mistake that it does and will remain a precedent.

The hastily-conceived legislation was passed within eleven days of the attacks, without Congressional hearing or significant public debate. The statute contains no specifications for who may file a claim or the manner in which monies would be disbursed. Those details were relegated to the Fund's Special Master to define. "Healing" through monetary compensation, expediently delivered, appears to be the guiding precept. Despite these obvious flaws, if success is measured on the basis of participation, the Fund was decidedly successful. Over 97% of those eligible to file for compensation did so by the December 22, 2003 deadline with fewer than 90 persons opting to sue in the tort system (Grey 2005). A total of more than $7 billion dollars was

paid to survivors and victims' families in the 33 months that the Fund was administered (Schachner and Tebo 2007). The Fund was officially concluded at that time with future change in applicant status therefore being rendered irrelevant.

With the benefit of hindsight, philosophical issues arising from the government's response to 9/11 and the general concept of victim compensation have emerged, engaging legal scholars, policy makers, ethicists and the general public. The extent to which taxpayers should ultimately bear responsibility for compensating the families of those who perish as a result of terrorism has potentially far-reaching implications which raise matters of equality, justice and fairness across disaster type and conceivably could apply both retroactively and well into the future. This case study of the 9/11 Victim Compensation Fund uses evaluation research methods in an exploratory study. It examines the positive and negative aspects of the Fund as a government compensation mechanism and searches the multi-disciplinary (legal, economic, ethical and sociological) and international perspectives that contribute to contemporary victim compensation theory.

II. LITERATURE REVIEW

At the outset, it is important to put the 9/11 Victim Compensation Fund in historical context. The extraordinary effort by the federal government to compensate victims of 9/11 can best be understood from the point of view of the person who actually administered the Fund, its Special Master, Mr. Kenneth R. Feinberg. Attorney General John Ashcroft appointed Mr. Feinberg to this post on November 27, 2001, based on his vast experience in mediation and his expertise on mass tort. Feinberg played a major role in such high profile cases as the Agent Orange settlement, Dalkon Shield, breast implant and asbestos settlements (Schneider 2003). His various publications offer a rare perspective into the decision-making processes, precedents, objectives and compromises associated with the Fund.

In addition to Mr. Feinberg's legal opinions, Professor Robert L. Rabin, an A. Calder Mackay Professor of Law at Stanford Law School and widely acknowledged expert in tort, has published a Book Review Essay on Feinberg's writings in the Columbia Law Review, and other scholarly publications assessing the Fund specifically, and victim compensation theory in general. Rabin's work is both an historical and legal analysis of the Fund and its implementation, with particular emphasis on concepts of "substantive and procedural fairness" (Rabin 2006, p.464). Although Rabin applauds Feinberg's work, he also questions the wisdom of whether or not the Fund should be used as a model for future victim compensation and makes recommendations as to process

modifications within the existing legal framework if it is to be used as a standard. Rabin and Sugarman also propose a future terrorism victim compensation model for the US, with particular consideration given to tort and social welfare issues.

Some of the most vigorous debate surrounding the Fund has occurred among legal scholars. The Fund's hybrid approach combining no-fault liability and tort is remarkable and, at the same time, highly debatable as a paradigm within the democratic system. The basis for these arguments lies in conflicting versions of "justice." James R. Copland from the Center for Legal Policy at The Manhattan Institute, John Culhane, and Schachner and Tebo compare theories of corrective justice and distributional justice, concepts which form the basis of the tort system but do not necessarily apply under government victim compensation models. Rebecca Levin, Kent State University School of Law, focuses her work on the inherent need for consistency and uniformity as a resultant legal consideration.

Outside of existing legal constructs, victim compensation is also framed by economic realities. Michael Faure examines the Fund and its effect on free market forces (including insurance and tort) from an international perspective (Faure 2007). Along these same lines, Benson and Clay explore risk reduction options and the insurance industry. Distributional equity, the role of charity and economic efficiency are other factors that should be considered in setting priorities and administering public compensation funds. Articles by John Culhane, C. Eugene Steuerle, Robert A. Katz, and a publication authored by Lloyd Dixon and Rachel Kaganoff Stern for the Rand Institute

for Civil Justice probe these complex relationships. George Priest provides a framework for assessment of the Fund's structure through four principle institutions the U.S. uses for dealing with loss: tort, private market insurance, government insurance and government welfare (Priest 2003).

Aside from legal and economic concerns, the once-tidy distinction between philosophies of philanthropy versus governmental responsibility has become decidedly unclear after the establishment of the Fund, raising ethical questions central to public policy development. Historically, governmental disbursement of funds under existing programs has been much different than what occurred with the 9/11 Victim's Compensation Fund and it follows that public monetary disbursement, as a practice, should follow ethical decision-making rationales. Several such criteria, rooted in ethical models, are discussed by Lascher and Martin, the Markkula Center for Applied Ethics at Santa Clara University, and Lascher and Powers. Tom Seessel from the John S. Watson Institute for Public Policy at Thomas Edison State College has studied complex ethical issues that emerge when balancing donor intention and charitable giving, along with federal responsibility and priority-setting.

William L. Waugh, Jr., a prominent disaster science researcher, provides insights into the complexities involved in the emergency management system and how it is inextricably linked to our socio-cultural values (Waugh 2000). Disasters as focusing events and vehicles for public policy agenda change are a reflection of public opinion, and the differences between disaster types are also examined by Professor Robert Rabin

and Thomas Birkland. Elizabeth Schneider and Deborah R. Hensler have researched the role that monetary compensation has assumed in society as a means of assuaging grief and trauma suffered by victims of terrorism and their families. Betsy Grey and Thomas Seessel examine the emotional, psychological and social benefits of compensation, and noted disaster science professional Dennis S. Mileti provides some insight into American cultural values which help shape public policy.

Mr. Bernard A. Koch from the European Centre of Tort and Insurance Law (Austria) has prepared a comparative study of international victim compensation programs for the Council of Europe with specific emphasis given to the role of tort and insurance. Hans Jorg Albrecht and Michael Kilchling from the Max Planck Institute for Foreign and International Criminal Law in Freiburg Germany have likewise completed a comparative study of the European victimological frameworks from a theoretical perspective. They describe the sociological, political and economical disparities which currently exist in Europe, and serve to complicate the development of an international victim compensation model. Iincluded in their discussion is a history of Council of Europe (CoE) and European Union (EU) policies before and after 9/11. Dr. Jo Goodey from the Crime Programme of the United Nations (Vienna) completed a discussion paper for the National Center for Victims of Crime which explores the concept of compensation as a "right" versus good government practice, the philosophical underpinnings of different European compensation mechanisms and the complexities of the socio-legal contexts which define various programs internationally.

Although not intended as an archetype for future victim compensation by Congress when it was first legislated, the 9/11 Victim's Compensation Fund has undoubtedly set a confusing precedent. Before the inception of the Fund, compensation was rendered by government and charity to attend to the immediate, basic needs of disaster victims. The form that victim compensation for terrorism will take in the post-9/11 world will be vested in the societal values and expectations which guide political agendas and ultimately create public policy. Those social factors are dynamic and include economic realities, legal considerations and ethical beliefs. Moving forward, the ability to discern the synergy of these forces will help to provide a sound foundation for shaping victim compensation in the future.

III. RESEARCH METHOD

Ollie Davidson, a notable disaster researcher at the forefront in mitigation and recovery through private-public partnerships, has advocated for the increased use of evaluation designs for future research applications. Evaluation research is used to determine the success of both processes and relationships through a variety of methods including empirical and cultural analyses, computer modeling and inter-organizational assessment (Stallings 2002). Whatever the method, the intent of evaluation research is to appraise the success or failure of a particular disaster characteristic or scenario.

Within this broad context, the case study is a fitting framework for such analysis. As a staple of comparative analysis, the case study enables a researcher to critically evaluate a singular event or attribute of an event. Evaluation research using a case study method facilitates comparative research across disaster type, temporal margins and national boundaries. In so doing, the researcher is able to validate which external factors of community and event emerge as significant (Stallings 2002).

The case study will explore the positive and negative aspects of the Fund as a victim compensation construct from a holistic, inter-disciplinary perspective to ensure study construct validity and internal data validity. Although external data validity is more difficult to achieve in a single-case study, Yin (1994) asserts that theoretical relationships can be developed from a case study which can then lead to generalizations. External data validity is accomplished through comparison with international victim

compensation mechanisms and the premise(s) on which they are based (Tellis 1997).

For the purposes of this research, the case study can be categorized (according to Stake, 1995) as being both instrumental and collective, e.g. instrumental insofar as it is used "in order to obtain a better general understanding" of a wider phenomenon, and collective by virtue of aggregating evidence from a number of sources for comparatively exploring similarities and differences (BERA 2009). The research aims to identify the forces that shaped victim compensation within the unique events of 9/11 in order that a theoretical understanding of compensation may be developed. Comparison with international programs can further, and more convincingly, identify consistent factors that comprise the wider context of victim compensation through "analytic generalization" (Yin, 1984). Finally, such generalization will help to unravel the complex forces central to global contemporary victim compensation theory (BERA 2009).

The uniqueness of the 9/11 Fund makes it ideal for the case study format because it is not only a critical case, but also a paradigmatic one. It is critical because it "can be defined as having strategic importance in relation to the general problem" (Flyvbjerg 2006, page 229). It is also paradigmatic because it "transcends any sort of rule-based criteria where no standard exists because it sets the standard" (Flyvbjerg 2006, page 232). " Kuhn (1987) has shown that the basic skills, or background practices, of natural scientists are organized in terms of 'exemplars,' the role of which can be studied by historians of science" (Flyvbjerg 2006, page 232). There is little debate that the 9/11 Victim Compensation Fund is one such "exemplar."

