

ضرر الموت وتعويضه

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The Damage of Death and its Reparation

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Abstract

Marked international unanimity in recent years indicates that reparation should be defined to include 'material' and 'symbolic' forms of redress.¹ While the former refers, particularly, to monetary measures such as 'restitution'² and 'compensation',³ the latter concept has been used more generally to refer to some forms of 'rehabilitation',⁴ 'satisfaction' and 'guarantees of non-repetition'.⁵ Roht-Arriaza proposes that symbolic forms of moral reparation are just important as material ones, because they are contained in a wide range of measures, 'most deal[ing] with a felt need for telling the story, for justice, and for measures to avoid repetition'.⁶ Both material and symbolic reparation are usually applied in cases of serious large-scale violations of human rights, particularly the right to life.⁷ One main objective of both forms of reparation is to centre an approach on

¹ Jonathan Doak, *Victim's Rights, Human rights and Criminal Justice: Preconceiving the Role of Third Parties* (Hart Publishing 2008) 208.

² Restitution, according to Principle 19 of the UN Basic Principles and Guidelines, seeks to restore a victim to his or her position previous to the occurrence of the violation. It includes the 'restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property'. United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Proclaimed by General Assembly resolution 60/147 of 16 December 2005.

³ Principle 20 of the UN Basic Principles and Guidelines indicates that 'Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law'. This includes '(a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services'. Ibid.

⁴ Rehabilitation, under principle 21, refers to the medical, psychological care, legal and social services aimed at promoting the victims' healing. Ibid.

⁵ Principles 22 and 23 include measures aiming to ensure that violations cease, that closure be provided for victims, which includes a search for victims who have disappeared, and, if applicable, an official acknowledgment by a state of its responsibility, the making of an apology by that state and a declaration of the measures it has instituted to prevent repetitive violations. Ibid; Doak (n 1) 215; Ben Saul, 'Compensation for Unlawful Death in International Law: A Focus on the Inter-American Court of Human Rights' (2004) 19 *American University International Law Review* 523, 537-538.

⁶ Naomi Roht-Arriaza, 'Reparations Decisions and Dilemmas' (2004) 27 *Hastings International and Comparative Law Review* 157, 159.

⁷ Pablo De Greiff, 'Justice and Reparations' in Pablo De Greiff, *The Handbook of Reparations* (Oxford University Press 2006) 452.

a victim who has been offended and to empower that victim.¹ This objective is to be achieved regardless of whether such offences have been committed by state authorities or private individuals, and also irrespective of whether a heavy burden will be placed upon the perpetrator.² This paper argues that justice requires all aspects of the damage of death, including the objective aspect (loss of life) and the subjective aspect, as well as the moral damage resulting from it should be redressed. However, taking the death of victims very seriously may imply more than financial if it is, at least to some extent, to be addressed adequately by the state. Therefore, the best approach for a state is to fully respond to both the monetary and symbolic aspects of reparations.

Keywords: Human Rights, Victims Rights, Moral Repair, Reparation, State Responsibility.

