Article

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Offender and state compensation for victims of crime: Two decades of development and change

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Abstract
This article comprises an overview of the principal normative and operational issues that arise in both common and civil law states' arrangements for the compensation and reparation of victims of crime. Balancing what are inevitably generalized statements about jurisdictions within federal common law countries and within the European Union, the article illustrates these issues with details drawn from the civil and criminal justice systems of England and Wales. The article begins with some general observations about the ways in which compensation and reparation by offenders and compensation by the state form elements in a state's overall objectives for victims within its criminal justice system, and addresses the question of what we might understand by 'compensation' in a criminal justice context, and how that sits with civil justice. For this purpose 'compensation' may be understood both in the compendious sense of any offender or state financial payment in respect of a victim's loss or injury or of the offender's direct or indirect restoration of stolen or damaged property, and in its discrete sense of a purely monetary response distinct from the non-monetary responses that characterize 'reparation' – responses now widely associated with restorative justice. The article provides some detail on compensation and reparation by offenders as forms of criminal justice disposals, and on the scope and the functions of state compensation schemes.

Keywords
Offender compensation, state compensation, victims

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Introduction

This contribution to the *International Review of Victimology*'s 20th anniversary edition reviews the developments that have taken place over the past two decades in the philosophies and the operation of national criminal justice arrangements for offender and state compensation to victims of crime. Although these are very broadly drawn matters, I consider the themes to be recognizably common to and often contentious for all states whose criminal justice systems aim to respond to crime victims' interests. At a normative level they include the purposes of compensating and of punishing harms and the relationship between them, the role of the state in making and justifying the arrangements necessary to deliver reparation and compensation to injured victims, whether funded by offenders or taxpayers, and the role of these arrangements alongside those giving effect to other, potentially conflicting, criminal or civil justice objectives. At an operational level they include such questions as what offences might be regarded as warranting either offender or state compensation, the criteria of victim eligibility, how harms or injuries are to be assessed, how the responsible executive and judicial agencies can be encouraged to implement these arrangements, and, not least, what impact they may have upon victims and, where they are the source of funds, offenders. Many of these themes equally apply to the compensation and reparation outcomes that are now routine elements of restorative justice, where their relationship with its widely held objectives for the moral re-education of offenders is not always comfortable.

I deal in this article with the compensation and reparation arrangements for crimes committed within the state's jurisdiction.[1] I do not deal with international arrangements for the reparation of victims after violent conflicts, which is the subject of Stephan Parmentier's review. Even so, it will be seen that similar normative and operational issues arise in those cases, exacerbated by such evidentially complex and politically charged matters as the identification of victims and offenders, the allocation of state and insurgent responsibility for harm, and the amenability of those responsible to international jurisdiction. I begin with some general observations about the ways in which compensation and reparation by offenders and compensation by the state form elements in its overall objectives for victims within its criminal justice system. This section also addresses the question of what might we understand by 'compensation' in a criminal justice context, and how that sits with civil justice. The third section deals with compensation and reparation by offenders and the fourth with state compensation. The final section draws together some general conclusions about these various arrangements.

I use the word 'compensation' both in the compendious sense of any offender or state financial payment in respect of a victim's loss or injury or of the offender's direct or indirect restoration of stolen or damaged property, and in its discrete sense of a purely monetary response distinct from the non-monetary responses that characterize 'reparation'. In a single article it is impossible to do justice to all of the issues that are raised by the themes mentioned above, and still less to consider them in the context of the many jurisdictions that have arrangements for these matters. I endeavour to reflect their reality as evidenced within the common law and within the civil law jurisdictions of the European Union, balancing what are inevitably generalized statements with details drawn from the civil and criminal justice systems of England and Wales. I cite a number of articles that have appeared in the *Review* since its first publication in 1991 as evidence of its contribution to our understanding of development and change around this topic.

Compensation, criminal and civil justice

Constructing victims. To review the scope of the state's arrangements for the compensation or reparation of victims it is necessary, first, to have some understanding of what we mean by, and how we use, the word, 'victim'. In the *Review* and elsewhere I have argued that the concept 'victim' is essentially contested, involving the social construction of particular persons and the harms that they sustain in a process (often replayed and repeated) of claim and negotiation having implications for how they are to be viewed in terms of official and unofficial norms (Miers, 1999, 2000). I do not pursue this argument further here, though I discuss in the third section that aspect of its contested nature that is seen in the problematic notion of the deserving victim as the recipient of public compensation (van Dijk, 2009: 24).

Victims and criminal justice systems. Almost all western liberal democracies have arrangements in their criminal justice systems for the compensation and reparation of victims of crime, whether they are resourced publicly (by the state) or privately (by offenders). Many of these were introduced during the 1960s and 1970s in response to an increasingly vocal victims' lobby that repeatedly drew attention to the perceived secondary victimization that victims suffered at the hands of criminal justice systems whose objectives and values were focused upon offenders (Hall, 2010: 16–43; Strang, 2002: 25–42). Lucken (1999) and Young (1999) commented on the enactment in the United States of the Victims of Crime Act 1984 (VOCA), which established the Crime Victims' Fund to support state crime compensation and victim advocacy schemes, and on the increasing focus in restorative community justice on offender accountability and the empowerment of crime victims. Over the past decade there have been similar developments in the European Union (European Commission, 2012; European Union, 2001) by which offenders are to be encouraged to compensate their victims or to make reparation via restorative justice. That the perceived discrepancies between the state's treatment of offenders and of victims continues to be a powerful and persistent strand in the politics of criminal justice reform is reflected in a rhetoric which demands that it be 'rebalanced' in favour of the victim (Dignan and Cavadino, 1996; Sebba, 1994; Williams, 2005: 87–92), and is amply demonstrated by the British government's lament concerning the courts' 'frustrating inability to prove offenders' means', resulting in fines and compensation 'being set at levels apparently unrelated to the swaggering lifestyles of some criminals' (Ministry of Justice, 2012a: 3).

Victims' rights are now internationally recognized, though their scope and implementation may remain controversial or incomplete. As the United Nations' 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power indicated (Melup, 1991: 38–49; Waller, 1989: 100–101), within their compass the state's arrangements to compensate victims of crime or to provide for offender reparation of their losses constitute one of the principal means by which it can demonstrate its commitment to the amelioration of victims' experiences of crime and of their contact with the criminal justice system.

Constructing and delivering compensation. Taken in its broadest sense, to compensate victims for the unlawful harm or loss that they have suffered implies the application of a remedy that restores them, so far as it is possible to do so after the event, to the condition they formerly enjoyed. Although the Latin phrase, *restitutio in integrum,* has its principal resonance in civil or private law, where the doctrine of unjust enrichment for unlawfully assumed contractual and property rights has a substantial history, restitution of property or of its value is a common ancillary sentencing option akin to orders

for reparation. The offender may still have the stolen property or the proceeds of its sale to return, but even these apparently straightforward possibilities (and I leave aside any complicating factors) do not equate to the full restoration of the victim's original position. Victims of property offences generally value criminal justice or insurance services that recompense material losses, and for that reason are incentivized to report them (Robert et al., 2010; Sheu and Chiu, 2012). However, although stolen goods may be returned whole, the victim temporarily lost the use of them, a loss that may be accentuated by the distress that accompanies the possibly permanent loss of a valued object.

