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An Economic Analysis of Veterans’ Compensation Law

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Introduction

Since the Continental Congress first voted in 1776 to provide pensions to American soldiers wounded in the Revolutionary War\(^1\), the United States has consistently recognized the importance of compensating disabled veterans for their service. Though veterans’ benefits have been expanded since the eighteenth century, a significant portion of modern veterans’ law remains devoted to the provision of compensatory benefits for “disabilities resulting from personal injury suffered or disease contracted in the line of duty…. [unless] the disability is a result of the veteran’s own willful misconduct or abuse of alcohol or drugs\(^2\).” Qualified disabled veterans are entitled to free medical treatment for their disability and its residuals, and may receive additional monthly pensions if their disability is deemed sufficiently disabling under a predetermined set of medical criteria\(^3\).

From an economic standpoint, these veterans’ compensation programs are a byproduct of a socially efficient contract between the government and individual servicemen, which requires the government to pay expectation damages to any veteran whose right to bodily integrity has been violated during military service. Although this contract allots rights and liabilities efficiently in cases of injuries incurred due to military service, its imposition of strict liability standards on the government for disabilities incurred outside of a veteran’s line of duty suggests that the contract itself may be rooted as much in deontological standards as it is in attaining optimal economic efficiency.

Optimal Military Protection and the Military Contract

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\(^2\) 38 USC §1110, 1131

\(^3\) 38 USC §1114, 1134
A military’s effectiveness \((ME)\) is contingent on three factors: the number of enlisted troops \((n)\), their level of training and skills \((s)\), and the amount and quality of equipment available to them \((e)\):

\[
ME = n^{s*e}
\]

Because an effective military is a public good, a socially efficient level of military effectiveness is often only achievable through government intervention. At this level of optimal military effectiveness, the total social benefits \((TSB)\) conferred by the military’s existence is equal to total social costs \((TSC)\):

\[
ME_{optimal} : TSB = TSC
\]

\(TSC\) includes both the financial costs of maintaining socially optimal levels of \(n, s,\) and \(e\) as well as the costs incurred by individual soldiers (i.e.: restricted freedom, increased risk of personal harm, etc.); while the financial costs and social benefits of maintaining \(ME_{optimal}\) are dispersed among taxpayers at large, the personal costs of military service are disproportionately borne by individual soldiers. This imbalance suggests that, in the absence of involuntary conscription, socially suboptimal enlistment is unlikely to occur unless the government steps in to create incentives that offset the disproportionately high costs of military service.

Currently, the government achieves this goal by entering into mutually beneficial contracts with all enlisted soldiers: In exchange for the societal benefits generated by the soldier’s service, the government promises to provide financial and in-kind benefits such as a salary, retirement funds, and medical care to the serviceman\(^4\). The soldier’s consideration in exchange for these benefits includes both the opportunity costs of enlistment and the

\(^4\) 37 USC §101-910
renunciation of certain privileges, such as freedom of movement and procedural rights such as trial by jury. However, this contract fails to explicitly address whether the serviceman must also renounce his right to be free from bodily harm as a result of his service, or whether this right trumps the government’s right to require military employees to fulfill military objectives regardless of potential hazards. Resolving the tension between these conflicting rights is crucial to any assessment of the economic efficiency of veterans’ compensation laws, and we will thus examine the implicit assignation and enforcement of these rights.

**Efficient Assignation of Rights: Four Scenarios**

According to the welfarist Kaldor-Hicks criterion, an action or allocation of rights is socially optimal only if the increased surplus of the “winning party” in this scenario are great enough that it can completely compensate the “losing party” for its losses and still retain more surplus than if the action or allocation in question had not occurred\(^5\). Using this criteria for social efficiency and assuming that social efficiency is optimized when \( ME_{\text{optimal}} \) is achieved at the lowest possible cost, we will consider the efficiency of four possible scenarios for the allocation of the right to bodily integrity: This right can be either granted to individuals or trumped by the government’s right to military optimization, and can be enforced under either property or liability standards.

If the government has absolute property rights over the military and may exert absolute control over troop movements and assignations, then servicemen have no compensable right to bodily integrity. Such a situation may give rise to two distinct inefficiencies: The government has an incentive to overestimate the benefit of sending troops into socially suboptimal situations because it can shift the costs of these situations onto individual soldiers, and servicemen will have an incentive to engage in suboptimal but risk-

minimizing behaviors in order to avoid injury. Some servicemen may even decline to enlist in the first place, which would decrease the number of soldiers in the military \((n)\) and require the government to increase training and equipment expenditures \((s\) and \(e)\) for the remaining troops in order to maintain \(ME_{\text{optimal}}\), which would be an inefficient use of social resources.