Stake (1995) asserts that the protocols used to ensure accuracy in case study are rooted in a triangulated research strategy. Ethical scientific research confirms the validity of processes and methods so results can be replicated. For this research, the case study protocol uses multiple data sources, or "data source triangulation," to identify similarities among different contexts (Tellis 1997). The multi-disciplinary approach to the research (legal, economic, ethical, social dimensions) and an analysis of commonalities in the global milieu ensure that the research is accurate.

IV. RESULTS

The 9/11 Victim Compensation Fund—A Description

The terrorist attacks of September 11, 2001 resulted in 2,976 deaths, with more than 2,600 injured (Schachner and Tebo 2007). The Fund represented a "dramatic departure from previous methods of compensation used by the federal government" (Levin 2002, paragraph 3) by providing a no-fault administrative process to victims as an alternative to traditional tort. It was the first time in U.S. history that government has ever compensated victims in this manner. By accepting Fund awards, claimants were thereby prohibited from filing traditional civil actions against all defendants, including the airlines, airline manufacturers, airport owners, Boeing, anyone with a property interest in the World Trade Center (WTC) and the City of New York (Levin 2002)—the only exception being against the terrorists and their organizations (Schneider 2003).

Further, the Fund was designed for claimants to collect both economic and non-economic loss awards. As a replacement for tort, Congress provided compensation by using an approach designed to provide the type of "individualized justice" one would normally associate with both the process and dollar amounts that could reasonably be recovered through successful traditional civil litigation (Levin 2002). Economic loss included the expected medical expenses and loss of present earnings but was also expanded to address "loss of business or employment opportunities" (future lost income). Non-economic loss was broadly interpreted as "losses for physical and emotional pain,

suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship," and other such losses usually associated with tort (Rabin 2006).

Unlike tort awards, however, Fund disbursements were reduced by collateral source benefits that claimants could receive. Life insurance payments, pension funds, social security, workers' compensation and other death benefit programs were deducted from award totals. Defined charitable contributions received by victims were exempt and, therefore, not deducted from awards (Schneider 2003).

Special Master Kenneth Feinberg employed a "presumptive methodology" for determining economic loss that was tied to age, past income and number of dependents, and non-economic losses were fixed (Rabin 2006, page 477). Individual claimants were compensated for economic losses up to the 98th percentile of individual income ($231,000.00), and non-economic losses of $250,000 (plus $100,000 for spouse and each dependent child). A minimum amount of $300,000 per family was allowed. All awards from the Fund were tax-free. Claimants had to file on or before December 21, 2003, and the Fund's Special Master was required to issue a final, non-appealable determination within 120 days of claim filing, with payment received within 20 days following judgment (Levin 2002).

This general processing timeframe and structure contained two alternative procedures for claim review from which each claimant could choose: Track A and Track B. Track A required claim submission to initially determine whether a claim was

"substantially complete." After eligibility and completeness were established by Fund administrators, within 45 days the claimant would be notified of the determination along with the recommended financial award amount. The claimant then had an opportunity to request an appeal, with the right to an in-person hearing wherein "extraordinary circumstances" could be considered. Afterward, a final award would be calculated and no further appeals heard (Rabin 2006).

Track B had a similar initial review for eligibility and completeness, followed by claimant notification of acceptance *and* to schedule a hearing. Unlike Track A, no presumptive financial award was released prior to the hearing phase. After the individual hearing, Fund administration offered defined award amounts that were final and could not be appealed (Rabin 2006).

In fact, claims were equally divided between each track. Differences in selection between the two were that injury victims overwhelmingly selected Track A, while individuals with larger incomes tended to opt for Track B (Rabin 2006). Of those individuals who opted out of the Fund entirely, approximately 60 lawsuits continue to "wend their way" through the traditional U.S. tort system (Schachner and Tebo, 2007, page 60).

In the final analysis, the 9/11 Victim Compensation Fund distributed almost $6 billion in claim awards to survivors for 2,880 deceased victims, and more than $1 billion to 2,680 injured victims, for a total of $7.049 billion federal dollars. The average award to surviving families was $2.1 million, ranging between $250,000 and $7.1 million each.

Awards to injured victims ranged from $500 to $8.6 million per claim. Ninety-seven percent of claimants determined to be eligible for participation in the fund did so. Program administrative costs approximated 1.2% of the total disbursement (Rabin 2006).

In addition to Fund awards, families of victims categorized as "emergency responders" received an average of $880,000 more in charitable contributions than did civilians killed. The combination of charity and government benefits for emergency responders suggests that these families received an average of $1.1 million more than a civilian with similar economic loss (Dixon and Stearns 2004).

Nomenclature Ambiguity

"Victim" and "Compensation"

A widely-accepted concept of "victim compensation" is essential, and yet this case study research reveals that perception varies extensively among industries, disciplines and even individuals. A TIME/CNN poll conducted in January 2002 found that 86% of people surveyed believed that all families of the 9/11 tragedy should have received the same financial award. "The principle goal of victim compensation is to reaffirm a set of values about particular kinds of suffering'" (Levin 2002, paragraph 40). Historically, compensation in a democracy has remunerated victims of terrorism equally, acknowledging that all are equal members of society and innocent victims of a political attack (Levin 2002).

Before the Fund, the federal government had assumed two distinct approaches with assisting terrorism victims: "compensation" and "restitution." Significant compensation statutes have been passed on an ad hoc basis and can be tied to discrete events, including the Hostage Relief Act of 1980 (Iranian hostage crisis), the Victims of Terrorism Compensation Act (Iranian hostage crisis), the Aviation Security Improvement Act of 1990 (Pan Am Flight 103 bombing--Lockerbie) and the Justice for Victims of Terrorism Act (Oklahoma City Murrah Building bombing). The Hostage Relief Act of 1980 offered compensation to only government employees and, further, the statute prohibited hostages from seeking damages through tort against Iran. The Victims of Terrorism Compensation Act expanded the Hostage Relief Act of 1980 to include any/all terrorist acts. The Aviation Security Improvement Act of 1990 extended compensation to all citizens, not just government employees, and the Justice for Victims of Terrorism Act provided more flexibility for dissemination of monies through states, public agencies and charities for victims. All of these statutes were "based on the principle that the federal government should come to the rescue of those who suffer by fairly and adequately assisting them" (Levin 2002, paragraph 25). With the Iranian hostage crisis of 1980, the government had a narrow interpretation of what compensation would entail and who should be eligible. But, over time, the scope of federal assistance became more inclusive and more comprehensive (Levin 2002).

In contrast, restitution statutes are based on the concept that the person responsible for the harm should "restore" the victim to his/her status quo and permits survivors to pursue tort remedies. Specific restitution statutes include: The Torture

Victim Protection Act of 1991, the Anti-Terrorism Act of 1992 and the Foreign Sovereign Immunities Act. Restitution laws broadly enable U.S. citizens who are victims of terrorism, and their survivors, to obtain monetary compensation from responsible parties at home and abroad through the tort system. The benefit of tort is largely seen as allowing victims the right to confront, place blame, and ultimately heal through that process in the legal system while, at the same time, receiving monetary compensation from wrongdoers (Levin, 2002).

Compensation has also been interpreted as "reparation," the "act or process of mending or restoring and of making amends, offering expiation, and giving satisfaction for a wrong or injury" (Schneider 2003, paragraph 83). This usage has recently become associated with African Americans and slavery. However, Webster's Third New International Dictionary of the English Language (Unabridged 1230 [1993]) defines compensation as something that "makes up for a loss" and the "act or action of making up, making good, or counterbalancing" (Schneider 2003, paragraph 83). In comparing the two, it can reasonably be argued that the intention of the fund was to do both—"mend, restore and give satisfaction" for the injuries of 9/11 (reparation), while also attempting, through financial means, to "make up for a loss" (compensation). While accepting no blame, the government provided monetary awards designed to satisfy victims and survivors' families, thereby avoiding tort (Schneider 2003).

The nomenclature associated with the concept of compensation is varied and dynamic. Placed into a framework where taxpayer monies are involved it becomes

fraught with political, moral and legal hazards, among others. This scenario leads to a central underlying uncertainty: "whether government should assume any obligation to the victims of life's misfortunes," at all (Rabin 2006, page 480). Where individual risk assumption ends and government compensation begins has been, historically, situational and therefore, defining who is a "victim" and who is not further complicates the issue.

A democratic system implies some level of individual risk assumption but, when government compensation is involved, the need for uniformity becomes obvious. This parity does not exist among disaster scenarios, either within a terrorism subcategory (e.g. 9/11 attacks, USS Cole and Oklahoma City bombing) or across disaster type (e.g. Hurricane Katrina, Minnesota Bridge Collapse). This does not imply that aid was not available to victims in any form, but the ad hoc manner by which assistance was administered resulted in considerable disparity. And while it is outside the scope of this case study to compare and contrast disaster events and subsequent compensation, it is critical to note that there are significant differences between them. Any compensation mechanism which seeks to place responsibility on the government for any and all inherent risk in general, and terrorism incidents in particular, requires consensus on how it defines both "victim" and "compensation" at a minimum. At present, such consensus has not been attained.

"Terrorism"

An additional nomenclature issue has to do with defining "terrorism." It is readily apparent that the 9/11 perpetrators, the Madrid and London train bombers, all fall

into a particular category of terrorists, which includes politically or religiously motivated non-nationals deliberately targeting innocent civilians. These can be subdivided into organized groups and individuals acting alone (e.g. suicide bombers). The definitional boundaries become blurred when one considers alternate *motivations* and other terrorizing *methods* (e.g. serial killings, campus shootings, mass casualty events) (Rabin and Sugarman 2007). At present, no compromise-definition of terrorism has emerged at the international level, although discussion has focused on motivational nuances and terrorism victimization methodology. The international definition seeks to be broad enough to incorporate compensation schemes already in place while also considering free market risk reduction. Current efforts seem to be focused around categorization or listing of particular offenses (Koch 2006).