Considerations such as these are greatly pronounced and considerably more complex where the purpose is to compensate a victim's personal injury or death. As in the civil law of damages, it may be possible through such devices as actuarial tables to put a price on a victim's future loss of earnings, but the representation in money terms of the victim's pain and suffering or of the dependants' sense of bereavement is a necessarily arbitrary exercise even where it is based on the accumulation of judicial decisions. However, as Shapland and Hall (2007: 205) observed, these decisions are largely determined by the courts' workload, which has consisted primarily of cases arising from road traffic accidents and accidents at work, and more recently from medical negligence cases. Their comments were made in a special issue of the *Review* that explored alternative models drawn from health, and from welfare economics, for placing monetary values on what the common law of general damages aims to compensate as 'pain and suffering' (Dolan and Moore, 2007; Dolan et al., 2007; Loomes, 2007), or as 'loss of amenities' and 'loss of expectation of life' ('quality-adjusted life years', Dolan et al., 2005).[2] In a later review, Mulder (2009: 69) commented that the reason why it is impossible to formulate clear and practical guides for such compensatory damages is that although it is accepted that they are intended to make victims whole, 'it is still unknown how economic and non-economic forms of compensation actually work and how they are interrelated'. It was in part for these reasons that in 1996 the British state compensation scheme replaced common law damages with a tariff that grouped together injuries of comparable severity to which a corresponding financial value was attached; its purpose was precisely *not* to compensate for the injury itself but simply to give it monetary recognition.

Successful personal injury litigation against offenders is rare, not least because they are likely to be impecunious – although, as the civil action by its survivors and the dependants of those killed in the Omagh bombing in Northern Ireland in 1998 demonstrates, the claimants' objectives may be as much to achieve a finding of responsibility against the offenders as an award of damages. Studies show that even though it is likely to be limited, victims prefer offender compensation to financial compensation by the state, because it nevertheless constitutes the offender's recognition of the harm done (Bazemore, 1999; Bolivar, 2010; Doak and O'Mahony, 2006). There is also good evidence that victims place value on what offenders can *do* by way of compensating behaviour rather than what they can afford to pay (Strang, 2002: 8–24). Offenders' time and labour could, of course, be monetized, but the distinction is not simply instrumental. Money payments, like fines, may be perceived simply as a tax on conduct, but which, because they are not normatively equivalent to the redirection of the offender's time and labour, do not 'compensate' for the moral harm implicit in the offence (Johnstone, 2002: 74–76). 'Compensation' can therefore also embrace such non-monetary responses as direct or indirect reparation (Sharpe, 2007). In their systematic review of studies into crime victims' needs, ten Boom and Kuijpers (2012) noted that in terms of 'justice' outcomes many victims valued, in addition to the offender's arrest and punishment, both material (compensation, restitution) and 'immaterial' reparation (apology), the latter assuming a moral dimension in which the offender explicitly acknowledges the victim's loss (Choi et al., 2010; Mørland, 2000; Takahashi, 2005).

Institutional arrangements for delivering compensation and reparation have traditionally been situated in the formal settings of criminal and civil justice systems – and in many civil law countries in the victim's formal attachment as a party to criminal proceedings against the offender (Cameron, 1991). Their limitations in terms of efficiency and the capacity to deliver good outcomes for victims even where offenders have means are legion, and I do not rehearse them here (APAV, 2009: 108–110; Brienen and Hoegen 2000; Laxminarayan, 2013). What is clear is that the less formal and perhaps less intimidating arrangements associated with restorative justice are capable of delivering good outcomes both in terms of procedural justice for victims (van Camp and Wemmers, 2013) as well as reparative and compensatory justice (Jacobsson et al., 2012).

Compensation by offenders

In this section, which deals only with disposals made by criminal justice agencies, I distinguish a narrow conception of compensation as monetary payments by offenders from a broader understanding that involves the reallocation of their time and labour that is typically to be found in restorative justice outcomes. Whichever the source of compensation a number of common normative and operational issues arise for the courts and other criminal justice agencies that order these compensating disposals. These include the disposal's scope, nominal and actual levels of award, its relationship to other criminal penalties, especially fines, and its relationship to any civil remedies for the harms caused. In the case of both the narrow and the wider conception of offender compensation and reparation I illustrate these various points by reference to the law of England and Wales – in the case of the wider conception by reference also to the compensatory and reparative outcomes to be found in other jurisdictions' restorative justice arrangements. Criminal justice and penal systems have other objectives for disposals of this kind: in the case of restorative justice to encourage a conforming shift in the offender's moral outlook, and to reduce reoffending – objectives that Joanna Shapland reviews elsewhere in this collection. However, I do address one further matter at the conclusion of this section – the introduction and recent expansion of the victim surcharge.

The narrow conception: The offender's financial means. Magistrates' and Crown Courts in England and Wales have had power since 1972 to order the offender to pay compensation on conviction 'for any personal injury, loss or damage arising from that offence' or 'to make payments for funeral expenses or bereavement in respect of a death from any such offence', excluding road traffic deaths and, more generally, traffic injuries that are not otherwise insured.[3] The scope of compensation orders is potentially very wide, contemplating any offence against the person including homicide, and any offence against property; moreover, the order may be made for the benefit of any person who has sustained injury, loss or damage as a result of the offence (or one taken into consideration), and not only its direct victim. Notwithstanding this potential, there have been significant variations in their use. The 1990s saw a gradual decline to 13 per cent of all sentences in 2001, reversed to 18 per cent in the subsequent decade (Ministry of Justice, 2013a).[4] Although their mean value in all courts (£306 in 2010) is more than the mean value of the fines that were recovered (£223), compensation orders will frequently not fully meet the cost of the harm the victims have suffered (Ministry of Justice, 2012b: paras 83, 100 and 134).

A wide variety of factors contribute to what the government considers to be an unsatisfactory incidence and level of offender compensation: 'we believe that as many offenders as possible should be required to make reparation to victims, and that compensation orders play a critical role in achieving

that aim' (Ministry of Justice, 2012b: para. 135). Some of these factors are particular to the applicable law, but many reflect difficulties that are of general application. First, despite repeated exhortations, there is often no information about the victim's loss or damage available to the court provided by the police or the Crown Prosecution Service. Unlike the civil law model, victims cannot be a party to a criminal trial, but only witnesses, and even if called their evidence does not necessarily fully deal with any loss or injury. It is in part for this reason that victim personal statements fulfil an important role, 'either in terms of calibrating the seriousness of the offence or in identifying compensation for the crime victim' (Roberts and Manikis, 2011: 4; and see de Mesmaecker, 2012). In England and Wales they have since 2009 enabled the victim 'to mention' whether 'you intend to claim compensation from the alleged offender for any injury, loss or damage you've suffered' (Office for Criminal Justice Reform, 2009), but the government reckons that they could be more effective in providing the courts with the information they need when deciding whether to impose a compensation order (Ministry of Justice, 2012a: para. 95). Indeed, where previously it had a statutory duty to give reasons why it had not made an order, a court now '*must* consider making a compensation order in any case where [s. 130] empowers it to do so' (emphasis added).[5] Early research on compensation orders by Newburn (1988) and Shapland et al. (1985) showed a clear relationship between the prosecution's mention of 'compensation' and the subsequent making of an order – a finding confirmed more recently by Leverick et al. (2007), who reported an association between the presence of a victim personal statement and court-ordered compensation.