This situation is somewhat remedied if the government’s right to military control is enforced through liability rather than property rules; in this case, soldiers with sufficient financial means would be able to pay to avoid situations that they consider excessively dangerous. However, less wealthy soldiers who desire to pay to extricate themselves from the same dangerous scenarios may be hampered by their financial inability to do so, and this inability may decrease \(n\) to suboptimal levels by discouraging less wealthy individuals from enlisting in the military to begin with; it may also create a strong sense of class-based resentment within the military that could undermine its overall effectiveness.

The inefficiencies inherent in the preceding scenarios suggest that optimal social welfare may be best achieved when servicemen hold the right to bodily integrity. If this right is considered a property right, a soldier would be able to refuse any orders that he felt to be unduly risky or dangerous. Allowing soldiers to refuse orders in this manner, however, would be disastrous for the military’s effectiveness; many socially optimal military operations involve a heightened amount of risk to participating soldiers, and allowing soldiers to opt out of missions essentially decreases \(n\) and again forces the government to make costly increases in \(s\) and/or \(e\) in order to maintain \(ME_{\text{optimal}}\).

Thus, social efficiency may be best achieved when servicemen retain the right to bodily integrity under liability standards. Such an assignation of rights would prevent individual servicemen from being forced to bear the cost of providing benefits to society at
large (as when their right to bodily integrity is not recognized), but would also allow the military to effectively engage in combat operations so long as it is prepared to pay Kaldor-Hicks compensation to any disabled soldiers. Such a rule would encourage the government to only send soldiers on missions for which the expected benefits are at least as great as expected costs, and would also discourage soldiers from being excessively cautious and refusing to work in all but the safest conditions. Unsurprisingly, this assignation of rights is implicitly endorsed by current law, which allow the government to court martial disobedient soldiers but also requires it to pay compensation to disabled veterans.

**Standards for Damages**

Assuming that the optimal allocation of rights occurs when servicemen can enforce their right to bodily integrity through liability rules, we then consider how the government ensures that only legitimate disability claims are compensated: Under current law, veterans who serve during peacetime must submit contemporaneous medical evidence indicating that a disability began or was significantly aggravated during a term of active military service in order to receive compensation. Different standards exist, however, for veterans who served during wartime: Veterans who served in Vietnam or the First Gulf War can claim presumptive service connection for a variety of disabilities, ranging from cancer to tropical illnesses to chronic fatigue syndrome, and veterans who served on the front lines also need minimal proof of service connection for any disability that may reasonably have resulted from their service.

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6 10 USC §802  
7 38 USC §1110, 1031  
8 38 USC §1133  
9 38 USC §1116, 1117, 1118  
10 38 USC §1112
The disparities in these two sets of standards of evidence are based in sound economic reasoning, for they allow the government to discriminate effectively between soldiers based on the circumstances in which their disability arose. During peacetime, soldiers can easily receive free medical care at base hospitals\(^\text{11}\), and records from these visits are easily available to the VA physicians and administrators who later determine the validity of the veteran’s claim. By requiring soldiers to provide contemporaneous medical evidence of service-connected disabilities, the government can drastically reduce social expenditures on the pursuit of ambiguous, disputable claims without preventing soldiers with legitimate, documented claims from successfully pursuing compensation.

During wartime, however, many disabilities are incurred on the frontlines, where detailed medical records often unavailable due to either incomplete documentation or destruction. Requiring wartime soldiers to provide detailed documentation of the exact incurrence of their disability—especially if the disability was a result of exposure to miniscule biological triggers, such as malaria-infected mosquitoes or neurotoxins such as Agent Orange, rather than the result of a single, easily defined incident—makes it difficult for many veterans who may have suffered legitimate disabilities in service to receive compensation for their claims. As a result, the standards of evidence are relaxed during wartime to account for these difficulties, and to prevent the possibility that fewer soldiers will enlist during wartime for fear of being inadequately compensated for potential disabilities.

**Determination of Damages**

Once a veteran’s disability is deemed legitimate and eligible for compensation, the law must then address the proper type of damages he should receive, given that the effects of

\(^{11}\) 10 USC §1074
bodily harm cannot be significantly mitigated by the veteran and are often permanent or carry chronic residuals. Reliance damages are generally inapplicable to veterans’ law, for example, because veterans are unlikely to expend significant sums as a direct result of military enlistment; restitution damages are also impractical due to the near impossibility of quantifying the government’s exact benefits from sending a single soldier into a disability-inducing situation. Requiring the government to perform specific performances by continuing to provide the veteran with financial and in-kind benefits for the remainder of the contract’s period of validity is preferable to the abovementioned options, but the brief duration of these contracts suggests that this measure of damages may be inadequate in many cases involving long-term disabilities.