International compensation mechanisms vary between ones which include terrorism as a special instance and those that consider terrorism a subset of the larger "crime" category. In the United States, there is no single federal program which administers compensation for either terrorism or crime victims, but all 50 states have crime victim compensation programs managed on an ex ante basis (permanent funds which anticipate future losses) (Koch, 2006).

State crime victim compensation mechanisms do not include property loss, pain and suffering or loss of future income, and there are caps on overall amounts disbursed per victim and per category of damage ($10,000-$70,000 average), unlike 9/11 Fund. State programs strictly follow the principle of subsidiarity, meaning that payments are

made only to the extent that benefits cannot be attained through other sources (insurance, corporate benefits). State funding is obtained primarily from offender fines and penalties, supplemented by federal grants through the Federal Crime Victim Fund (VOCA) (Koch 2006).

The distinction between crime victims and terrorism victims in the United States can be distinguished through the government compensation programs already in place. But after 9/11, these arguably artificial boundaries have come into question, primarily as a matter of equity. Convincing arguments are made for statutory consistency in compensating all victims of "violence," regardless of event-specific or ad hoc compensation approaches which tend to be influenced by political and economic objectives (Albrecht and Kilchling 2007). In attempting to provide clarity in defining "terrorism," substantive issues of just and equal treatment between victim typology also become part of the discussion.

The terrorism subcategory conundrum is starkly apparent in Europe. On one hand, the European Union seems to favor programs which focus on terrorism victims as a singular class of victim, as seen in its 2002 Framework Decision on Combating Terrorism. The EU states that "specific measures are necessary" regarding the vulnerability of terrorism victims. Conversely, the Council of Europe (encompassing countries beyond the European Union's borders) stresses that victims of terrorism have essentially the same needs as victims of other crimes (2006 Recommendation on Assistance to Crime Victims) (Albrecht and Kilchling 2007). Not only is there

fundamental inconsistency of nomenclature between the two policy-making entities in Europe, but wide differences exist among individual European member States.

What becomes evident is that, in attempting to define "victim," "compensation," and "terrorism," inconsistency is ubiquitous. Some of this may be clarified in the United States through the legislative process, but how that may or may not "translate" internationally remains a serious challenge.

United States Victim Compensation History

To understand the formative context of victim compensation, it is helpful to examine the concept in retrospect. The U.S. government has assumed a limited role in compensating victims of terrorism and, when it has, it has done so on an ad hoc basis in a reactive mode. Most recently, legislation passed after the 1993 attack on the World Trade Center and the 1994 Oklahoma City bombing provided indirect assistance to victims through state and community grant funding (Grey 2005). Although the 9/11 Victims Compensation Fund was also an ad hoc approach, it was the first time that the federal government compensated individual victims directly (Lascher and Martin 2008).

In contrast to event-specific compensation, the federal government has established several permanent, ongoing victim compensation mechanisms such as Black Lung compensation (Peck 2003), the National Childhood Vaccine Act, the Price-Anderson Act, and workers' compensation programs (Grey 2005). These long-term compensation

programs are administered outside the common law tort system, are based on no-fault compensation ideology and are also designed to reduce threats to targeted industries from incapacitating litigation (Grey 2005). The Black Lung compensation model required claimants to establish that total disability was the direct result of employment, and benefits were issued through existing federal programs. Eventually, the burden of "proof" on the part of claimants proved unmanageable (Peck 2003). The National Childhood Vaccine program requires lesser proof, but its success hinges on the market forces encouraging pharmaceutical manufacturers to remain in the industry by providing governmental backing in the event of fault (Grey 2005). That program also provides equal compensation to victims (Levin 2002). The Price-Anderson Act limited liability to nuclear power generators, while ensuring governmental compensation and requiring minimal proof for claimants. Workers' compensation statutes dismiss negligence liability for employers in an increasingly industrialized economy, while still entitling workers some monetary compensation (Peck 2003).

These existing governmental programs generally balance a substantial measure of "proof" on the part of claimants with acceptance of liability on the part of industry (combined with governmental backing). It appears that governmental intention is divided between ensuring the integrity of various economic entities (nuclear power, pharmaceuticals) and safeguarding the rights of individuals. The Fund proved to be similar in that government sought to protect the aviation industry and also compensate victims, but it is somewhat divergent on issues of eligibility (or proof), compensation levels and type. The Fund also awarded monies based upon the singular judgment of the

Special Master, evaluating each claim individually, without regard for the categorical equity associated with existing government programs. "There is not a single program that grants recovery for wage loss reflecting the tort system's total disregard for considerations of horizontal equity and need-based considerations. Nor is there a single instance in which no-fault programs provide for unconstrained case-by-case determinations of non-economic loss" (Rabin 2003, paragraph 50).

Indeed, the goal of Congress was to "provide speedy relief to an airline industry confronting the potential of thousands of lawsuits that arguably threatened its financial viability" (Feinberg 2006, paragraph 2). It has even been suggested that the Fund itself was an afterthought. In natural disaster situations, the Federal Emergency Management Agency (FEMA) assumes the lead, tasked with extending federal aid dollars to state and local governmental agencies, not individuals (Seesel 2003).

FEMA's mission focuses on replacement of physical loss, not compensation for future economic loss or non-economic losses associated with pain and suffering. This compensation is best understood as being needs-based, not fully comprehensive. However, it can reasonably be argued that the different emotional and social circumstances specific to a terrorist attack suggest that government re-think this type of victim compensation in a less traditional way.

Physical loss and economic loss can be calculated, documented and aid disseminated through established government channels. But what of the victim's survivors? Should they be compensated at all? The extent to which the Fund reflected

the values of the United States' democratic society appears to be a philosophical nexus where the Fund's purpose wandered away from traditional government compensation.

European Victim Compensation History

"In 1964, Britian became the first country in Europe to introduce a modern scheme of State compensation" (Goodey 2003, page 5). In fact, only months prior, New Zealand was the first in the world to legislate such compensation. "From the 1970s on, terrorism, back then mostly in the form of national, separatist and political terrorism, started to trouble European countries" (Albrecht and Kilchling 2007, page 14). As a result, police and criminal laws were modified to deal with organized violence intended to disrupt the political or economic systems of European states (Albrecht and Kilchling 2007).

The CoE initially advocated government compensation to crime victims (not necessarily terrorist victims specifically) through its Convention on the Compensation of Victims of Violent Crimes in 1983. Entered into force in 1988, the Convention's goals were to outline minimum provisions for its convention members for establishment of victim compensation programs. Such programs were required to provide: loss of earnings, maintenance (for dependents), funeral expenses and hospitalization/medical payments (Albrecht and Kilchling 2007). At this time, the effect of terrorist violence was considered similar to other criminal behavior upon civil society, including the racist/hate crime and ethnic violence that had plagued Europe for decades. Underlying each type of

violence, a similar intent could be identified: to destroy the "very basis of social integration that is social solidarity" (Albrecht and Kilchling 2007, page 14).

"Individual state compensation programs had been established in the following European countries: Northern Ireland (1968); Sweden (1971); Austria (1972); Finland (1973); Ireland (1974); Norway (1976); Denmark (1976); The Netherlands (1976); Germany (1976); France (1977); and after the 1983 CoE Conventions, some form of state compensation programs became adopted in Luxembourg (1984), Belgium (1985), Spain (1995), Portugal (1991-1993) and Switzerland (1992)" (Goodey 2003, page 5). These programs generally compensated victims of such violent crimes as homicide, assault, rape and robbery. Though similar in typology, the inherent disparities among awards were noteworthy (Goodey 2003). While generalizations are difficult to make, one thing is certain: "the history, extent and nature of State compensation in the EU can be conveniently interpreted with respect to general differences in common and civil law justice systems, and the general 'place' assigned to victims of crime in each jurisdiction" (Goodey 2003, page 18). The philosophical basis for state compensation can be tied to political factors directly affecting budgetary priorities (Goodey 2003).

"Whether the USA is able to learn anything from these examples of State compensation to victims of terrorist acts in the EU is questionable. Compensation schemes in the EU have largely emerged as a response to long-term and on-going internal terrorist activities" (Goodey 2003, page 17). This cultural context has been a formative power and has undeniably influenced the political parameters shaping victim

compensation internationally. Distrust of government, corruption/organized crime as a socio-political force, dictatorship and the role of the welfare state are central to the nature and extent of victim compensation programs among European nations (Goodey 2003).

In Europe, there are two "core rationales" for justifying state compensation: 1) the legal duty rationale and 2) the moral duty rationale. The first acknowledges that the state, in some manner, failed to protect its citizens and, therefore, has a legal duty to provide compensation. The second upholds the state's moral obligation on a humanitarian or welfare-state basis. "Victim-centered justice in European jurisdictions is predominantly a needs-based response, and, as such, can be interpreted in the framework of a moral duty rationale" (Goodey 2003, page 11). As the welfare state expands across Europe, state-sponsored victim compensation is justified on the basis of "social solidarity and equity" among nations (Goodey 2003 page 12). And, while seen as government's pragmatic response to the needs of victims, state compensation is not viewed as a right in Europe (Goodey 2003).

As in the US, legal constructs among European countries enable a crime/terrorism victim to pursue compensation through two venues: the state or the offender. The first priority is always to collect damages from the offender through civil or criminal legal proceedings. However, it is commonly understood that due to the nature of terrorism violence, the inability to identify and prosecute terrorists, and difficulty in actually recovering funds for disbursement to victims, these efforts are rarely successful. The EU and European Commission are promoting state compensation as the cornerstone of

victim-centered justice in Europe. But binding legislation among member nations will be a necessity to ensure equity between compensation program monetary disbursements and reciprocity among citizens victimized in other states (Goodey 2003).