Secondly, although the operative provisions are quite broadly framed, the courts have limited their application to cases that are simple and straightforward. Magistrates, who deal with the vast majority of offences, are generally not well placed to assess harm that is not readily understood in money terms; and where orders are made, it is desirable both for the offender and for the victim that orders are, even if typically paid in instalments, normally capable of completion within 12 months and completed on time. Indeed, another of the early research findings (Newburn, 1988), confirmed in later interviews with victims (Commissioner for Victims and Witnesses in England and Wales, 2011: 18–23) and reflected in the magistrates' sentencing guidelines (Sentencing Guidelines Council, 2008: 165), was that victims did not wish to prolong their contact with the offender, in particular by receiving delayed or what they perceived to be derisory compensation payments. The judicial limits were introduced largely to assist the smooth administration of the processes of making and enforcing these orders, though a thorough review suggesting that the offender's payments over time should be held in a central fund, but from which the order could be paid in full to the victim immediately after sentence, was not implemented (Hodgson, 1984).

Undoubtedly the greatest obstacle to routine compensation is the commonplace fact of the offender's limited means. The court is required, as in the case where it proposes to impose a fine, to conduct a means inquiry, and where these are insufficient to pay an appropriate sum for both, the court must prefer the compensation order.[6] That the offender's means are limited need not preclude an order where the harm caused is financially modest or, if substantial, for a portion of it, but 'compensation orders are imposed in less than a third of burglary offences tried in the magistrates' courts, and in less than half of criminal damage offences'. Even where orders are made, the amounts are indeed modest; in 2010 the mean value of compensation awarded in magistrates' courts was £240, though nearly a quarter were for £1000 or more. In the Crown Court, by contrast, the mean value was £1454, but nearly two-thirds of all compensation orders imposed were for less than £100 (Ministry of Justice, 2012b; para. 143). Without evidence of the victims' losses it is difficult to reach definitive conclusions about the adequacy of these values, but one of the contributory factors in the case of orders made by magistrates has been their statutory limit of £5000. Concluding that the existing guidelines

give insufficient direction concerning the assessment of compensation, the government has instructed the Sentencing Council to review them, and, in order to give magistrates greater flexibility in cases where significant damage is caused and offenders have the means to pay, has removed the £5000 cap on a single compensation order for adult offenders, in line with new provisions for fines.[7]

Compensation orders benefit the victim of crime, but they also constitute a sentence of the court and as such must attract some consideration based on sentencing theory and practice. They may, first, be seen as having a variety of beneficial impacts upon offenders: retributive (by depriving them of their assets so as to pay for the harm done); reparative (by requiring them to compensate the victim for the injuries they have caused); and rehabilitative (by drawing their attention to the pain and misery they have caused to another human being, and so to change for the better their attitudes towards themselves and to others). Although there is no objection to the use of compensation orders in the case of offenders with means who are subject to custodial sentences, the great majority of compensation orders are issued alongside non-custodial sentences. 'As a result, for community orders in particular, they can be an effective means of providing reparation while also leaving the courts capacity to select appropriate punitive, protective or rehabilitative requirements' (Ministry of Justice, 2012b: para. 137). In these respects compensation orders appear to fit well with such sentencing notions as balancing the harm caused by the offender and of correcting injustice as between the offender and the victim.

However, the practical realization of any or all of these objectives is seriously constrained by the obligation to take account of the offender's means, and is especially problematic where the offender is either poor or very rich. In the government's view compensation orders are 'essentially reparative rather than punitive, and should not count towards the "punitive weight" of a sentence' (Ministry of Justice, 2012b; para. 137); thus, where the offender has no or limited means, a court should not itself 'compensate' by increasing the principal sentence. The problem of securing even-handed justice becomes more acute when the court has to deal with the wealthy offender. Here, as is also the case with fines, the offender should not be treated less seriously lest it be thought that offenders are buying their way out of the penalty.[8] From this perspective, undoubtedly their most significant aspect, introduced in the Criminal Justice Act 1982, is the possibility of these orders being used, with some exceptions,[9] instead of, and not, as was formerly the case, only in addition to dealing with the offender in any other way. If they have no function other than compensation, it may be objected that where the offender has sufficient means to meet an ideal assessment of the victim's loss no formal sanction has been imposed to reflect the public aspect of the offence, because the order is in effect a surrogate for the victim's civil action;[10] the offender's public wrong has been rectified by the private cost set upon it. However, the tenor of the Ministry of Justice's recent consultations on sentencing reform (2010a, 2012a) and on improving services for victims (2012c) suggests that, as well as serving a compensatory function, compensation orders can bear some punitive emphasis, but if a single monetary order can only with difficulty serve both a compensatory and a punitive function, even where offenders have sufficient means, the realization of this twin objective is yet more remote where they are insufficient.

The broader conception: The offender's time and labour. Many of the normative and operational issues to which it gives rise are present in other jurisdictions in which monetary compensation by offenders forms part of their penal law – for example, in Austrian law, which contains a number of compensatory disposals whose purpose is to serve victims' interests as well as to prevent future offending, and in the German penal Code, which contains a priority clause by which compensation payments to the victim have priority over the execution of fines in cases where the offender's means

are limited (Kilchling, 2012: 161; Kilchling and Löschnig-Gspandl, 2000, updated in Hilf, 2012: 46; Walther, 2000). In short, these issues centre around the relatively small number of cases in which compensation is ordered, the limited means of most offenders compared with an ideal assessment of the victim's loss or injury, victims' reluctance to receive instalments of £20 or their Euro equivalents over many months, and the ambiguous use of compensation as both reparation and punishment.