الخلاصة

يشير الإجماع الدولي الملحوظ في السنوات الأخيرة إلى أنه يجب تعريف التعويض ليشمل الأشكال "المادية" و "الرمزية" للتعويض. بينما يشير الأول ، على وجه الخصوص ، إلى التدابير المالية مثل "الاسترداد" و "التعويض" ، فقد تم استخدام المفهوم الأخير بشكل عام للإشارة إلى بعض أشكال "إعادة التأهيل" و "الرضا" و "ضمانات عدم التكرار". تقترح روته أريازا أن الأشكال الرمزية للتعويض الأخلاقي مهمة شأنها شأن الأشكال المادية ، لأنها متضمنة في مجموعة واسعة من التدابير ، "معظمها يتعامل مع حاجة محسوسة لرواية القصة ، من أجل العدالة ، واتخاذ تدابير من أجل تجنب التكرار". عادة ما يتم تطبيق كل من الجبر المادي والرمزي في حالات الانتهاكات الجسيمة والواسعة النطاق لحقوق الإنسان ، ولا سيما الحق في الحياة. يتمثل أحد الأهداف الرئيسية لكلا الشكلين من أشكال الجبر في تركيز النهج على الضحية التي تعرضت للإهانة وتمكين تلك الضحية. يجب تحقيق هذا الهدف بغض النظر عما إذا كانت هذه الجرائم قد ارتكبت من قبل سلطات الدولة أو الأفراد ، وأيضاً بغض النظر عما إذا كان الجاني سيُلقى عبئاً ثقیلاً. تجادل هذه الورقة بأن العدالة تتطلب جميع جوانب الضرر الناجم عن الموت ، بما في ذلك الجانب الموضوعي (خسارة الأرواح) والجانب المادي ، فضلاً عن الضرر المعنوي الناجم عن ذلك ينبغي تصحيحه. ومع ذلك ، فإن أخذ وفاة الضحايا على محمل الجد قد يعني ضمناً اتخاذ تدابير ليست فقط مالية إذا كانت ، على الأقل إلى حد ما ، يمكن القول بان الدولة قد عالجتها بشكل مناسب. لذلك ، فإن أفضل نهج للدولة هو الاستجابة الكاملة لكل من الجوانب المالية والرمزية للتعويضات.

الكلمات المفتاحية: حقوق الإنسان ، حقوق الضحايا، الإصلاح الأخلاقي، جبر الضرر ، مسؤولية الدولة

1. Introduction

The provision of reparation for victims of human rights violations is widely considered to be one of the most respected and central of legal principles.³ However, whether both the monetary and symbolic aspects of reparations are capable of redressing the harm depends on its nature. This is because the effects of certain crimes against individuals' human rights may cause such serious damage, for instance, physical damage, that no kind of reparation would be capable of undoing.⁴ As Roht-Arriaza neatly puts it, 'what could replace lost health and serenity; the loss of a loved one or of a whole extended family; a

¹ Doak (n 1) 208.

² Ibid.

³ Doak (n 1) 207.

⁴ Ibid.

whole generation of friends; the destruction of home and culture and community and peace'.¹ Therefore, in such serious crimes, reparation may serve merely to ease the consequences for victims and their families² by acknowledging their suffering, condemning their aggressors and, to some extent, restoring humanity and dignity to victims.³

However, the achieving of such reparation depends on effective enforcement mechanisms being in place to provide victims with confidence that remedies for the violations of their human rights lie at the heart of their state's domestic legal system. Further, according to Urban Walker, to respond adequately to the wrong and harm done to victims, 'moral repair' should be considered, defined as 'the attempt to address offence, harm, and anguish caused to those who suffer wrong' by 'the process of moving from the situation of loss and damage to a situation where some degree of stability in moral relations is regained'.⁴ Moral repair in essence means 'restoring or creating trust and hope in a shared sense of values and responsibilities' between victims and responsible parties. It is about 'setting things right' in the first instance, for the victim'.⁵ Like Roht-Arriaza, Walker acknowledges that no reparation can fully repair the damage to victims of serious crimes against their human rights:

"If repair is possible in some degree, it will usually be at some cost for the victim, the cost of absorbing some irreparable loss, pain, and anger; for the wrongdoer, the cost of some shame, vulnerability, and compensating action; for communities, the costs of providing and vindication for victims, placing responsibility and its demands on wrongdoers, and showing that standards are affirmed and enforced".⁶

For redress, at least two aspects of the damage caused by criminal acts against an individual's right to life, which could be called *damage of death*,⁷ should be considered. One is fixed and objective, the other variable and subjective.⁸ The objective aspect concerns the right of victims not to be deprived of the full period of an average life-time. This right applies to all people equally, and, it will be argued, when violated, requires compensation in itself independent of any pecuniary and moral redress.⁹ As it is impossible to restore the life of victims, monetary compensation may be said to be the only available form of address for the violation of an individual's right to life. Damage caused by illegal prejudice of the human right to life ought to be measured, it will be argued, by a single objective standard applying to everyone because all people are equal

¹ Roht-Arriaza (n 6) 158.

² Doak (n 1) 207.