In 2005, the CoE drafted the Protection of Victims of Terrorist Acts (adopted at the 917th meeting of the Ministers' Deputies, 17 September 2005). With this measure, the CoE acknowledged that victims of terrorism were in a separate category from crime victims and, therefore, deserving of "national and international solidarity and support" (Albrecht and Kilchling 2007 page 16). Although the CoE capitulated in rendering this distinction, the principles and guidelines established within the Act thoroughly reflect consistency with other victim compensation programs. The importance of privacy, emergency assistance and long-term aid associated with terrorist victimology were highlighted, as was the need for fair and timely compensation regardless of national borders. CoE policies and programs generally compensate terrorism victims "as more part of a general victim policy than part of particular counter-terrorism activities" (Albrecht and Kilchling 2007, page 17).

On the other hand, the EU appears to support compensation and treatment of terrorist victims as a completely separate mandate. "According to its 2002 Framework Decision on Combating Terrorism, 'specific measures are necessary', in particular with regard to the vulnerability of victims of terrorist offences" (Albrecht and Kilchling 2007, page 26). Through its various Green Papers, declarations and framework decisions, the EU has regularly issued guidance to its member states on crime victim compensation.

Ironically, only days before 9/11, the EU issued a Parliamentary resolution concerning its role in combating terrorism (Albrecht and Kilchling 2007).

"The basic legitimacy for setting up victim compensation legislation throughout the EU is seen (in addition to criminal policy rationales) in equity and social solidarity, which also constitute the basic principles behind the 1983 European Convention on Compensation of Crime Victims" (Albrecht and Kilchling 2007, page 19) issued by the CoE. In that way, the EU and the CoE are similar. However, the EU recognizes the programmatic differences that exist between countries in their crime victim systems and the nuances presented by terrorism victim class. Both the EU and CoE are working toward a consensus-terrorism policy grounded in principles of equity and solidarity, with compensation independent from nationality and a particular emphasis on victim protection and enhancing states' abilities to deal with the consequences of terror attacks (Albrecht and Kilchling 2007).

Evaluating the Fund

An assessment of the Fund from a multi-disciplinary perspective can help identify the forces that shaped victim compensation within the unique events of 9/11. Special Master Feinberg has said, "I believe it ultimately unavailing to try and make sense of the September 11 Victim Compensation Fund in the context of American tort law. It is so unique in the size and scope of the awards, the total public source of the funds, its 'tort-centric' emphasis, and the almost unfettered discretion provided one individual in

designing and administering the program that it stands alone as an example of domestic public policy" (Feinberg 2006, page 486). Surely, his perspective is both valuable and biased, public policy is the result of the synergistic forces of our times. In this case study, a holistic research framework is used to identify and assess the value of the Fund's various components to achieve internal data validity.

Legal Summary. First, the Fund and its legal virtues are evaluated. Because it represented such a divergence from existing governmental programs and was enacted by Congressional mandate outside of normal statutory procedures, the Fund is rife for discussion among legal scholars. The consensus position is that the Fund was as unique as the events of 9/11 and, as such, should not be considered a model compensation scheme. The Fund's hybrid legal approach combining a tort model with no-fault liability lies at the crux of the discussion. This may have spared the airline industry but, in so doing, did governmental compensation come at the expense of "justice" for victims and survivors?

The tort system's dual purpose is to allow claimants to seek compensation while punishing and, thereby, changing the behavior of those who have harmed others (Schachner and Tebo 2007). Civil litigation is the means by which "corrective justice," a central goal of tort, is achieved—punishment promotes deterrence. By opting in to the Fund, claimants gave up their right to pursue traditional corrective justice through the tort system (Grey 2005). "By strictly applying the usual formula for tort damages, Feinberg set an unofficial minimum and maximum limit on awards and made distinctions among

individual claimants" (Grey 2005, page 57). The Fund offered tort-type individualized compensation determinations through its administrative process, but in a no-fault setting.

"While no-fault schemes are not narrowly needs-based, they are grounded in the premise that compensation for basic economic harm is the primary concern, and that considerations of defendant misconduct and plaintiff contributory responsibility are largely irrelevant—that injury arising out of a given activity or event is, in itself, a sufficient basis for affording compensation" (Rabin 2006, page 469-470). Such compensation methods also seek horizontal equity among claimants, known as "distributive justice" (Grey 2005). Distributive justice in compensation is based upon three allocation principles: equity, equality and need. Equity refers to dissemination of monies on merit, skill, productivity or value. Equality reflects the belief that those in similar circumstances are compensated similarly. And need is the traditional benchmark used in distributing aid after a disaster (Grey 2005).

In contrast, the underlying premise of tort is that "a 'responsible' defendant ought to be charged with losses reflecting what is required to make a 'deserving' plaintiff whole," representing the "intersection of deterrence and corrective justice" (Rabin 2003, page 798). Tort stands directly opposite of a no-fault model where "basic needs recovery" is the norm for categories of similar beneficiaries, recognizing the horizontal equity between them (Rabin 2003). "Serious questions remain, however, about the Fund's varying treatment of members of its own victim class. Implicit in the economic damage awards' reliance on economic damages is that richer victims recovered much

more than poorer ones" (Copland 2005, paragraph 66). Those receiving less were faced with wondering why their loved ones' lives were seemingly not worth as much as others while higher wage earners complained that the arbitrary cap on earnings above the 98th percentile was unfair and left them "undercompensated" (Copland 2005).

Programs such as social security and workers compensation pre-exempt tort by their very nature. But in the earliest days of the Republic, government has sought to provide relief to citizens who have experienced harm/loss, dating back to the Whisky Rebellion of 1794 (Schachner and Tebo 2007). Broad discretion was afforded the federal government in administering these public funds even then. But balancing immediate relief with appropriating blame afforded through tort can be contradictory. "While the Fund did allow those families who opted in to be compensated quickly and go forward with their lives, it failed to apportion fault, create accountability and, ultimately, have a deterrent effect" (Schachner and Tebo 2007, paragraph 45).

Preliminary cases suggest that the tort system would need to be modified to hold more potential defendants "accountable" based on the "foreseeability standard" as applied to future terrorist acts. No longer can the tort system ignore the sad reality that increased terrorist attacks are not only possible but probable. "To adapt to the new reality, the tort system must modify its forseeability analysis and establish that our new national policy of terrorism prevention dictates holding individuals accountable when their negligence facilitates the completion of a terrorist act" (Wientge 2005, page 196).

Another controversial aspect of the Fund in legal circles had to do with collateral offset—traditionally, life insurance or pensions would not be deducted from a plaintiff's award in a tort case as they were from Fund awards. The Fund's requirement for offset was unprecedented and perceived as a penalty to those families or companies who happened to have planned ahead and purchased insurance or other free market risk management mechanisms (Copland 2005).

With the wounds suffered after 9/11 so raw, the nation would have been unable to bear the sight of families and victims streaming into courtrooms for months on end (and likely years) pursuing traditional tort remedies. The expeditious manner in which compensation was delivered was one of the Fund's strengths. "The American tort system has failed to meet both equity and efficiency goals. Awards are random, slow, and inequitable; and the system shows no evidence of deterring risky behavior such that actors economically internalize the cost of accidents, in fact deters innovation and products and behaviors that are useful but novel with unknown risk profiles, and is incredibly expensive to administer. Having failed to meet both its compensatory and deterrence objectives, the tort system is ripe for reform" (Copland 2005, paragraph 20). In fact, the system has been found to be less than 50% efficient as a measure of compensation versus administrative costs. The U.S. economy devotes a larger percentage of its economy to tort law than any other industrialized country (Copland 2005).

Despite the problems inherent in the tort system, it remains a cornerstone of democratic society. Feinberg noted that "I'm convinced that the civil justice system is an

important force for promoting safe standards of conduct and individual responsibility" (Feinberg 2005, page 180). That perspective notwithstanding, Feinberg's hybrid approach combining no-fault with tort process essentially eliminated tort as a reasonable option for the 9/11 claimants. The families who chose not to opt-in to the Fund cite litigation and the discovery process as absolutely essential to discovering "what went wrong" that allowed the terrorists to be successful. They also assert that this aspect of tort is essential to providing closure and emotional healing (Wientge 2005).

Feinberg acknowledges that the hearing process afforded by the administrative procedures of the Fund , mirroring tort, provided an outlet for claimants to be heard and heal, but also served to "exascerbate...raw wounds" by creating the perception that some lives were worth more than others by virtue of the hierarchy of financial awards (Feinberg 2005, page 183-184). In retrospect, he advocates that individualized award assessments be set aside in favor of a model based on horizontal equity wherein each surviving family would receive equivalent compensation (Rabin 2006). A majority of legal scholars agree that this very public distributional inequity was likely the most negative aspect of the way the Fund was administered.

European justice is similar to the U.S. tort system insofar as compensation can be sought through civil or criminal proceedings against either an identified offender or the State. According to a survey from the mid-1990s, McIntosh and Holmes attempted to determine what compensation level would be awarded hypothetical claims through civil tort in different European jurisdictions (*Personal Injury Awards in the EU and EFTA*

Countries, 1994). Although a comparison of hypothetical cases could be considered questionable research, what the survey illustrated, ultimately, "is the extent to which claims for damages, in a civil court, can differ greatly between European jurisdictions," just as is the case in U.S. courts (Goodey 2003, page 8). Contributing to the variability were differences in "relative income, cost of medical treatment, and the provision and level of social security benefits" (Goodey 2003, page 8).

Legal research has revealed that "the right to bring a civil claim for compensation in the course of criminal proceedings, as in the 'partie civile', is unsuccessfully applied in most EU jurisdictions" (Goodey 2002, page 8). The justice system in Europe has also conceded that many terrorism offenders are never brought to justice. As a result, "State compensation presents a real alternative for vast numbers of victims who are eligible for compensation but are not in a position to bring a civil claim" (Goodey 2003, page 9).