However, it is within the broader ambit of restorative justice arrangements in the (principally) common law jurisdictions of Australasia, North America and the UK that compensation by offenders, whether in money or in kind, has become a defining feature (Miers, 2006; United Nations, 2006). A special issue of the *Review* remarked on developments in Canada (Griffiths, 1999) and the United States (Bazemore, 1999), and on less well documented societies (Banks, 1999; Elechi, 1999; and see Sherman and Strang, 2007: 32); a later article reported on empirical studies of victim satisfaction with these opportunities for offenders to make amends (Bradshaw and Umbreit, 2003). These opportunities are significantly associated with the early restorative justice initiatives that developed in New Zealand and Australia and that provided the impetus for the Thames Valley Police restorative conferencing programme with young offenders introduced in Great Britain in the 1990s, whose outcomes might include an apology, paying some form of monetary compensation, or undertaking work for the victim or the community.[11] Similar restorative justice arrangements within the civil law jurisdictions of the European Union (Miers and Aertsen, 2012; Willemsens, 2008) were introduced or consolidated against the background of supranational texts having normative force made by the Council of Europe (1999) and by the European Union (2001) and updated by the European Commission (2012).[12] What is valued here is not simply financial compensation, which may be operationally problematic in the case of both poor and wealthy offenders, but the appropriation of their time and labour. This is a disposal that deprives offenders of the freedom to do as they please and from which they cannot purchase their freedom, and whose normative function is both to assert a moral rebalancing between their offending and the harm to the victim – more bluntly, for the state to show offenders that unpleasant actions have unpleasant consequences for them as well as for the victim.

The Thames Valley programme involved 'restorative cautioning' – cautioning itself having a lengthy history within the criminal justice system of England and Wales as a diversionary disposal for young offenders – and in 2003 the government introduced 'conditional cautioning' for adult offenders (Home Office, 2003).[13] This may be used where, even though the public interest requires a prosecution, 'in the first instance the interests of the victim, community or offender are better served by the offender complying with suitable conditions, which include reparation, rehabilitation or punishment' (CPS, 2013a: para. 15.1.1).[14] The Ministry of Justice's 2013 Code of Practice provides that reparative conditions may include 'apologising, repairing or otherwise making good any damage caused, provided this is acceptable to the victim.' Where the offending has resulted in damage to community property, reparation may take the form of repairing the damage caused, reparative activity within the community more generally, or a payment to an appropriate local charitable or community fund. Reparation may also entail 'specific financial compensation' being paid to a victim. There are restrictions on the offences amenable to conditional cautioning,[15] but for those to which it does apply there are no restrictions on those for which a compensation payment can be given or on its amount. Although it does not follow a conviction (though an offender who accepts a caution does formally admit his guilt), offender compensation under these arrangements in many respects reflects the factors that a court must take into account when making a compensation order. The 'decision-maker' should always prioritize compensation for the victim ahead of any other financial penalty, in particular where the offender is of limited financial means

(Ministry of Justice, 2013b: paras 2.16, 2.39 and 2.42). The sums that the government suggests are payable for particular injuries: for example, up to £125 for a black eye, or £100 to £200 (depending on size and whether stitched) for a minor cut with no permanent scar (CPS, 2013a: Annex B), are the same as those suggested in the Magistrates' Association's Sentencing Guidelines for compensation orders, and should be capable of being achieved within a short stated period, and like them, and in common with all restorative justice outcomes, the victim's consent to the payment must be obtained, as must the offender's.

Evaluations of conditional cautioning point to the central importance of the decision-maker's understanding of the offender's financial means but say little about the general success of the conditions for the reparation or compensation of the victim (Ministry of Justice 2010b; Office for Criminal Justice Reform, 2010: para. 4.17), although the CPS leaflet, *Restorative Justice and the Conditional Caution: What You Need to Know: For Victims*, states that 'victim compensation is the most common condition of a Conditional Caution, with significant numbers of victims receiving compensation far quicker than if they had waited for a court process.'[16] Conditional cautioning was extended to young offenders in 2009,[17] subject in general to the same conditions as apply to adults. Unlike a fine, there are no circumstances under which the offender's parents or guardians are liable to pay any compensation; given that a young offender's means are likely to be very limited or non-existent, the Code of Practice stresses the importance of the means assessment (Ministry of Justice, 2013c: paras 11.8–11.9). It may therefore be more appropriate for young offenders to direct their time and labour to reparative activity, such as personally repairing or making good the damage to the victim's property, undertaking unpaid work for the community, or writing a letter of apology (CPS, 2013b: Annex B).

Reparation has for some time been a sentencing option for both young and adult offenders. It figures in the three non-custodial ('community') sentences for young offenders, most notably in 'reparation orders': 'to make reparation to a person or persons so specified [in the order] or to the community at large'.[18] In the case of adult offenders there has since 1972 been a seldom used statutory power to defer sentence for up to six months in order to have regard to the offender's conduct after conviction, which may include making reparation to the victim, and which now includes participation in restorative justice activities.[19] Indirect reparation may also figure as a condition of adult community orders,[20] in what the Home Office calls 'Community Payback'. Here the reparative element consists of unpaid work for the community, such as removing graffiti, clearing wasteland or decorating public places and buildings. Although they are specifically intended to let local people, including victims of crime, see, by virtue of the high visibility vests they wear, that offenders are making amends – paying back – for their crimes (Home Office, 2006: para. 3.17), these community orders are some way removed from accepted notions of restorative justice. Nevertheless, the government conceives this allocation of the offender's time and labour in terms of reparation to the community as 'punishment and payback'.

> 'Criminals should face the robust and demanding punishments which the public expects. There must be consequences for breaking the law. Hard work for offenders is at the heart of our plans to make punishments more rigorous … Community sentences must be tougher and more intensive, with local communities benefiting directly from the hard work of offenders – such as compensation orders and restorative activities' (Ministry of Justice, 2010a: para. 31).

The victim surcharge. In addition to the kinds of offender disposals described in the preceding sections, whose principal purpose is to restore stolen property (or its proceeds) to the victim of theft,[21]

to repair criminally damaged property, or to require or encourage offenders to make monetary recompense or recognition of their victims' losses or of their personal injuries, all criminal justice systems seek to confiscate the proceeds of crime or otherwise order the forfeiture of property connected with its commission. The exercise of these powers does not typically involve victims directly harmed or injured by the offence, but the funds recovered may be hypothecated to victim services managed by the state or the voluntary sector. A more recent application of the belief that offenders should be accountable to victims for their crimes is the victim surcharge (Williams, 2005: 97–98). This is typically a small fixed sum that is payable on conviction for an offence that may or may not have harmed any victim, or, indeed, be incapable of causing harm,[22] and, as a recent international review shows, there is significant variation in the criteria applied in defining which offenders will be liable to pay it (Bowles, 2010: 4).