³ M. Cherif Bassiouni, 'International Recognition of Victims Rights' (2006) 6 *Human Rights Law Review* 203, 231.

⁴ Margaret Urban Walker, *Moral Repair: Reconstructing Moral Relations after Wrongdoing* (Cambridge University Press, 2006) 6-7.

⁵ Ibid. 7, 23-28.

⁶ Ibid 6.

⁷ It is important to note that whether the death of an individual by illegal acts is considered to be in itself damage is a highly problematic issue. Steve Hedley, 'Death and Tort' in Belinda Brooks-Gordon et al, *Death Rites and Rights* (Hart Publication Ltd 2007) 244.

⁸ Ibrahim Mohammed Sharif, *Physical Damage and Compensation in Tort: A Comparative Study* (PhD thesis, University of Baghdad 2002) 33; Faris Kareem Al-Anaibi, *The Damage of Death and its Compensation: Comparative Study*, (MSc thesis, University of Babylon 2007) 24-25.

⁹ Mohammed Naji Yaqout, *Compensation for the Loss of Life Expectancy: A Comparative Study in Civil Liability in Anglo-American law, the Egyptian and French law* (Modern Arab printing press, 1980) 40-41.

in human value. It follows, therefore, that compensation, according to the objective standard, should not be different from one person to another. However, it should be noted that monetary compensation for *damage of death* should not be seen as a price of the loss of a victim's life, but rather as a recognition of the seriousness of the infringement of the value of the individual's right to life. This recognition of such value, in terms of money, it will be argued, is better than no recognition of this value at all, or rejecting it on the basis that life is beyond value. Nevertheless, *damage of death* in its objective aspect cannot be sufficiently repaired by merely monetary compensation and, therefore, acknowledgement of responsibility for the damage and correction of its injustice is an essential requirement for comprehensive reparation.

The subjective aspect of *damage of death* varies from person to person because it is linked to how much the individual talent and ability of a victim is diminished, and applies only to the economic implications of any impairment of that talent, and how valuable that talent was in the first place.¹ This means that the material compensation for this subjective aspect also varies from one victim to another depending on the material loss involved. In addition to these two aspects of damage, any physical and mental pain that a victim has suffered in the course of being killed also requires compensation. Moreover, a victim's family also deserves to be compensated for its pecuniary loss as well as for its grief in losing a loved one.²

To determine what constitutes adequate reparation for the violation of the right to life it is important, firstly, to explore whether this violation should be considered as a form of 'damage' to victims which requires compensation in itself.

2. Does it Matter that Death Resulted from Illegal Acts?

There is considerable disagreement among commentators on this question; some argue that the death of a victim is a form of damage in itself, while others think that it is not.³ Several arguments are used to support the latter position. First, it is contended that it is difficult to imagine that a human being who loses his life has been damaged by death because death is an inevitable fate and the dead person does not feel or lose anything;⁴ therefore, to assume that the dead can be damaged is unconvincing because a person must be in a state of existence to experience damage but a person's existence has ceased to be at the moment of death.⁵ As Joel Feinberg states, 'there cannot be harm without a subject

¹ Shariff (n 19) 35.

² Al-Anaibi (n 19) 167.

³ Shariff (n 19) 35.

⁴ Ibid; for further details, see Faris AL-Anaibi, *The Rights of Victims of Violence by None-State Actors in Iraq post-2003* (PhD thesis, Durham University 2018) 102-106.

⁵ See Joel Feinberg, *The Moral Limits of the Criminal Law Volume 1: Harm to others* (Oxford University Press 1987) 79; it is argued that 'the dead are beyond harm, they cannot be hurt; neither can have the desires or welfare interests to be denied. In the absence of a belief in the afterlife, to regard someone (the same 'someone') as continuing in a state of 'being' after death (ie as a corpse) is problematic'. David Price, *Property, Harm and the Corpse*, in Belinda Brooks-Gordon et al, *Death Rites and Rights* (Hart Publication Ltd 2007) 202; also, it has been asserted that 'Death cannot be bad, or be a misfortune for the person who dies, for, when death occurs, there is no longer a subject to whom any misfortune can then be ascribed'. Jeff McMahan, 'Death and the Value of Life', (1988) 99 *The University of Chicago Press* 32, 32; further, according to Ernest Partridge, it is untenable to hold that interests survive after death as no one's interest can be harmed at this point. Ernest Partridge, 'Posthumous Interests and Posthumous Respect' (1981) 91 *The University of Chicago Press* 243, 243-264; for further details, see John Harris, 'Law and Regulation of Retained Organs: the Ethical Issue' (2002) 22 *Legal Studies* 527, 534-537; Walter