The most appropriate form of damages may therefore be expectations damages, which would take into account the benefits that the veteran would have accrued had he not been disabled in service. Appropriate expectations damages would thus have to involve two types of compensation: Full payment for all medical expenses directly related to the disability or its residuals (since the veteran would not have had to pay these bills if he were not injured) and financial compensation for any earning potential or personal utility (ie: enjoyment, mobility, etc.) that is lost as a result of the veteran’s disability over the remainder of his lifetime. This system of bipartite expectations compensation is, in fact, used by the government to provide damages to disabled veterans12.

While the government can easily determine a veteran’s medical expenses, calculating the proper amount of financial compensation is complicated by differences in subjective value: A veteran who was a professional musician in his civilian life may well place a higher value on his ability to have full hearing than a veteran who worked in retail, for example,

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12 38 USC §1114, 1134, 1710
while the lifetime loss in earning potential is greater for disabled veterans who were engaged in high-income professions such as medicine or law. Considering that the VA provides disability compensation to over 3 million veterans annually¹³, any requirement that the government investigate the exact circumstances and subjective values of every veteran would create immense and inefficient administrative costs for the government.

To avoid this problem, the government instead maintains a detailed rating schedule of all compensable medical conditions, with each assigned a disability percentage based on predetermined sets of medical criteria¹⁴; all conditions with the same disability percentage, regardless of etiology, are compensated at the same rates¹⁵. By providing this systematic and predictable ratings and compensation schedule, the government allows veterans to better estimate their expected compensation and determine whether this figure is higher or lower than the subjective value of their expected losses, and to act accordingly—i.e., to avoid enlistment if expected losses are likely to exceed expected compensation. This is socially optimal from a contract perspective as well, since the veteran can obtain accurate information about his own subjective values at a much lower cost than the government.

**Conclusions: Is Veterans’ Compensation Always Efficient?**

Based on the above analysis, the current statutes governing veterans’ law are remarkably effective in achieving economic and social efficiency. By assigning the right to bodily integrity to veterans and allowing them to seek damages when military orders lead to the violation of said right, federal law discourages the government from engaging in overly

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¹⁴ 38 CFR § 4.1

¹⁵ 38 USC §1114, 1134
risky military operations while decreasing the expected costs of military enlistment to individual servicemen.

The preceding analysis of optimal rights allocations and appropriate damages presumed that the disabilities in question were incurred as a result of the soldier’s profession placing him in danger, such as when a soldier is deployed to a war zone. However, case law has established that veterans may receive compensation not only for disabilities incurred in professional capacities, but also for any disability that originates during a term of active service: A soldier who injures his knee playing recreational softball while enlisted, for example, may receive compensation\textsuperscript{16} so long as no evidence exists to prove that he was acting recklessly or under the influence of controlled substances at the time\textsuperscript{17}. The economic rationale behind the extension of veterans’ compensation law to cover such disabilities is shaky at best: Such injuries are essentially unrelated to the original contract between the government and each serviceman, since they are uncorrelated with the serviceman’s involvement in the military. Instead of encouraging efficiency, this policy likely encourages servicemen to discount the costs of these non-professionally-related disabilities and thus engage in excessively risky (and expensive) behaviors in their nonprofessional capacities.

The justification for this policy may instead lie in deontological and political ideals, specifically the notion that all military members, especially those who have been disabled “in service,” have made sacrifices toward the defense of society and thus deserve special appreciation and rewards for their services. This romanticized view of disabled veterans is the same that drives the government to preferentially hire disabled veterans to competitive federal positions and inspires many private individuals to make donations to or care packages

\textsuperscript{17} 38 USC §1110, 1131
for veterans’ organizations. Taking a public stance against the provision of benefits to certain
disabled veterans on grounds of economic efficiency would likely outrage many members of
the voting public and be tantamount to political suicide for any policymakers who seriously
suggested such a move. Though this unwillingness to suspend benefits for veterans disabled
in non-professional settings may lead to overcompensation in some cases, the American
public appears to be willing to sacrifice a bit of economic efficiency in order to satisfy their
deontological beliefs about the proper treatment of disabled veterans.
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