There is further disparity among European nations with respect to who may seek State compensation and who may not, based upon the victim's standing in each jurisdiction's legal construct. Essentially, there are three groups of eligibility: 1) the affected victim (covered by all State schemes in the EU), 2) the dependants and other relatives of the victim (not covered by all schemes) and finally, 3) a person accidentally caught up in the offense (occasionally covered by some schemes). "The history, extent and nature of State compensation in the EU can be conveniently interpreted with respect to general differences in common and civil law justice systems, and the general 'place' assigned to victims of crime in each jurisdiction" (Goodey 2003, page 18). This socio-

legal framework makes it difficult to generalize among European state victim compensation programs (Goodey 2003).

"Notwithstanding manifold international efforts and instruments, variation in legislation and practices is substantial in Europe" (Albrecht and Kilchling 2007, page 30). And although ad hoc event-specific compensation is certainly flexible, it fails to "meet requirements set by principles of predictability and equal treatment; instead it tends to be influenced by varying political and economic objectives" (Albrecht and Kilchling 2007, page 30). Different legal systems and political priorities, coupled with varying economic standards of living in European states continue to result in victim compensation that falls short of achieving the European goals of social solidarity and equity (Albrecht and Kilchling 2007).

Economic Summary. Businesses and individuals affected by the events of 9/11 relied on a combination of the Fund, charitable contributions, insurance and tort. At present, no disbursements have been made through tort, but these other quantifiable benefits were allocated according to: the Fund--$15.8 billion (42%), charity--$2.7 billion (7%) and insurance--$19.6 billion (51%). Businesses received more than 61% of the total overall benefits, a reflection of the property damage and economic effects to the economy of New York City. Nearly 28% of the total went to victims, with emergency responders receiving 18% of that amount (Dixon and Stern 2004).

Businesses accounted for more than 85% of insurance payments which likely prevented further economic damage. Whereas issues of corrective and distributional

justice have been discussed within the legal construct, economic efficiency must be a major goal for compensation systems. In this case, economic efficiency "includes making sure that benefits are distributed with low administrative and other transaction costs, providing incentives to individuals and businesses to maximize economic activity, and providing incentives to individuals and businesses to take appropriate security measures" (Dixon and Stern 2004, page xxii-xxiii). And while benefits were abnormally large, business losses in New York City were considerably larger. Property damage to businesses was estimated at $16 billion, with insurance payments covering only $7.5 billion of that total. Large payments by insurers were also made for business-interruption and cancellation, but lost profits caused by the terrorist attacks were never completely compensated (Dixon and Stern 2004).

"From an economic efficiency point of view, the most salient aspect of business benefits was the unprecedented effort to revitalize Lower Manhattan" (Dixon and Stern 2004, page xxix). Economic revitalization has not yet been evaluated from a cost/benefit standpoint, although the area has largely recovered and initial programs in that regard totaled almost $5 billion. Dixon and Stern (2004) suggest that such an analysis is crucial to discovering the economic efficiency aspect of compensation, and that it should include the effect revitalization efforts have had on reducing incentives for businesses to purchase terrorism insurance and what impact this may eventually have on national security.

As the annual costs of disasters continue to increase, risk transfer mechanisms and insurance have begun to assume better prominence (Benson and Clay 2004). The manner

in which free market insurance and governmental resources provide compensation, either alone or in concert, has economic implications. As an example, the government could require that all property/casualty insurance policies cover terrorism loss (as is the case in France and Spain). Terrorism insurance is designed to pre-position resources that can be used in the event of a terrorist attack. Likewise, the federal government could design and fund a permanent compensation program in advance of an event. Although it seems prudent to prepare ahead, the downside is that such plans can reduce flexibility on the part of both insurers and government to allocate resources to the most pressing needs after an attack has occurred (Sterns and Dixon 2004).

In the case of the Fund, insurance assumed a major role in averting economic disaster and in helping to revitalize Lower Manhattan. Although the Fund was extremely generous in distributing financial awards, all governments face serious budgetary constraints. European governments increasingly rely on first-party insurances backed by state reinsurance. First-party insurance is designed to enable individuals to purchase coverage according to their individual degree of risk aversion and may include lost income, medical expenses and even pain and suffering. The merit of such insurance is that it allows a better adaptation of premiums and policies, while also facilitating government compensation's focus on immediate relief and humanitarian needs (Faure 2007).

Essentially, there are four principal institutions in democratic society that function together economically and address loss: tort, private market insurance, government

insurance and government welfare. Tort shifts the responsibility of compensation to the wrongdoer which, in turn, creates incentives to reduce further harm to society. Private market insurance is designed to collect premiums and place individuals into self-supporting risk pools, effectively reducing risk while building financial resources to be paid out when necessary. Government insurance provides a safety net for larger, more general societal risks (unemployment or disaster) where less of a market exists. Finally, government welfare redistributes public money to individuals who have "not otherwise been in a position to protect themselves by savings or insurance" (Priest 2003, paragraph 3).

Accepting these four systems for loss and compensation, the Fund with its unlimited budget, represented a significant diversion from traditional economic free market compensation models. Tort and private market insurance each contain an internal logic which strictly measures award amounts based on circumstances (liability calculation for tort, and price restraint based on premiums and coverage for private market insurance). Governmental insurance and governmental welfare are naturally constrained by the budgetary realities of public funding and are, therefore, provided at much lower levels than either tort or private market insurance solutions. Further, there is an equality ethic in both coverage and benefit, a horizontal justice of disbursement (Priest 2003). In Europe, state compensation programs use caps on financial awards as a means of limiting disbursements and providing horizontal equity.

The function of the charitable sector is a key component of the "social service safety net" (Steuerle 2002, paragraph 5) and should necessarily be part of the economic analysis of the Fund. While government capacity to provide victim compensation far exceeds that of charities, these organizations have the advantage of being more flexible, innovative and responding more quickly with fewer administrative constraints. More than $2.7 billion was donated in response to 9/11 (Koch, 2006). In 2001, Americans gave, on average, approximately 2% of their annual income to charities, or about $203 billion (Steuerle 2002). "Charities distributed an unprecedented $268,800 on average for each person killed on September 11th (Katz 2003, page 588).

There are four classic principles of public finance which generally dictate how the charitable sector distributes monies. How these principles were or were not followed after 9/11 provides some insights for future disbursements. The first principle is that of progressivity, or vertical equity. This infers that larger resources are given to those having larger needs. Where this principle normally fails is in duplication of efforts and the inability to foresee long-term needs. The Fund's hierarchy of awards did not achieve vertical equity. "Public pressure to use funds for individuals and families directly affected by September 11 also shifted the focus away from distributing aid on the basis of families' income and toward distributing it on a per-victim basis" (Steuerle 2002, paragraph 12).

The second principle of public finance holds that "two people in identical circumstances generally have the right to be treated equally" (Steuerle 2002, paragraph

13). The Fund's lack of horizontal equity has been well-established and was the central flaw in the Fund according to Special Master Feinberg. The third principle states that "individuals maintain the rights over their own property" (Steuerle 2002, paragraph 15). This is generally interpreted to mean that people can spend their money or use their resources as they see fit. This was successfully applied after 9/11 insofar as donors were able to choose to whom individual monetary donations were made (Steuerle 2002).

The final principle seeks "efficiency," in maximizing remuneration and in providing for the greatest overall benefit to society as a whole. While the Fund's administrative costs were deemed extremely efficient (1.2% of total), its "overall benefit to society" is a matter of opinion. As this principle relates to the charitable sector, the correlation between donor wishes and the organizations' actions must be clearly defined and followed (principle number three). Strictly abiding to this objective, however, may sometimes promote inefficiency and duplication of efforts (Steuerle 2002). Generally, the Fund and the charitable sector, working together, achieved mixed success in adhering to the principles of public finance.

From an economics perspective, victim compensation should be considered in terms of how a compensation method can be provided at the lowest possible cost, without disincentives for prevention or harmful distributional results. The charitable sector must coordinate with government and business to maximize both resources and effort. Ensuring efficiency, equity and adherence to donor intentions should be of great

consequence. Charitable contributions are unpredictable and largely based on the emotional response to a given disaster scenario (Faure 2007).

At this point, further research is needed to evaluate the merits of mandatory coverage, fixed premiums, governmental reinsurance, and the potential effects of supply and demand on the insurance industry. Clearly, free market solutions should be facilitated and the role of charity should be encouraged. And while it is impossible to quantify either, it is possible that these two economic forces could combine to negate the need for a government fund altogether. "Comparing once more the role of government as guarantor of a hand-out or facilitator, there are very few economic reasons for a compensation fund for catastrophes, provided that an insurance system can provide adequate coverage" (Faure 2007, page 359).

Economists have argued that the absence of government compensation would ultimately have adverse consequences on the insurance industry, and they use 9/11 as a benchmark. The staggering obligations the industry would have incurred suggest that it may have failed. But in fact, "the insurance industry was never in such shape following September 11 as many imagined and ..... the industry had more capacity to cope with terrorism losses than is commonly believed" (Lascher and Powers 2004, page 290). In retrospect, we will never know whether either the insurance industry, or the airline industry for that matter, would have actually collapsed.

To date, comparative research is lacking among European nations in the economic discipline, specificially for the two most common methods associated with economic

analysis: regional econometric modeling and inter-industry modeling. First and foremost is the problem of equivalence or comparability. National statistics and indices most often used by researchers are affected by temporal differences among events, national interpretation, and mode of data collection (Stallings 2002).

The inconsistency among victim compensation programs in terms of what losses are covered, funding sources and how disbursements are administered are compounded variables. Attempting to standardize costs of living, population statistics and infrastructural variations is difficult, and any assumed equivalencies must be challenged in a multi-national study (Stallings 2002). Thus, without meaningful research in this regard, it is not possible to herein provide consequential comparison of the Fund with the larger European community of member states and their respective programs within an economic framework.