The victim surcharge is a commonplace sentencing option at both federal and state levels in the United States, Australia and Canada, and was introduced in England and Wales in April 2007, payable by both young and adult offenders.[23] The surcharge raises about £10 million annually towards the government's Victim and Witness General Fund; in 2012 both its scope and payment levels were increased as the government sought to redress the balance between its own spending on victim services and that made by offenders,[24] and to make savings on the costs of the Criminal Injuries Compensation Scheme (Ministry of Justice, 2012c: paras 130–161). However, these increases do not reflect a purely instrumental purpose; the government's clear ideological position, reflected in its recent changes in the scope of compensation orders and of restorative justice, is to make offenders take greater moral and financial responsibility for their actions.[25]

Compensation by the state

Establishing and justifying state compensation schemes. In common with developments in offender compensation and reparation, publicly funded state criminal injury compensation schemes were also the product of initiatives taken during the 1960s and the 1970s (Miers, 2014), though some of them remain rudimentary or otherwise incomplete (Ljungwald and Hollander, 2009; Vibhute, 2010). Based, with a few exceptions, on common law personal and fatal injury actions, the first British scheme, made in 1964, constituted a model that was initially followed in Australia and Canada. In the United States, California created the first scheme in 1965; there were 37 by the time that the President's Task Force on Victims of Crime recommended that Congress should enact legislation to provide federal funding to assist them (Sebba, 1996: 226–240); the Crime Victims Fund now provides about a third of the funding for the states' schemes, which are universal. A number of civil law jurisdictions within Europe also developed schemes (Mikaelsson and Wergens, 2001; Nelson, 2000); supranational European attention first took shape in 1983 (Council of Europe, 1983), and, by virtue of the compensation Directive (European Union, 2004), they exist in 27 Member States.[26]

Although the rebalancing agenda was sufficient to justify the imposition of financial burdens on offenders, the introduction of these state schemes generated a substantial literature that sought justifications for this novel allocation of public funds to meet the gap between the victim's theoretical civil remedy against the offender and the unreality of its enforcement. This allocation was particularly acute as the source of funds was, for many jurisdictions, the taxpayer, but the effort to find a convincing legal base was equally strong in the United States, where, in contrast to the position in the Member States of the European Union, the revenue base for the individual states' schemes was not 'tax dollars' but the financial penalties that their criminal justice systems impose on offenders,

later supplemented by the grants made by the Crime Victims Fund (Office for Victims of Crime, 2011: 8). Reviewing these justifications, the President's Task Force on Victims of Crime commented, 'the philosophical basis for these programs varies from a legal tort theory, whereby the state is seen to have failed to protect its citizens adequately, to a humanitarian rationale through which all citizens should receive assistance for their compelling needs, to a by-products theory that recognizes victim satisfaction as a benefit to the criminal justice system. In reality, most programmes represent a mixture of these rationales, (United States, 1982: 39; see Miers, 2007: 338–341; Sebba, 1996: 240–248). Some commentators remained unconvinced; Elias (1983), for example, concluded that the principal motivation for their introduction was entirely to placate the victims' lobby (Joutsen, 1990: 216–217), captured in the subtitle to Burns' (1992) comprehensive account of the Canadian schemes: 'social remedy or political palliative for victims of crime?'

Compensating victims of violent crime on (largely) the same basis as in civil litigation also prompted the question: *Why* should the state privilege the crime victim's injuries above those of other victims, such as of accidents at work or of congenital or contracted disease or illness, who also rely on the taxpayer for their long term care (Stapleton, 1986: 108–114)? The adoption in the 1964 British scheme of the 'offender (tortfeasor) surrogate' model in preference, for example, to payments akin to industrial injury benefits, comprised an exercise in corrective justice that arguably had no place where the taxpayer foots the bill. On the contrary, and along with many other jurisdictions, successive British governments have consistently rejected any notion that the state is vicariously liable for the acts of offenders; their simple and repeated justification for its introduction was that 'it is right to do so' – a mantra that continues to this day: 'Compensation is given to victims of violent crime in recognition of a sense of public sympathy for the pain and suffering of the victim' (Ministry of Justice, 2012c: para. 149). In an earlier consultation, the Home Office asserted that 'a financial award is society's way of acknowledging the harm that has been done to the victim as a representative of the community' (2005: 21).

It is an incontestable fact that each one of us has a statistically determinable risk of victimization. Where schemes are funded by general taxation we may accept that it is levied for the purpose of insuring us against the risk when it eventuates. In that sense, a victim is, on the occasion of the victimization, a representative of this actuarially constructed group. This argument for public insurance against criminal victimization resonates with some conceptions of the functions of tort law (Deakin et al., 2008: 49–56) – that it is socially more just and economically more sensible to distribute losses occasioned by criminal activity at large, rather than let them fall on the particular victim. The obvious analogy is compulsory motor insurance, where every road user likewise has a statistically determinable risk of being injured in a road accident, and which, like criminal victimization, falls unevenly across the population (Brennan et al., 2010). However, it may be objected that the argument in favour of the optimality of loss spreading does not justify treating victims of violent crime more favourably than those injured on the roads. The answer implicit in the government's position continues to be that what differentiates them is that they have suffered a distinctive harm. Unlike other forms of hardship caused by road or industrial accidents, or even another's negligence, they have, stereotypically, suffered injuries that were inflicted 'deliberately' or, more precisely, intentionally or recklessly. The injuries that a victim of a crime of violence sustains may be as unexpected, abrupt and often irrevocable as an accident at work, but they were not, in the paradigm case, the result of being the target of another's ill will.

This reasoning also draws on elements implicit in one of the proposed justifications for crime victim compensation schemes. Even if the state liability argument discloses no legal failure on the criminal justice system's part, to experience crime is to experience a failure in civic trust – that is,

in the trust that citizens have (and are encouraged to have) in the capacity of the system to protect them. 'Civic trust' is a condition of social justice (de Greiff, 2006). It describes, first, the trust that citizens have of one another in a society that is predominantly well-ordered, and in which most social interactions are successfully (non-violently) mediated between them and not by law. For its part, the legal system depends on citizens' generalized norm-compliance, else it could not cope. It depends not just on the trust that they have of one another, but on the trust that citizens have of the system itself, that it can reliably meet their reasonable expectations for the prevention of crime and the investigation and prosecution of offences. A failure to meet these expectations requires not only the mobilization of the criminal justice system against and the denunciation of offenders, but also a monetary award in recognition of that failure: 'payment can never fully compensate for the injuries suffered, but it is recognition of public sympathy' (CICA, 2013: Section 1.1). Sympathy (identifying with another's loss) is reflected in the ethical value 'empathy' (understanding of another's loss), which also strongly underpinned the Council of Europe's 1983 thinking – that compensation was a matter of social solidarity (Buck, 2005: 150–154; Council of Europe, 1983: Preamble).

Constructing and delivering state compensation schemes. Whatever the differences between them, all common law and civil law schemes seek to answer the same set of basic questions: what victims are to be compensated to what level of compensation for what injuries arising from what crimes, and under what conditions can their eligibility be lawfully limited or denied? On one question there is broad unanimity. Allowing for its extension to recklessness, the definition in the European Union's 2004 Directive, of a 'violent intentional crime', which in all member states includes sexual offences, also captures the scope of the common law schemes (European Commission, 2009: 8–9; Office for Victims of Crime, 2011: 8).[27] In marked contrast with offender compensation, all schemes exclude property offences. This is because they may readily be insured, are so prolific that no system could cope with the volume of claims, are ready occasions for fraud, and where it is the taxpayer who funds the arrangements, are financially and thus politically prohibitive.