to be harmed, and when death occurs it obliterates the subject, and thus excludes the possibility of harm' because 'death is defined simply as the first moment of the subject's nonexistence, so it is not something that ever coexists with the dying person for the time required for it to have a directly harmful effect on him'.¹ Secondly, where the deprivation of an individual's life by illegal acts has been instantaneous, the legal personality of that individual and his capacity to have rights, including the right to compensation, has ceased.² The assumption by opponents that the right of the victim to compensation arises at the moment of his death is ultimately flawed since it rests on the idea that any potential victim has not yet died and it cannot be predicted whether or when death might occur as a result of a criminal act.³ Even if this assumption were correct, death would terminate this right because a dead person no longer possesses any right as his legal personality has ceased to be.⁴ Therefore, supporters of this position do not recognize either that a victim has been damaged by death or has a legal right to compensation for death which can be claimed by the heirs to his estate.⁵

By contrast, other commentators have contended that a right to compensation ought to exist for a number of reasons. First, although it is true that death is inevitable for any human being and that no one holds that any compensation should be made if this happens from natural causes, where death has resulted from the illegal acts of others, compensation should take place as these acts have shortened the victim's legitimate expectancy of life.⁶ In addition, the argument that a victim who loses his life instantaneously through a third party criminal act does not suffer any damage seems to be contrary to reality and law, as life is most precious and human beings usually vigorously resist being deprived of it and of the enjoyment of all the good things which it can bring.⁷ The violation of the right of a victim to life, and the corresponding right of

Glannon, 'Persons, Lives, and Posthumous Harms' (2001) 32 *Journal of Social Philosophy* 127, 127-128. However, although no damage to the body or mind can be done to anyone after death, wrong still exists because rights or morally protected interests have been violated. Harris 34.

¹ Feinberg (n 25) 80; most commentators have struggled to explain how death may harm anyone because, as Epicurus stated that where life was, death was not and where death was, life had ceased to exist. Price (n 25) 203; Feinberg, however, notes that 'Death and developments after death are alike in coming into existence during a period when there is no longer a subject. If the absence of a subject precludes our speaking of posthumous harms, then equally it precludes our speaking of death as a harm (a rather harder pill to swallow) since both death and posthumous events are post-personal. Either death and posthumous events both alike can be harms or neither can'. Feinberg (n 25) 82.

² For further details about the arguments of those who do not acknowledge the right of a victim to compensation for his death, see Sharif (n 19) 375-377; Al-Anaibi (n 19) 36-39; it has been asserted that the possession of rights by individuals is only possible 'if and only if . . . his well-being is of ultimate importance'. See Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press 1986) 166. Therefore, 'the dead have no wellbeing for the simple and sufficient reason that they have no 'being' at all; they are not beings, but ex-beings or former beings. They were once beings whose well-being had ultimate value, but no more'. Harris (n 25) 534.

³ Al-Anaibi (n 19) 36.

⁴ For instance, early English common law held that 'a personal action dies with the person' and, therefore, 'death of either party to personal injury litigation terminated it; and causing the death of another was not a ground for civil action'. Hedley (n 18) 243.

⁵ Al-Anaibi (n 19) 36.

⁶ Sharif (n 19) 379.