However, it is possible to make some broad generalizations with respect to economic factors that help shape European victim compensation. Socio-economic disparities that naturally exist among the European member states is clearly the most difficult to calibrate. For example, whereas the joint State compensation scheme that comprises England, Scotland and Wales is considered to be the "most generous" of State programs (in terms of the number of victims who actually receive compensation) as compared to states with similar populations and analogous levels of criminal victimization, this does not necessarily translate financially. Even in member nations where state compensation exists, these "all cannot solve the problem of different

expectations, and needs, resulting from different life standards. As long as significant economic differences prevail, any attempt to establish a uniform level must remain fruitless" (Albrecht and Kilchling 2007, page 28). From a practical perspective, an alternative approach might be to allow victims to seek additional financial compensation from their home countries based upon actual standard of living there. Such an approach seems closer to achieving social solidarity among European member states (Albrecht and Kilchling, 2007).

Ethical Summary. The manner in which monetary disbursements were made from the Fund has raised many ethical questions, most of them based on issues of equality, need and responsibility. According to the Markkula Center for Applied Ethics at the University of Santa Barbara, California, there are generally five sources of ethical standards to be applied to decision-making. These are:

- **Utilitarian**: "which option will produce the most good and do the least harm?"
- **Rights-based**: "which option protects the rights and dignity of all stakeholders?"
- **Fairness/justice**: "which option treats all people consistently unless there is a morally justifiable reason for treating them differently?"
- **Common-good**: "which option promotes the common good and helps all participate more fully in the goods we share as a society?"

- **Virtues**: "which option would enable the deepening or development of those virtues or character traits that we value as individuals and as a society?" (Santa Clara University 2008, paragraphs 7-14).

Evaluating financial disbursements from the Fund, most of these ethical approaches have been theoretically applied to a degree. The lack of distributional equity is the most obvious divergence from the fairness/justice ethical norm—that is, not all claimants received equal treatment. The central issue of equality is a result of the Fund's structure, combining both tort and no-fault concepts producing a hierarchy of awards. "While corrective justice comes into play where a specific act and actor are identified, distributive justice presses its case in every circumstance" (Culhane 2007, page 179). Expanding the frame of reference to other terrorist acts (e.g. the Oklahoma City bombing, the USS Cole, the first bombing at the World Trade Center) the fairness/justice, rights-based and virtues ethical norms would call for compensation in those cases as well.

The level of compensation awarded to the Fund's claimants was another function of its structure. By attempting to provide tort-like compensation, dollar amounts went far beyond traditional aid, which focuses on need. In retrospect, compensation levels should accurately "reflect what the public generally perceives as appropriate, based on principles of equality and need rather than loss" (Grey 2005, page 743). The excessively large financial awards disbursed were not economically efficient nor did the majority of compensation go to the neediest claimants (Grey 2005). This represents another

deviation from the utilitarian and common-good ethical norms, as well as traditional governmental aid.

Another ethical issue concerns that of the federal government's responsibility to provide compensation at all. "If the U.S. government failed to take reasonable steps to prevent the September 11 assaults there is a strong normative rationale for compensating victims, even if fault was never in fact acknowledged by the government" (Lascher and Martin 2008, page 149). Regardless of government liability or culpability, the fact remains that the utilitarian argument in favor of compensation appears well-grounded in the public's expressed desire in support of such a policy. It is necessary, however, to recognize that public opinion naturally vacillates—the individual disaster event characteristics and associated public response continuously changes, and as it does, will continue to shape the public policy agenda (Lascher and Martin 2008).

If the government's responsibility to provide some type of assistance is accepted as normative, then ethicists further debate the form and manner that such compensation should take. Lascher and Martin (2008, page 151) provide that "a major implication of our own ethical analysis is to strengthen the case for providing equal payments to terror victims, rather than the differentiated payments provided on behalf of casualties of the September 11 attacks." Again, the issue of equality is at the forefront.

The efforts of the EU and CoE have focused on the principles of social solidarity, equality and justice—both among member states and between victim class (crime and terrorism). The need for just and equal treatment is significant across national borders,

particularly when "differences might appear justifiable from a theoretical and systematic perspective" which arise from the "territory principle"—allowing individual nations legal jurisdiction without interference from other nations (Albrecht and Kilchling 2007, page 27-28). Disparate compensation among member states, however, is an inherent consequence of the territory principle, considered to be "the regular, internationally recognized standard for liability of states under all major international instruments in the area of victim assistance and victim compensation" (Albrecht and Kilchling 2007, page 28). While the territory principle is an accepted legal construct, its philosophical underpinnings undoubtedly influence other politically-inspired social programs.

Ethically, the Fund met most standards widely acknowledged as appropriate for decision-making in a democratic society. Inequality among Fund awards and, indeed, between terrorist events remain. Until Congress establishes a firm policy on terrorism victim compensation, ethical controversies surrounding the ad hoc manner in which aid is distributed are likely to continue.

Social Summary. Government policy is a reflection of contemporary social and cultural beliefs, outlined by economic, political and legal realities. The terrorist attacks of 9/11, like other natural and man-made disasters, served as a "focusing-event". News coverage was immediate and constant (Birkland 2004). The national emergency management system is a complex network comprised of public, private, non-profit, individuals, governmental agencies, quasi-governmental bodies and ad hoc volunteer groups, including the media; however, "the ultimate guarantor of aid is the government" (Waugh

2000, page 4). Disasters create a window of opportunity drawing public attention and resources to a particular issue while also creating an imperative for government to act based on the collective will of its citizens. The emergency management system is, therefore, inextricably linked to our socio-cultural values (Waugh 2000).

According to the Fund's Special Master Feinberg, the Fund was "grounded in the emotional response of the American people just eleven days after the terrorist attacks....and can best be understood through this historical lens" (Feinberg 2006, page 485). Whereas existing government aid programs structured in a no-fault legal setting "unapologetically provide a form of social insurance against risk, they are not fraught with the symbolic significance associated with heroism and patriotic feelings" as what occurred with 9/11. In this manner, these victims of terrorism are, in fact, "different" (Rabin 2003, page 792-293). There is little doubt that the nation's raw emotional reaction to 9/11 was immense and unprecedented. "Altruism is also a very strong cultural force," as evidenced by charitable giving, volunteer behavior and community involvement observed in the aftermath of the disaster (Mileti 1999, page 145).

In constructing the Fund, the government attempted to "right the moral wrong" done to its citizens strictly by offering monetary compensation, not by assessing blame or providing accountability. It has been clearly stated by Special Master Feinberg that the government's primary goal was to save the airline industry. As a result, some claimants saw the Fund as "hush money" and perhaps even an implicit apology on the government's part for its own failures of that day. Regardless, financial awards for

individual claimants were generally accepted as a means of providing "moral or social repair" and "alleviating grief and trauma" (Schneider 2003, page 492-494).

Unfortunately, neither the Fund nor tort could have eased the pain of 9/11. Those who opted in to the Fund struggled to understand what each financial award said about the value and meaning of their loved ones' lives or that of their children. "For many people, the mere act of translating human life to money is morally reprehensible" (Hensler 2003, page 454). Claimants looked outward at what others were getting as a measure of the fairness of their own compensation. Some felt justified, others were morally affronted by the notion that their loved ones were worth less than others (Hensler 2003).

"The exclusive reliance on money and compensation, the complexity of processes of the Fund, procedural justice, the statute of limitations, and the need for alternative means of repair are important to consider in assessing the Fund" (Schneider 2003, page 497-498). The concept of "closure" for victims is a complex and highly individualized one, and the Fund's inclusion of a hearing process as a means of achieving closure was likely oversimplified. The final decision-making authority being vested in the Fund's Special Master, having been appointed by the same government that failed to protect on 9/11, was largely met with distrust on the part of claimants. The Fund's inability to "recognize the severity of survivors' grief and trauma and their moral and human needs limited the effectiveness of the Fund in a number of ways" (Schneider 2003, page 499-500). The principle reason for the legislation, the speed with which Congress enacted it,

and the Fund's administrative parameters demonstrate the government's failure to appreciate the grief experienced by claimants and to provide for future claims related to the incident that might not become evident until years later (Schneider 2003).

For observers, victims' families came to be seen as "motivated more by greed than a desire for justice" (Hensler 2003, page 437). Money is the medium for conveying social meaning, and each time it changes hands "it carries with it multiple messages about personal and social relationships and about personal and social worth. But these messages are so embedded in the culture that many people rarely stop to consider them" (Hensler 2003, page 452). Large financial awards and distributional inequality resulting from the Fund's hierarchy called attention to the social inequalities in our society at a most inopportune time. Americans seem to favor economic inequality and see it as a natural byproduct of meritocratic norms—until the day they have to put a financial value on their own loved ones' lives (Hensler 2003).

American cultural values shape public policy and certainly played a role in the development of the Fund's administrative procedures. In the U.S., "there is a widespread self-interest motivation and a majority-rules mindset" (Mileti 1999, page 145). While public safety is carried out by government, Americans hold individualism and private property rights as dominant. The Fund processed claims separately, allowed each person the opportunity to be heard and awarded monies based on individual circumstances. Some have argued this had the deleterious effect of pitting claimants against each other and undermining a sense of common purpose and community.

While there are psychological and emotional benefits offered by victim aid (social safety net), traditional government compensation has routinely targeted immediate economic restoration, which helps society to re-establish a sense of normalcy (Grey 2005). A few of the main lessons learned by the London Bombings Relief Charitable Fund following the bombings of July 7, 2005 were that the goal of victim compensation should be to ease the present circumstances, while not implying actual counterbalance for what happened. Also, there was a definite psychological value that resulted from victims receiving aid so quickly (Barnard 2008).