In the United States the answers to the other questions are broadly similar across all state schemes. This convergence arises because, although each state administers its own scheme, in order to be funded under VOCA it must meet certain minimum standards concerning eligibility and payable benefits (Newmark et al., 2003), and is accentuated by the schemes' collective membership of the National Association of Crime Victim Compensation Boards.[28] Reflecting their respective legal, political and social histories and their economic circumstances, there is much greater heterogeneity between the schemes operating within the European Union,[29] some covering only a narrow range of injuries and with limited payments, whereas others are more broadly conceived (Matrix Insight, 2008: 58–63).[30] It is not possible to explore these similarities and differences in detail, but two matters that all schemes must address stand out and are discussed in the following two sections: victim eligibility – in particular their approach to undeserving victims – and their compensation function. I consider these from the perspective of the current British scheme ('the Scheme': Miers, 2013), contrasting the approach taken elsewhere.

Victim eligibility: Deserving and undeserving victims. The British scheme's underlying philosophy has always relied on a categorical differentiation between deserving victims (being those who are in the circumstances innocent or blameless in respect of their injuries) and undeserving victims of crime (being those who by virtue of their personal characteristics or conduct resemble, or have been, offenders). This philosophy is a problem conceptually because, as noted in the Introduction,

persons who suffer harm or injury are not 'victims' in and of themselves but as a result of complex social and forensic interactions which label them so. It is also problematic operationally because its implementation inevitably creates difficult boundary and fairness issues.

The first requirement of being a deserving victim is to be a good citizen: good citizens co-operate with the police, the prosecution authorities and the Criminal Injuries Compensation Authority (CICA). From the outset the Scheme required the victim to report the incident to the police and to co-operate with the authorities, failure in either case resulting in the denial of, or a reduction in, an award. However, in order to ensure that 'eligibility to claim under the Scheme should be tightly drawn so as to restrict awards to blameless victims of crime who fully co-operate with the criminal justice process' (Ministry of Justice, 2012d: para. 162), the revised 2012 Scheme imposes the single consequence of denial for either failure. Its reporting requirement is expressed as a narrative, 'as soon as reasonably practicable' – a formulation seen also in Australia, Canada and in some Member States of the European Union; the United States' schemes specify a reporting period, typically within 72 hours of the incident. Insistence on the victim's compliance with these reporting requirements is necessary primarily because no scheme requires the offender to have been convicted of an offence arising from the violent incident. Indeed, it will often be the case that the offender is unidentified; reporting is thus a primary safeguard against fraud. However, all schemes recognize, to paraphrase the Scheme, that particular account should be taken of the victim's age and capacity at the date of the incident and whether the effect of the incident was such that it could not reasonably have been reported earlier.

The Scheme is intended to compensate blameless victims of crime: accordingly, the common law principle that those who are wholly or partly the authors of their own injuries should have no or only a partial remedy in a civil action against (privately insured) negligent defendants applies with greater force where public funds are the source of compensation. It has normally been 'inappropriate' (Ministry of Justice, 2012d: para. 25) to make an award where the victim willingly took part in a fight, was acting in an aggressive or threatening way or otherwise provoked the incident, or was injured as a result of there being some violent 'history' between the victim and the offender. Although what is 'inappropriate' *may* refer to a causal link between the victim's conduct and the criminal injury, all that the Scheme requires is a *temporal* link: that the victim's conduct occurs 'before, during or after' the incident giving rise to the injury. In contrast with the principal terms of paragraph 25, in cases where the victim was at the time intoxicated the Scheme now implicitly requires a causal link. Good citizens may get drunk (Tryggvesson, 2008), but that does not necessarily mean that they are undeserving if they are then victimized. The Scheme has always provided that it could exercise discretion in such cases, but an earlier version attracted much negative publicity when it rejected a woman's application on the ground that it was unclear whether the sexual intercourse was, by virtue of her intoxication, non-consensual, and thus rape. The 2012 Scheme explicitly provides that conduct does not include intoxication through alcohol or drugs to the extent that such intoxication made the applicant more vulnerable to becoming a victim of a crime of violence (CICA, 2013, Section 5.11).

All of the Australian and Canadian schemes similarly require, and the European Commission's minimum standards provide, that states may reduce or refuse compensation payable to victims who in some way contributed to the incident in which their injuries were sustained. Although redolent of tort law's apportionment of financial responsibility where the claimant is guilty of contributory negligence, the question for the Scheme is whether the victim is a person whose moral worth is such that his ensuing injuries should be compensated by the taxpayer; and this question appears to be no less important where the tax base for those funds is fines and penalties imposed on

convicted offenders. Almost without exception, the United States' schemes will in these circumstances either exclude altogether or reduce any compensation that might be payable.

Although there is a broad consensus that the victim's delinquent conduct at the time of the incident constitutes a good reason for the rejection of claims or reductions in awards – at least where the victim is an adult (Swanston et al., 2001) – there are opposing views on the question whether 'a life of crime' should also result in affecting the victim's eligibility. Although they all have provisions permitting reduction or refusal for delinquent conduct, only six of the 24 European Union Member States having such schemes that responded to a European Commission research project conducted during 2007 provided for reduction or denial of compensation for a life of crime (Matrix Insight, 2008: para. 4.3.4(d)). This minority view is seen also in the United States, where of the 53 current schemes, six provide for mandatory and three for discretionary exclusion of victims with criminal records; a review of schemes in Australia and Canada suggests that claim rejection or reduction in an award is limited to cases in which the victim contributed to or was committing an offence at the time of the incident causing the injury.

By contrast, for the British scheme rejection of or reduction in an award because of the victim's delinquent character has been an article of faith, and the 2012 revision continues to constitute a non-negotiable public statement that it exists to compensate those who are and have been law abiding. This construction of the deserving victim has always been controversial, in part because these outcomes may follow notwithstanding that there is no causal connection between past offending and the present incident. The government's constant answer to the criticism that its stance amounts to a form of outlawry – imposing on these victims a financial disenfranchisement additional to the court's sentence – rests as it always has on a judgment of their moral worth within civil society: 'We consider that in principle awards should only be made to those who have themselves obeyed the law and not cost society money through their offending behaviour' (Ministry of Justice, 2012c: para. 207). In short, the Scheme provides that 'an award will not be made' to an applicant who on the date of the application has an unspent conviction for an offence which resulted in a custodial sentence or a community order.[31] In the case of unspent but minor convictions, it continues to provide for refusal or reduction, unless there are 'exceptional reasons' to make an award. These might rehabilitate an otherwise undeserving victim who was assaulted while attempting to prevent a crime. Delinquent character is paradigmatically evidenced by the victim's criminal convictions, but the Scheme can also take account of such other evidence as police reprimands (in the case of young offenders) and cautions (for both young and adult offenders); neither do good citizens evade their taxes nor falsely claim state benefit – victims who do are undeserving of compensation funded by honest taxpayers (CICA, 2013: Section 5.17).