⁷ Ibid 375; Yaqout (n 20) 29; Al-Anaibi (n 19) 41; Feinberg claims that 'to extinguish a person's life is, at one stroke, to defeat almost all of his self-regarding interests: to ensure that his ongoing

a victim to be compensated for the loss of it, is a matter of principle and no positive law can justifiably preclude it.¹ Moreover, to assume that a person who is killed does not suffer any sensory pain may be doubtful. He may also suffer from the psychological damage of the loss of all the usual legitimate expectations which might be associated with life.² It has been asserted that the concept of deprivation which holds that death does harm a person seems to be much more plausible.³ As this concept implies that:

“Death deprives a person of all the goods that they might otherwise have achieved, and in so far as death precludes the ante-mortem person from achieving certain future oriented desires, desire-oriented interests may be thwarted by events occurring by or after death. Desires as to the disposition of one’s cadaver are future oriented and capable of being—only being—thwarted or implemented after death, ie when one has ceased to be”.⁴

Secondly, to argue that the right of a victim to compensation for the damage of death cannot exist at the moment of death is contrary to the source of the right to compensation.⁵

The source of this right is the illegality of acts against the right to life which precede death, even if just for a moment, because every action precedes its outcome.⁶ Therefore,

at the moment when a victim is dying, he or she still has the legal right to compensation for all damages arising from the illegal act, a right which can be claimed by his family following his death.⁷ In other words, on death such a right is transferred from the deceased to his or her next of kin. In addition, it seems wrong to state that the right to compensation for victims who continue to live following injuries must be respected but not for those who die instantaneously from their injuries.⁸ Such a position defies logic and reason as it places an offender who ends a victim’s life instantaneously in a better position than one who injures a victim without bringing about death.⁹ Such an outcome may also act as an incentive that could actually encourage an offender to kill a victim instantaneously in order to deny or limit that victim’s right to compensation, which would be contrary to the primary objectives of good legislative policy which require that the perpetrator of an unlawful act is not to be given any reason to believe that the death of the victim does not matter in terms of an obligation for him to make compensation.¹⁰

Weighing up the pros and the cons of the above arguments of both the supporters and opponents of the right of victims to compensation for the damage of death, it can be argued, based on the above arguments of those who support it, that those who deny that a victim’s death is a damage in itself are in the contradictory position of refusing to acknowledge such a right to exist before death actually occurs and then, when death does

projects and enterprises, his long-range goals, and his most earnest hopes for his own achievement and personal enjoyment, must all be dashed’. Feinberg (n 25) 82.

¹ Al-Anaibi (n 19) 41; however, it is worth noting that law, in principle, tends to agree with the view that dead themselves are beyond harm. An example of this can be found in the law of tort concerning deceased persons. Hedley (n 18) 241-256.

² Taha Abdel Mawla, Compensation for Physical Damages in Civil Law in terms of Jurisprudence and the Judiciary (Dar Alfikr and Law, Mansoura 2000) 103.

³ Price (n 25) 203.

⁴ Ibid.

⁵ Mohammed Saad Khalifa, The Right to Life and Bodily Integrity: A Comparative Study of Civil and Islamic Law (Dar-Alnahda Arab, Cairo 1996) 44.

⁶ Ibid.

⁷ Sharif (n 19) 376.

⁸ Ibid; Al-Anaibi (n 19) 42.

⁹ Al-Anaibi (n 19).

¹⁰ Ibid.

actually take place, they still deny this right, as they consider that a person's legal identity ceases to exist on his or her death. It is not reasonable to ignore this contradictory position when dealing with such serious damage as the loss of life since the lack of any necessity to provide compensation may be said to undermine the process of civil accountability, civil protection and would lead perpetrators to conclude that they had no obligation to restore justice by healing the consequences of their violation of the victims' right to life. Accordingly, it is arguable that justice requires the compensation of a victim for the illegal deprivation of his right to life. If justice requires a victim to be compensated for an attack on other inherent human rights, then the right to life which is of such great importance and the source of all other human rights should be given priority of entitlement for compensation when it is violated by illegal action.¹ Even if convincing theoretical arguments were not forthcoming to prove that a victim possessed such a right at the moment of death, the responsibility of an offender for the damage of death should not be precluded, nor should he be excused from himself making compensation, irrespective of any other kind of compensation to which a victim may be entitled and which can be claimed by his or her heirs.² If it is said that to allow the heirs of the deceased to benefit from his death is not morally justified, then it may be asked, what is the difference between this transfer of the right to compensation following immediate death and the transfer of the material and moral damage suffered by a victim prior to his death?³ Where no moral objection is made to the next of kin receiving such compensation, then, it is highly justifiable for his heirs to claim compensation for the damage of death to the victim because they are his representatives. Acknowledging such a claim would also underline the seriousness of illegally violating the right to life and, to some extent, lead to the reparation of the injustice it causes.⁴