Despite the philosophical divergence between the EU and the CoE on whether or not terrorism victims should be treated as a separate victim class, the moral duty rationale justifying State compensation to wronged citizens has become a hallmark of the European political system and an established part of the social culture. This notion upholds State compensation on the basis of "humanitarian and welfare grounds and, in turn, can be viewed as a form of loss distribution along the grounds of social insurance" (Goodey 2003, page 11). Although the disparate and, compared to the Fund, very limited financial awards are often seen as a "political gesture" rather than meaningful financial compensation, the EU and CoE continue to work toward consensus based on social solidarity and equality among their member states. The CoE's most recent guidelines on the protection of Victims of Terrorist Acts have compensation objectives designed to meet both the immediate and long-term needs of victims and dependents, including "long-term medical, psychological, social and material assistance" (Albrecht and Kilchling 2007, page 17). The need for timely, fair and appropriate compensation, along

with a right to privacy, emerges as significant in European compensation objectives (Albrecht and Kilchling, 2007).

Europe's long history of violence has become woven into its cultural fabric and, therefore, assumes a seminal role in how victim compensation programs are designed by state governments and how they are received by citizens. "Compensation schemes in the EU have largely emerged as a response to long-term and on-going internal terrorist activities" Goodey 2003, page 17). The British and Northern Ireland compensation programs are fully utilized and viewed among the most successful by citizens. In comparison, the Italian government has been tainted by fraud and characterized as unwilling to conform to EU mandates. Italian citizens, distrustful of their government, are more likely to rebuff government assistance and instead seek assistance from family and independent institutions. Likewise, Spain's recent history of dictatorship and lack of state welfare programs have resulted in a half-hearted government attempt at victim compensation and a citizenry which would rather turn to the Catholic Church than seek government assistance (Goodey 2003). These long-standing cultural attitudes and resulting political philosophies have evolved over hundreds of years and, while understandable, present serious roadblocks for the EU and CoE as both attempt to develop consistent victim compensation models across Europe. Cultural forces cannot be underestimated, especially in the diverse European milieu.

The International Approach to Victim Compensation

Albrecht and Kilchling, in their research on European terrorism policies and legislation (2005), suggest that international victim compensation models can be divided, roughly, into three groups: 1) states with legislation and programs specifically for terrorism victims, 2) states with crime-victim compensation programs that can assimilate terrorism victims (although they are not expressly mentioned and 3) states with either no or very limited compensation programs for crime or terrorism victims. Even among states with compensation programs in place, there are significant differences in program outcomes and methods of administration. Some programs offer one-time payment, while others consist of a well-endowed subsidy system of regular payments, pensions, tax exemptions or priority access to public services (Albrecht and Kilchling 2007).

Of the European states with no (or limited) programs, reasons behind the absence of these assistance schemes reside "in restricted public funds that can be made available for victim compensation and/or the adoption of the view that other areas of social policy require a higher priority when deciding on where public investments should be made" (Albrecht and Kilchling 2007, page 25). Financial realities within the stratified socio-economic European states have shaped victim compensation public policy.

Comparative research on existing international victim compensation programs has not been performed, although a "brief overview" of important mechanisms for selected member states of the CoE was prepared by Mr. Bernard Koch (European Centre of Tort and Insurance Law, Austria) in 2006 (Koch 2006, page 1). Primarily, this study focused

on the significance of promoting insurance despite the existence of permanent victim compensation programs. What Koch's research reveals in a broader sense are the different philosophical models on which individual state programs are based. For this case study, those models have been assessed, and several generalized categories have been identified: the Military model, the Social Solidarity model and the Welfare State model.

The first model type, the Military model, connotes those program types which place particular emphasis on and give expanded benefits to the military victim class. These programs design civilian victim compensation similarly (e.g. Israel and Russia). The second category uses Social Solidarity as a guiding precept to victim compensation program administration, thereby seeking to minimize any differences that exist between national programs, socio-economic stratification and victimology (e.g. Great Britian, Northern Ireland). The final group can generally be described as falling within a Welfare State model, whereby programs attempt to "compensate all the risks individuals are faced with in modern societies and to compensate fully for damage resulting from such risks" (e.g. France, EU policies) (Albrecht and Kilchling 2007, page 20). What these models appear to reflect are the systems of law and cultural context of victim compensation theory for each jurisdiction and, ultimately, how these have defined state victim compensation programs.

V. ANALYSIS AND CONCLUSION

Interdisciplinary Evaluation of the Fund—Summary of Results

The Fund's hybrid tort/no-fault method has both positive and negative legal arguments. By providing for economic and non-economic losses, the financial awards mainly mimicked tort, while not requiring victims and their families to go through the arduous legal system. The statute included the option for claimants to pursue traditional tort if they so chose. The administrative process was expedient and efficient, particularly as compared to other disaster relief. Financial awards were relatively predictable, given the guidelines pre-established by Feinberg. The opportunity for survivors, victims and their respective families to "be heard" through the process was, perhaps, one of the most positive aspects of the Fund procedurally. And, although in retrospect Feinberg recommends that any future victim compensation scheme include equivalent compensation for all victims, he also clearly acknowledges that the "success of the Fund rested on the process-based, individual treatment of the applicants" (Rabin 2006, page 481-482).

Legally, however, the Fund was not structured to provide "justice" as intended in the democratic system. The no-fault structure may have spared the airline and insurance industries from financial damage and the government from even deeper embarrassment, but it also prevented victims and survivors from obtaining answers through the discovery process. Further, it prohibited the main deterrent function of tort, corrective justice.

Economically, the Fund was administered efficiently and disbursement methodology followed some of the existing principles of public finance. Revitalization efforts appear to have had a positive impact on Lower Manhattan and helped prevent a total economic collapse following 9/11 (Dixon and Stern 2004). The important role that private market insurance and charity assumed, however, suggests that better incentives in this regard could substantially reduce the demand on public funds (Faure 2007).

The Fund had no budget and unlimited access to taxpayer dollars, undermining free market forces as well as tort. The Fund violated the public finance principles of progressivity (taking need into account when disbursing public funds and forseeing long-term needs) and horizontal equity (Steuerle, 2002). If accepted as a terrorism victim compensation paradigm, the Fund will likely weaken both free market forces (insurance, risk transfer mechanisms) and the charitable sector. Further, it is reasonable to expect that the nation will experience terrorist attacks in the future. The number of persons who may be victims/survivors and their claims on governmental funds could prove to be economically impractical, depending on the scope of the disaster, if compensation was administered commensurate with the Fund.

The Fund was generally structured around established ethical approaches and few would argue that it was not utilitarian. Its conformity with other ethical norms are, at best, loosely evident. Society's negative perceptions of the Fund were plagued by discontent specific to fairness/justice and financial largesse. The tremendous outpouring of patriotism and altruism was most apparent in the charitable sector. However, taxpayer

comprehension of the extent of public funds used to compensate survivors and what that may suggest for future terrorism events is unclear.

By compensating for both economic and non-economic losses, the Fund awards "resulted in higher-wage earners receiving larger payouts than lower-wage earners, awards being offset by collateral sources, and a lack of accountability for a possible wrongdoer or negligent party" (Schachner and Tebo 2007, paragraph 16). The horizontal inequality actually manifested socioeconomic disparities under the "justice" supposedly promised in a democracy—a contradiction. And, while it is largely agreed that tort is in need of reform, it remains the basis of the justice system and therefore cannot summarily be dismissed.

Ethical norms as applied to government compensation have typically relied on concepts of similar treatment among victims and need. Neither of these standards was applied by the Fund in disbursing awards to the 9/11 claimants or affixed retrospectively to other acts of terrorism. Public opinion regarding victim compensation seems to favor government assuming some role, although the manner it should take and its financial extent are vague. Ethical questions will continue to be central to these discussions until a compensation policy for victims of terrorism becomes normative.

The social aspects surrounding an evaluation of the Fund are the most complex. To date, very little research has been conducted in this regard, either with claimants who received monies or with the general public. At present, the list of individuals receiving compensation from the Fund is classified. Cultural forces shaping social expectations are

undefined, as is the extent to which U.S. society believes the government is the guarantor of aid in this disaster scenario.

In summary, it was unrealistic to expect the court system, as it is structured today, to handle such a large number of cases. Further, it would have proven emotionally distressing for citizens to have witnessed such a spectacle. The no-fault administrative setting, while effective for industry, eliminates the tort discovery process, fails to assign blame, provide accountability, act as a deterrent or assist in healing. If neither tort nor traditional no-fault approaches appear to be substantially viable, then a hybrid approach (like the Fund) approximates a reasonable compromise.

But economically, the approach taken by the Fund damages free market alternatives and puts an unrealistic and unpredictable burden on public funds. Ethically, distributional equity and need must also be paramount in administering government aid and were not in the case of the Fund. Socially, limited survey data suggest that terrorism victim compensation is a categorically-unique circumstance and, therefore, should be managed accordingly. Collective social values call for equality in distribution of government funds with an opportunity, and perhaps even an obligation, for society as a whole to participate through the charitable sector. Although the Fund displayed some innovative legal concepts, this case study suggests that there were serious deficiencies in both design and process. Further, there are contradictions and inconsistencies across ethical and economic dimensions. This case study, as evaluation research within a multi-

disciplinary analysis, suggests that the Fund is not a successful victim compensation mechanism generally and should not be considered a model for future compensation.

International Comparison

In comparison to European victim compensation programs and philosophies, there is one critical difference that emerges with respect to the Fund, specifically, and U.S. compensation approach generally. Whereas most European countries have established, permanent victim compensation funds, the U.S. has adopted an ad hoc method. Reasonable arguments have been made in support of both. But because of this singular distinction, it follows that there are a myriad of subsequent administrative and operational differences between U.S. and European victim compensation. As one example, Europe places a high priority on the predictability of claims against government funds. Because the frequency and scale of terrorism events is unpredictable, it is necessary for European jurisdictions to narrowly administer compensation programs, limiting the number of claims and the amount of financial awards.

