

# *Capitalism and Morality*

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## **THEOLOGICAL AND PHILOSOPHICAL ROOTS OF COMPENSATORY PAYMENTS IN FORENSIC ECONOMICS**

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**Appeared in Wheeling Jesuit University's *Cardinal Perspectives* Spring 1996**

### **Introduction**

Although the value-of-life question has challenged scientists, philosophers, policy-makers, and others for centuries, it remains inconclusively answered. Nevertheless, professionals in the legal system, the health care system, and public policy decision makers are routinely compelled to negotiate the value of life issue on a pragmatic basis.

Despite their common goal of life evaluation, interdisciplinary studies are surprisingly few. The evaluation of life and its contributions, the quality of life (QOL), and pleasures of life (hedonics), are all inherently multidimensional and unequivocally interdisciplinary. Thus, these evaluations should be addressed and assessed using interdisciplinary methods. These multidimensional areas can be classified into health care, appraisal, and judicial fields. In the health care field, professionals such as physicians and psychologists examine issues related to the physical and the mental functioning of the human body. In the appraisal field, forensic economists assess the monetary market value of all tangible and intangible contributions that one's life can provide. Vocational and occupational experts and health economists are facilitator links between the health care and the appraisal fields. In the judicial field, the legal system, through its laws and the accumulating body of its most recent court decisions, indirectly sets the boundaries of evaluative practices in the health care and the appraisal areas. Furthermore, in evaluating life and especially assessing the "fair" compensation in personal injury cases, it is the judicial field (influenced by society's moral-cultural-political foundation) that defines the core and the perimeter of these evaluations. In turn, changes in the moral-cultural-political system of a society are rooted in its theological and philosophical doctrines.

In promoting interdisciplinary studies, the objective of this paper is to identify and examine the theological and philosophical roots of the compensatory payments for damages in the forensic economics, and to show that various theological disciplines and philosophical models can be used effectively to justify compensatory payments in forensic economics.

### **Theological Roots**

Some of the earliest systematic and widespread approaches toward compensatory payments for the loss or damage to life can be traced back to major cultures and religions originating in the Near East. In the Hebrew Bible, Exodus 21:20 refers to compensation for the loss of work and for the doctor's charges.

Then again, compensation for the death of a male or female slave of unspecified age was fixed at 30 shekels in Exodus 21:32.

In estimating the market value of a person's foregone future earnings, Ward and Olson (1987) quote Leviticus 27:1-4: "When a man explicitly vows to the Lord, the equivalent for a human being the following scale shall apply: If it is a male from 20 to 60 years of age, the equivalent is fifty shekels of silver by the sanctuary weight; if it is a female, the equivalent is thirty shekels." Concerning freedom to enjoy the pleasures of life (hedonics), Exodus 21:2 implies that slaves can earn their freedom in exchange for six years of services. Was the implicit and the minimum monetary value of one's freedom equal to monetary values of six years of net services?

A shekel was a standard unit of weight, approximately 14.5 grams of silver (in 1996 valued at \$2-\$3 per shekel). It is unclear whether these payments were meant to be paid annually or just one time. The dependency of the above scale on sex and the ability-to-work may reflect the market value (the earning capacity) differences among comparable (sex-age) slaves.

In Islam, an injured person has the right to demand payment for restitution (blood-money or "diya") to oneself for bodily harm and for damages to one's property. The base amount of compensation for injury was equal to 100 camels (in 1996 valued at \$5000-\$7000 per camel) or 1000 dinars (the present currency in Bahrain, Jordan, and Kuwait) or 10,000 dirhams (the present currency in United Arab Emirates). The blood-money for a woman is half that for a man. The blood-money must be paid in full for the loss of organs and limbs that exist singly; half for the loss of organs that exist in pairs; a detailed tariff covers most other wounds. If no percentage of the blood-money is prescribed, an estimated percentage based on the reduced value of a slave was used. For an accident leading to miscarriage, 500 dinars must be paid (Schachat, 1964).

Similar to the forensic economists' estimates of the earning capacity in personal injury cases, the restitution in both traditions varies with sex and earning potential. Moreover, both religions prorate values based on earning potential and prescribe a fixed valuation for a deceased person despite the age. Despite the high spiritual value of life in the major world religions, given the perspective of their legal codes related to compensatory payments for one's life, the Hebrew Bible seems to place more emphasis on the value of one's services than the value of one's whole life, whereas Islam's focus seems to be vice versa.

Due to twenty centuries of purchasing power fluctuations of the above commodities, any attempt toward a meaningful or scientific conversion would be highly questionable. Nevertheless, if a theological scholar had to find the best estimate of the above values, a composite index based on a biblical basket containing all documented goods and services values in shekels and a "comparable" basket at today's prices can be cautiously tried.

### **Philosophical Roots**

In addressing issues related to the meaning, value, and quality of life in forensic economics, three philosophical approaches are relevant, namely Natural Law, Utilitarianism and Personalism.

Until the early eighteenth century, the theological and philosophical views of life were closely related. Saint Thomas Aquinas (1224- 1274) synthesized religious and philosophical thought during the Middle Ages. His Natural Law theory views life as a spiritual gift with infinite value in any shape and quality. Natural Law would be said to proclaim that life has such a "high" value that nothing can compensate or replace it. In this sanctity-of-life position, life is literally priceless. Forensic economists, health professionals, and public policy decision makers do not generally follow this doctrine due to its limited pragmatism.