The compensation function. All schemes compensate eligible victims who survive the crime of violence and, in cases of homicide, their dependants, but there is wide variation between them in respect of the particular losses and injuries that will be compensated, their methods of assessment and of the level of awards. What does it mean 'to compensate' victims of violent crime? In the original British scheme the implicit answer was a remedy close to an action in tort against the offender. It followed that general damages were dictated by judicial decisions that sought to fix private financial responsibility on insured defendants rather than by governmental decisions concerning the proper use of public funds. In addition, the government could exercise only tenuous budgetary control over the Scheme, a deficit that it partly corrected by the introduction of the tariff in 1996. However, many schemes, notably those in the United States, have traditionally performed

a much more limited welfare function, compensating only the actual losses arising from the injury and excluding any payments for the injury itself.

The vast majority of schemes reimburse reasonable medical expenses where free public health provision does not already cover them. This coverage is mandated in VOCA funding, and is to be found in the Australian, Canadian and European Union's schemes; because of the availability of free health care, the British scheme does not compensate these expenses unless the injuries are long-term or disabling. Of potentially greater controversy are payments for loss of earnings and earning capacity. Here again, VOCA funding mandates payments for lost wages, as do the Australian schemes; a majority of the European Union's schemes cover loss of earnings, and there is a mixed picture in Canada, but no scheme provides full compensation for past and future loss of earnings, chiefly because it has been held to be politically indefensible as a matter of principle for public money to support high earners. Like a number of others, the Scheme has always placed a limit on these payments. In order to cut expenditure, the 2012 Scheme resets from capped actual income (1.5 × average industrial earnings) to statutory sick pay the rate at which they will be calculated. Though driven by the need to save money, this fundamental change in part answers those who have questioned why crime victims have been better provided for than others who also have no realistic civil remedy: these taxpayer-funded arrangements now have a basis in existing government policy relating to ill health.

By far the deepest cuts made in the 2012 Scheme are to the tariff amounts payable for the injury itself. All of the other common law schemes introduced in Australia and Canada have compensated the victim's pain and suffering, but in all cases subject to a fixed or a narrative limit. In complying with the 2004 Directive's requirement that compensation should be 'fair and appropriate', the Member States' schemes compensate what civil law calls 'immaterial damages', but again subject to often quite low limits. In an effort to save some £50 million from its annual cost of £200 million, the Scheme now excludes the lowest five of the former 25 payment levels and will pay only a proportion of the injury payments that fall within the middle range. Awards for the most serious injuries (£11,000–£250,000) are protected, as are those for the physical abuse of or sexual offences against children and adults, which would otherwise be eliminated or apportioned. Because the vast majority of injuries were compensated at the lower levels of the tariff, this radical surgery will halve the number of successful claimants and result in a third receiving apportioned awards; of some 27,000 successful applications in 2011/12, the 2012 Scheme would compensate (in full or in part) only some 15,000 seriously injured victims (Miers, 2013).

Like Great Britain, the financial pressures occasioned by both the level of awards and the schemes' administrative costs drove a number of the Australian and Canadian schemes to introduce tariffs or to make substantial reductions in their scope and compensation levels. These states also questioned the value of payments being akin to those available in civil proceedings, and which inevitably suffer from many of its disadvantages. Delay, complexity in the calculation of awards and the generation of unrealistic expectations about their amount are long-standing issues. Instead, payments would be directed to the here-and-now of victimization, for example for crime scene clean-up, commonplace in the United States' schemes, located within new and more comprehensive provision for victim services that place a greater emphasis on recovery from or indirect funding by the offender. There is, indeed, some alignment between these changes and the welfare function that has always underpinned the United States' schemes. Having no universal state or federal social insurance provision, its state schemes focused on the actual – the 'hard' – costs of crime (medical and dental bills), which in turn became the federal conception of victim compensation under VOCA. In order to prevent double recovery and to protect public funds, VOCA

requires the prior deduction of all public or privately funded collateral benefits – a requirement that applies to all schemes; although there may be some local variations, the intention is that they should all in effect be the payer of last resort. However, as we have seen, even with this caveat there are considerable variations in the payment levels authorized by these various schemes. The British Scheme may have rejected the common law model in 1996 and made significant cuts in 2012, but its 20 tariff bands of £1000–£250,000, awards for long-term disabling injuries and maximum payment of £500,000 continue to constitute a unique taxpayer-funded enhanced welfare function for victims of violent crime.

Concluding comments

When an offender harms another's person or property rights, his or her victims have, *prima facie*, a private right of action for their whole loss irrespective of the offender's means or position, vindicated via a public court service. What this article has reviewed are the arrangements that states make, where offenders cannot be fully pursued to judgment, to supplement that private right by the provision of a public remedy. Being 'public' in its ideology, that remedy is not actuated simply by a desire to ensure that victims are (to some degree) compensated for that harm, but is designed also to promote criminal and penal justice objectives. Their immediate objectives include: the public recognition of the harm done to the victim and the moral re-education of the offender; and in the longer term the prevention of and reduction in crime and re-offending by means of more effective, efficient and economic interventions.

In the case of offender compensation and reparation the public remedy lies first in providing the courts and criminal justice agencies with power, possibly reinforced as a duty, to order guilty offenders to pay compensation or, where they are of limited means, to allocate their time and labour to direct or indirect reparation. Both options, the latter in particular, are overlaid with a powerful state interest in ensuring that offenders make, and are seen to make, amends for their wrongdoing. This interest, substantially mediated via restorative justice, serves both an instrumental (the victim's garden fence is repaired or a community centre is repainted) and a normative purpose (the offender accepts and internalizes the boundaries of acceptable behaviour). However, not all offenders are amenable to these remedies (nor do victims consent to them) and there are, of course, many cases in which no offender is identified. Here the remedy typically takes the form of a monetary recognition of the victim's harm, limited to offences against the person, the funds being met from general taxation or hypothecated from financial penalties imposed on any convicted offender. Here, too, there may be an ideological public interest, not only in re-educating offenders but also, as in the British government's strategic aims for the Scheme, to move away from 'a culture of state compensation towards one of offenders making direct reparation for the harm they cause' (Ministry of Justice, 2012a: para. 16).

It is, for the most part, relatively easy to describe the normative and institutional parameters of these various public remedies for victims of crime. There is also, as noted in the article, broad consensus on what victims want by way of compensation and reparation, whether from the offender or the state, or by way of other responses. By contrast with restorative justice, there is much less certainty about their impact on victims. Some studies suggest that the impact is slight (APAV, 2009: 111–112; Broniatowski, 1993; European Commission, 2009), another involving an evaluation of six of the United States' schemes that victims were in general satisfied with their compensation outcomes (Newmark et al., 2003), whereas a study of Dutch victims showed that satisfaction appeared to be more dependent on the perceived quality of the procedure than on the amounts

received (Mulder, 2013). A British study estimated that about 5 per cent of victims of violent crime apply to the Scheme (NAO, 2007: para. 2.1), but the government's consultation on its future remarkably made no reference to levels of victim satisfaction with the ways in which their claims were dealt with or with their outcome. By contrast, a survey of victims' views on sentencing found that financial compensation was very important to some, but that they were concerned about payment levels and enforcement (Commissioner for Victims and Witnesses in England and Wales, 2011: 18–24).