Notwithstanding the aforementioned variation in approach, there are also several other comparative elements which emerge as significant. European programs contain the ethical philosophies of "equity" and "social solidarity" at their foundation. The Fund was administered within some established ethical parameters but did not have a guiding ethical precept. In fact, the Fund's hierarchy of financial awards undermined social solidarity and was clearly inequitable.

Europe's long history of terrorism violence has helped to define both its cultural and political approach to victim compensation and has likely been a factor in its establishment of permanent victim compensation programs. As U.S. history is comparably new, this limited experience may contribute to the ad hoc approach seemingly preferred by government, as well as the disparities across disaster type and among terrorism disaster events.

Forces That Shaped the Fund

Several external factors of community and event which emerge as significant are rooted in the magnitude, or scope, of this particular disaster. At no time in U.S. history had a terrorism event of this scale occurred, and the location of the attack was equally significant and symbolic. The victim class was uniquely diverse and included a broad cross-section of nationalities, across socio-economic, demographic and cultural spectra. The fact that the terrorists were non-national members of a known terrorist organization is also a distinctive characteristic of the event.

Arguably, the single-most significant external factor driving the federal government's response to the disaster was the potential economic impact. The prospective collapse of the airline and insurance industries, as well as the effect on New York City's financial stability, can be directly tied to the Fund's inception as a function of the event's magnitude. Whereas the federal government has and continues to bail out

industries in distress, never before have public dollars been disseminated directly to individuals in such largesse as they were with the Fund.

The forces which shaped victim compensation theory within the singular events of 9/11 are numerous. Clearly, economic forces were the catalyst and the federal government's concern for industry was substantial. This, in turn, had an effect on the political sector, resulting in public policy which sought expediency to avoid tort and blame-setting. The legal duty rationale employed in this instance appears to be based on avoiding lawsuits against the federal government and industry for their collective failure to impede the events of 9/11, as opposed to what is customarily observed in European victim compensation theory. In this way, economics can be chiefly linked to politics and the resultant public policy creating the Fund. Legal forces also emerge as significant in the way financial awards were determined, mimicking tort in size. The federal government's seemingly unlimited wealth and the Fund being constructed without regard to budget enabled large awards related to both politics and economics.

Social and cultural forces also played a role in how the Fund was administered. U.S. culture awards individual success and achievement, which led to the hierarchy structure of financial awards from the Fund. This stands in contrast to European victim compensation programs which are based, largely, on social solidarity. Perhaps this cultural divergence is rooted in historic U.S. isolationism, whereas European jurisdictions have a much more explicit need to achieve consistency across permeable national borders.

Theoretical Relationships

Theoretical relationships that lead to generalizations about contemporary victim compensation theory can be observed across disciplines and across global boundaries. The first is that economic concerns drive public policy. With 9/11, there is no debate that government's protection of industry was a conspicuous motivating factor. In Europe, these same economic concerns are more directly related to individual governments' ability to fund victim compensation programs, as opposed to government bail-outs of particular industries. European programs have strict caps, use offsets as a means of restricting awards, and offer alternative, less costly entitlements to citizens because of limited funding. A government's wealth helps to set the boundaries of victim compensation and, in the case of the Fund, there was no budget. Given the global economy and multi-national nature of business, it is increasingly important that some consistency and economic equivalency is attained internationally.

Another theoretical relationship that can be observed is that history influences the social expectations of government. Because 9/11 was a unique event in U.S. history, there was no precedent for the federal response to victim compensation. In contrast, Europe's long history of terrorism violence has resulted in permanent government programs with defined compensation constructs. In the years since the Fund, victim compensation theory appears to be changing. As other large-scale natural disaster events have occured (Hurricane Katrina) and comparisons are made with previous terrorist events (the Oklahoma City bombing), the injustice of the inequities among disaster

scenarios has become more pronounced and part of the public discourse. How these discussions will ultimately convert to public policy and legislative initiatives is unclear. However, it will be increasingly difficult for the federal government to provide future ad hoc victim compensation that is disparate, now that 9/11 has become part of the nation's history.

Integration of Findings

Previous research on the 9/11 Victim Compensation Fund has been conducted by legal scholars, economists and ethicists, by discipline. This interdisciplinary case study is the first of its kind and provides a holistic assessment of the Fund's success/failure. Prior international research has compared selected national programs with only limited reference to the Fund, whereas this case study enabled generalizations in both philosophy and administration between international victim compensation and the Fund, specifically.

This case study has identified the external factors of event and community that were significant to formulating the victim compensation construct within the unique events of 9/11. From that, the research has led to generalizations between international and U.S. victim compensation and determined theoretical relationships comprising contemporary victim compensation systems globally, which has not been studied to date. The inconsistencies among philosophies, programs and disaster events are not merely a U.S. challenge, but an international one. The implications of the research begin with a need to define the nomenclature, globally, and to define equivalencies based on disaster

type and victimology. Such consistency in an increasingly global economy is not only pragmatic but essential to promoting social solidarity—the type of solidarity that could, conceivably, prove to be a meaningful deterrent to recognized terrorist organizations.

Implications of the Study

The implications of this case study do not narrowly focus on the need for global consistency of nomenclature, but also the need for uniformity among programs and objectives for this victim class. With consistency as a principal aim, it follows that the U.S. should evaluate an ongoing, permanent victim compensation program, rather than employing an ad hoc approach to terrorism events. This will achieve both internal standardization among terrorism disaster events moving forward from 9/11, and international unity of purpose. Toward that end, it would be advantageous for the U.S. to coordinate with ongoing EU and CoE efforts to achieve consensus on the nomenclature, establish economic equivalencies, and develop globally consistent program standards for terrorism victim compensation programs.

This case study also implies that a contemporary victim compensation theory, globally recognized, should also support some basic level of free market risk reduction (e.g. insurance) and encourage charitable contributions. Because economic forces are so strongly tied to public policy, those tools which minimize government funding exposure should be strongly promoted within free markets *by* government.

One final implication of this case study is that "justice," through established legal channels, must play a role in victim compensation. Although legal systems vary internationally, prosecuting terrorist offenders is only a part of achieving justice—the opportunities for victims to obtain answers, place blame, be heard through the legal process and heal through that experience is equally important. A model victim compensation construct should comprise this dimension.

Research Needs

At present, there has been very limited comparative research performed among European victim compensation programs. It would be worthwhile to quantify the effect that permanent victim compensation programs in Europe have had on both the availability and effectiveness of free market risk reduction mechanisms. Further, the role that the charitable sector assumes where permanent compensation programs exist would be an important part of the overall puzzle. If government compensation for this victim class is to be universally normative, then the roles assumed by these two important sectors need to be evaluated. From an economic efficiency perspective, expanding free market solutions and increasing the role of the charitable sector appear to be preferable and may, in fact, considerably reduce the need for government intervention. Identifying the successful, consensus-elements between European programs and the 9/11 Fund experience can provide the framework for a global system. And, within that larger

construct, the conflicting compensation formats of a permanent system versus the traditional ad hoc approach can be compared.

Social science research in the area of victim compensation would facilitate a better understanding of the social expectations of government in the United States. To date, only very generalized, limited research has been conducted related to the Fund. It is important to acknowledge, however, that "each method of dividing up disaster relief funds reflects a conviction about what makes a good society; the subject stirs up almost as much passion as the idea of the World Trade Center disaster itself" (Ostreicher 2002, paragraph 23). And despite public opinion polling, it will be impossible to develop a method that will satisfy everyone (Ostreicher 2002).

Preliminary research does suggest that, generally, society accepts that victims of terrorism should be in a different category than victims of other disaster types (Grey 2005). Likewise, the use of money as the chief compensation mechanism for grief and trauma appears to be conventional, particularly in the U.S., but not to the exclusion of other reparative means (Hensler 2003). The moral uncertainty of translating an individual's life into a dollar value, and the comparative process that naturally occurs therein, tend to favor horizontal equity over individualized awards seen with the Fund.

Social science research should, at the outset, include those individuals who received disbursements from the Fund. The research should be designed to evaluate the Fund's success or failure as a compensation mechanism from the recipients' perspective, and include short-term and long-term needs as part of the assessment. Ethical and social

standards suggest that government compensation awards should seek to attain distributional equity, be needs-based and just. If society believes that government should be, at least, a limited guarantor, then the boundaries of that approach need to be begin to be defined. This additional social science research should seek to determine if victim compensation must equate to the total compensation approach taken by the Fund or if it should be designed to tackle the immediate needs of victims and restore a sense of normalcy. The unique experience of the Fund's very diverse recipients is an important first step.

Conclusion

Although seven years have passed since 9/11, public policy has remained ambiguous on the issue of victim compensation for terrorism; rather, the focus has been on national security and prevention, and rightly so. It is "uncertain whether September 11th represented an exception to the norm or a new norm" (Grey 2005, page 724). This case study intimates that the answer to Grey's question is likely both. September 11th was an incomparable event, and the uniqueness of the Fund is evidence of that fact. It represented an exception to traditional legal and government compensation practices. Politically, September 11th marked a turning point for the international community and the beginning of the "War on Terror." From it, a new norm will likely emerge as governments, internationally, re-think traditional victim compensation models and

develop long-term, permanent strategies balancing economic realities against ethical and social values.

Special Master Feinberg called the Fund "a fascinating experiment" (Feinberg 2005, page 277), and indeed it was. But this case study suggests the Fund should not be used as a model for future terrorism victim compensation. Whether permanent national funding programs, ad hoc approaches, an international fund or a hybrid would be most effective is unclear. Whether a military, social welfare, individualized award or social solidarity model should form the basis of contemporary victim compensation theory is equally uncertain. What is unmistakable, however, is that global consistency is vital to ensuring social solidarity and equity among this victim class. Governments must assume some responsibility as a minimum guarantor of assistance and legal processes should be incorporated allowing survivors and victim's families an opportunity to be heard. Basic needs should be compensated and reciprocity assured. The horrific events of 9/11 are now part of history and mandate moving forward with a resolute unity borne of tragedy.

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