Jeremy Bentham (1748-1832), and John Stuart Mill (1806-1873) are founders of the Utilitarian view that promotes the greatest happiness for the greatest number of individuals. In the Utilitarian view pleasure is the ultimate value. According to Bentham (1948), nature “has placed mankind under the governance of two masters, pain and pleasure.” In quantifying pleasure or pain he identified four factors: intensity, duration, certainty, and propinquity.

Although Mill considers intellectual pleasures superior to physical pleasures, all pleasures, physical and intellectual, are of equal value for Bentham. The Utilitarian view implies that the quality of life is directly influenced by one’s lifetime sum of pleasures and pains. Economist’s consumer behavior and demand theories and especially the concept of utility maximization are rooted in this philosophical view.

In personal injury cases, the granting of damage awards based on forensic economists’ estimates of earning capacity hedonics and the court’s often ad hoc assessment of pain and suffering implicitly assumes that the expected pleasures resulting from the granted awards (e.g., consumption of goods and services) will equally offset the expected pains associated with the injury and the inability to generate income. This restitution intends to make the person, and therefore one’s quality of life, whole again. This is an application of the Bentham’s pain and pleasure idea.

Furthermore, Bentham’s pleasure and pain factor of propinquity (closeness in time and space) is literally the same as the present value concept. In the present value analysis, future monetary values are discounted using discount factors which range between zero and one. In cases where one expects to receive future sums of money at different periods, those cash inflows that are expected to be received in the near future (closeness in time) and have low risk of default (closeness in space) are assigned a higher discount factor than vice versa.

For Richard McCormick, Martin Buber (1878-1965), Gabriel Marcel (1889-1974), and John Dewey (1859-1952), the ability to establish human relationships and communicate with others in society gives life meaning, value, and quality. While emphasizing the pragmatic assessment of the value of life and the importance of the social functioning aspect of human life, McConnick (1990) points out, “life is a value to be preserved only insofar as it contains some potentiality for human relationship.” Using a phenomenological method, Dewey’s pragmatism toward life also promotes the importance of human relationships and social interactions.

In Personalism, it is the intangible contribution to others (family, employer, society) that makes one’s life meaningful. Injuries alter the structure of social interactions. For example, a volunteer worker at a hospital cannot provide the same level of contribution after an injury. The scope of compensation in most personal injury cases is limited to the earning capacity (assuming household services is included in the earning capacity). By almost exclusively examining one’s “family” relationships, the objective is to make the injured individual “whole” again.

Personalism also would advocate consideration for the employer’s loss. Due to a reduction in an employee’s profit capacity after the injury (Hajiran, 1991), the employer of this individual will also be affected. The profitability of a firm is closely related to the contributions of its “key” employees. In making the employer “whole” again, the value of this profit capacity should be evaluated. This is another part of the total contribution of this individual to society. It seems that the employer should be compensated for its decreased level of profit. Furthermore, by expanding the scope of concentric circles, this view also implies that in calculating damage awards, besides one’s contribution to the family and the employer, all other social contributions of an individual should also be considered. Thus, damage awards should include the value of contributions such as volunteer works, or any other intangible contributions to society, using the replacement cost method of evaluation, hence, making the society “whole” again.

Other value-of-life related views are not as directly applicable to the forensic economics as those already mentioned. For instance, the existentialist view of Jean Sartre (1905-1980) and Paul Tillich (1986-1965) emphasizes human freedom, and the importance of an individual's need to make choices. Diminished freedom (physical or intellectual) due to an injury can also be used as a basis for damages to one's quality of life.

### **Conclusions**

The issues and questions concerning the value of life, the enjoyment of life, the quality of life are inherently multidimensional and interdisciplinary. Thus, these evaluations should be addressed and assessed accordingly as they can be classified into health care, appraisal, and judicial fields.

Using various theological views and philosophical models, this paper points out the importance and the relevance of interdisciplinary studies related to compensatory payments in forensic economics, even those in theology and philosophy. In addressing the value of life related domains, interdisciplinary forensic economics should be the primary core of reference.

Due to the multidimensional nature of life and its quality, an interdisciplinary approach through collaboration of clinicians, health economists, forensic economists, medical sociologists, and psychometricians will greatly improve the probability of some basic consensus on this issue.

### **Works Cited**

- Bentham, J. (1948). *Introduction to the principles of morals and legislation*. New York: Haffner Publications.
- McCormick, R. (1990). "To save or let die." In J. Walter & T. Shannon (Eds.), *Quality of life: The new medical dilemma* (p. 32). Mahwah, NJ: Paulist Press.
- Hajiran, H. (1991). An employer's loss of employee's profit capacity: a membership surplus approach. *Journal of Forensic Economics* 5 (1), 83-84.
- Schachat, J. (1964). *An introduction to Islamic law*. London, UK: Oxford University Press.
- Ward, J. & Oslon, G. (1987). "Forensic economics: A perspective and an agenda for research." *Journal of Forensic Economics*, 1 (1), 4.