Even a cursory consideration of the impact of these compensating arrangements raises, as these few studies suggest, a host of issues, but which cannot be explored further here. What proportion of (recorded) crimes of violence (including sexual offences) cause sufficient harm to their victims that would meet the relevant jurisdiction's eligibility criteria for state or for offender compensation, and what proportion of that eligible victim population make (successful) applications or receive compensation from the offender? How, and in what ways, do the differences between state compensation schemes, and more generally between criminal justice arrangements for compensation and reparation, affect victims? Where – as in the federal jurisdictions of North America, or as between the Member States of the European Union, in which there are marked differences in eligibility criteria or in the compensation function of their states' schemes – do questions of fairness as between victims similarly injured but differentially treated arise? What prompts victims to engage with these various arrangements, and having engaged what do they conclude about the extent to which those arrangements met their expectations? What, more broadly, are the state's normative and operational expectations for the arrangements that it has supported, and, in some states, substantially redirected? This article has been able only to touch on and illustrate some of the principal issues to which criminal justice arrangements for state and offender compensation and reparation give rise. Its founding and current editors would undoubtedly welcome the prospect of the *Review*'s further contribution to their elucidation over the next two decades.

Notes

1. For discussion of their extension to acts of terrorism committed against a state's nationals within its jurisdiction or abroad see Miers (2014).
2. See also Centre for Criminal Justice, University of York, Mainstreaming Methodology for Estimating the Costs of Crime; http://www.costsofcrime.org/.
3. Powers of Criminal Courts (Sentencing) Act 2000, s. 130.
4. Compensation orders were made in 182,151 cases in 2010. Offenders were fined in 891,226 cases (65%), but these will include many offences that have no victim (Ministry of Justice, 2013a).
5. Powers of Criminal Courts (Sentencing) Act 2000, s. 130(2A), added by s. 63 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
6. Powers of Criminal Courts (Sentencing) Act 2000, ss. 130(11) and (12).
7. Crime and Courts Act 2013, s. 44 and Schedule 16; Legal Aid, Sentencing and Punishment of Offenders Act 2012, ss. 85–87 and Ministry of Justice, 2012a; paras. 90–96. The limit of £5000 remains for young offenders but there is no limit on the value of a compensation order made by the Crown Court.
8. 'Compensation orders were not introduced into our law to enable the convicted to buy themselves out of the penalties for crime': *Inwood* (1974) 60 Cr. App. R. 70, 73, per Scarman LJ.
9. For example, very serious offences (such as murder) and 'dangerous' offenders; Powers of Criminal Courts (Sentencing) Act 2000, s. 130(2).
10. The result is the same should the court make an order for the ideal assessment of the victim's injury in respect of which the victim subsequently recovers the same or an increased sum in civil proceedings. The

victim/claimant is precluded from enforcing so much of the civil judgment as is accounted for in the order: Powers of Criminal Courts (Sentencing) Act 2000, s. 134.

11. As a thorough evaluation showed, the offender's delay in making the promised compensation or the victim's unrealized expectation of compensation inevitably prompted the victim's negative perception of restorative justice (Hoyle et al., 2002: 20, 44–45), an outcome aggravated where poor communication by the facilitator meant that the victim was treated as 'non-participating', thus losing any opportunity to explore the issue of reparation (Hill, 2002).
12. Article 16.2 of the 2012 Directive requires Member States to 'promote measures to encourage offenders to provide adequate compensation to victims'; but this goes no further than Article 9.2 of the 2001 Framework Decision, which provided that 'Each Member State shall take appropriate measures to encourage the offender to provide adequate compensation to victims'; see a review of its implementation in APAV (2009): 104–112. The Directive's requirements concerning restorative justice are more extensive.
13. Criminal Justice Act 2003, ss. 22–27; amended by ss. 17 and 18 of the Police and Justice Act 2006.
14. A conditional caution is 'a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply.' I do not discuss here the subsequent extension of this diversionary option, initially limited to reparation or rehabilitation, or both, to include punishment or, in the case of a foreign national offender, removal from the jurisdiction. Neither do I deal with the conditions that must be met before a conditional caution may be proposed, nor with the various iterations of the DPP's Guidance issued since the introduction of this option.
15. Conditional cautions are always available for summary and for some 'either-way' offences, but never for indictable-only (the most serious) offences (CPS, 2013a; Annex A).
16. http://www.cps.gov.uk/publications/docs/rj_cc_victims.pdf.
17. Crime and Disorder Act 1998, ss. 66A-66G, as amended by the Criminal Justice and Immigration Act 2008 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
18. Powers of Criminal Courts (Sentencing) Act 2000, ss. 11–20 (referral orders), 73–75 (reparation orders); Criminal Justice and Immigration Act 2008, Part 1 (youth rehabilitation orders; and see Youth Justice Board, 2010: 61–75).
19. Powers of Criminal Courts (Sentencing) Act 2000, ss. 1–2, as amended by the Crime and Courts Act 2013, s. 44 and Schedule 16 (Part 2); see also Ministry of Justice (2012a), para. 14.
20. Criminal Justice Act 2003, ss. 147, 177 and 199.
21. In England and Wales the Powers of Criminal Courts (Sentencing) Act 2000, s. 148.
22. The widened scope of the victim surcharge in England and Wales includes Fixed Penalty Notices arising from motoring offences such as traffic light contraventions or low-level offending, such as being drunk and disorderly.
23. Criminal Justice Act 2003, ss. 161A-161B.
24. The increases were made by the Criminal Justice Act 2003 (Surcharge) Order 2012, SI 2012/1696.
25. Similar purposes underpin its inclusion in the Justice Act (Northern Ireland) 2011 and the Victims and Witnesses (Scotland) Bill 2013, both initiatives being part of a wider package of reforms for victims and witnesses.
26. This article was completed before Croatia became the 28th Member State on 1 July 2013. Articles 66 and 67 of its Criminal Code provide that compensation by the offender may justify the imposition of a non-custodial or a suspended sentence. The state would be obliged to comply with the 2004 Directive.
27. There are differences in the inclusion of domestic violence. It is included in some schemes, notably in the United States, where it is a condition of federal funding, but other jurisdictions exclude it, or impose additional eligibility criteria.
28. http://www.nacvcb.org/.

29. See the comments in the Explanatory Memorandum of the proposed Directive (Commission of the European Communities, 2002).
30. The *European Judicial Atlas on Civil Matters* aims to catalogue national schemes, but for a number of Member States the relevant information is not available: http://ec.europa.eu/justice_home/judicialatlascivil/html/cv_information_en.htm?countrySession=2&.
31. This does not therefore apply to a conviction that is 'spent' in terms of the Rehabilitation of Offenders Act 1974.

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