However, in practice, some systems of law do not consider a victim's death in itself to be a damage requiring compensation,⁵ However, in some systems of modern law, it has been recognized that compensation may be given. For instance, England, in the statute of Law Reform (Miscellaneous Provisions) Act 1934, recognized that tort actions may still take

¹ Ibid.

² There is controversy about the nature of the damage of death. Some writers consider it to be a kind of material damage as it deprives a person of the opportunity to continue his life and enjoys the ability to work and earn financial rights which would be reasonable for someone of the same age in good health. Others consider it to be a kind of intangible damage as it is an infringement of the non-material, natural right to life. For further details, see Al-Anaibi (n 19) 27-28.

³ Ibid 49.

⁴ Ibid; Hedley in responding to the question 'Does it matter that death resulted' in cases of negligence in England? He suggested that 'It matters in the sense that serious injuries are taken more seriously: defendants are expected to think further ahead if serious injuries are possible; more care is expected of them; and defendants receive less sympathy if they argue that the loss was too 'remote', that is, too unlikely a prospect to contemplate before the event' and that 'the question is not how we view the facts now that we know a death has resulted, but how the defendant should have viewed them before the event, when injury was a mere possibility. Death is therefore special in this context because it is an exceptionally severe consequence, with an unfavourable prognosis'. Hedley (n 18) 245.

⁵ For instance, English courts have rejected the right to compensation for the damage of death; for further details, see Hedley (n 18) 241-256: also, in the Iraqi legal system, although the wording of Article 202 of Iraqi Civil Code No. 40 of 1951 expresses the need to compensate victims for many kinds of damage, such as physical, moral and material damage, many commentators have doubted whether the objective aspect of the damage of death (loss of life) itself was included. For further details, see Al-Anaibi (n 24) 215-222.

place after the death of a victim and, therefore, 'the death of the claimant could be regarded as an injury for which compensation could be given'. Nevertheless, the wording of section 1(2)) of the statute does not encourage this as it states that 'the damages ... shall be calculated without reference to any loss or gain to his estate consequent on his death', thus, ensuring that any claim for damages comes to nothing.¹ Therefore, as Hedley notes, 'personal injury damages law places a value of £0 on each life involved. Technically speaking, damages are not awarded for the death, but for the injury suffered. The fact that the injury resulting from the defendant's conduct proves fatal is not in itself a compensatable item, though (anomalously) a defendant who caused a death is liable for reasonable funeral expenses'.² In addition, compensation of a victim for pain and suffering is not provided for where death occurred instantaneously, on the grounds that such a death would not involve suffering.³ It has also been consistently argued that, even in a painful death, the last few moments of pain and mental suffering are, actually, part of death itself and therefore action would not be able to be taken under the 1934 Act.⁴ Moreover, death terminates or limits the claims of a victim for 'any compensatable loss of amenity', loss of earnings in 'lost years' which he may have been expected to live, loss of earning capacity and any future expenses, such as medical care and other expenses.⁵ It seems, as Hedley notes that 'The only substantial claim allowed is that of dependent relatives, who can demand at least part of the income stream they would have received had the death not occurred'. In other words, English law does not provide compensation for the loss of life, as 'the deceased's life is valued in terms of the loss inflicted by death on the deceased's dependants'.⁶

Some legal systems and judicial rulings of other states have clearly considered death as a damage which requires compensation. For instance, although the Egypt Civil Code does not contain an explicit text which refers to compensation for the damage of death in

¹ Hedley (n 18) 244.

² Ibid 251.

³ This is in spite of section 1(1)) of Administration of Justice Act 1982 which states that the shortening of a claimant's life by illegal acts is to be included alongside awards for pain and suffering. Ibid 247.

⁴ See for instance the case *Hicks v Chief Constable of South Yorkshire Police* [1992] 1 All ER 690 (CA). This has been criticised as contradictorily compensating for ordinary pain and suffering while, at the same time, rejecting compensation for the pain and suffering of death. Hedley (n 18) 248.

⁵ For instance, the Court of Appeal in the case of *Oliver v Ashman* [1962] 2 QB 210 (CA) ruled that 'there was no claim for earnings in those 'lost years': while the loss was genuine enough in purely financial terms, an award of that sum would not correct this injustice. A dead man does not feel any better, or even any richer, by being presented with a large sum for lost wages'. However, the House of Lords in the case of *Pickett v British Rail Engineering Ltd* [1980] AC 136 (HL) held that 'The deceased does indeed not suffer a loss in any real sense, but his/her dependants do, and awarding a sum for earnings in the 'lost years' compensates for that loss'. Hedley (n 18) 248-250.

⁶ Peter Cane, *Atiyah's Accidents Compensation and the Law* (7th edn, Cambridge University Press 2006) 163-164; the inherent difficulty of putting a price on human life in wrongful death litigation has led in the United States to consider economic loss as the exclusive measure of damage in cases of wrongful death. Recently, the United States has tended to broaden the monetary compensation for wrongful death, either by legislative or judicial measures. Jonathan M. Stern, 'Defending Damages in Death Actions' (1997) 23 *Litigations* 45, 45-48.

itself,¹ the courts have recognized that the death of a victim by illegal acts is a damage and should be compensated for irrespective of the compensation of other damages.² Nevertheless, the courts have considered such death to be merely a kind of material damage and not an independent one in order to justify the transfer of the right to compensation for this damage to his heirs. This results in compensation awarded for loss of life to be measured by different subjective standards and, therefore, awards of such compensation differs from person to person.³ A clear example of award compensation for death can be found in Article 248 of the Kuwait Civil Code,⁴ which states that if the violation of the right to life results from illegal acts, compensation should be provided for such violation in itself, in accordance with the provisions of 'Diya' in Islamic law.⁵ These provisions, unlike in the Egyptian courts, must be made equally and without distinguishing from person to person in regard to age, social status, occupation, sex or other subjective issues, and, also, should not affect the right of a victim to be compensated for financial and moral damages in accordance with the provisions of liability for unlawful act.⁶ Moreover, the state must compensate for damage of death in cases where compensation cannot be obtained from other sources.⁷ This reflects the idea that the state cannot absolve itself from its moral and legal responsibility to respond effectively to the violation of the right to life and to recognise it as a serious damage which requires reparation.

In the same vein, it can be argued that any system adopted by the state to compensate victims of illegal acts should take into account the redressing of the damage of death and its implications as a whole if that system really intends to repair injustice and give recognition to the seriousness of the violation of the right to life.⁸ However, a system in most states often aims to provide for the pragmatic needs of an injured victims in order to mitigate, to some extent, the consequential effects of illegal acts and is not concerned with the symbolic criterion of recognizing the damage of death. For instance, most

¹ Article 167 of the Egyptian Civil Code No 131 of 1948 refers to the general rule for compensation. This states that every wrong causing damage to another obliges the wrongdoer to make compensation for such damage.

² The Egyptian Court of Cassation has emphasized in many decisions that death caused by illegal acts is a damage and should be compensated for. See its decisions No 352 for the year 31Q in 02/17/1966, No 4 for the year 43Q in 03/07/1974, No 1466 for the year 48 in 23.01.1981, No 651 for the year 52 Q in 12/01/1986 and No 3063 for the year 61 Q in 21/05/1997. See Al-Anaibi (n 19) 44-45.

³ Abdel Mawla (n 34) 107.

⁴ The Kuwait Civil Code No 67 of 1980.

⁵ Article 251 of the Kuwait Civil Code states that the amount of Diya as compensation must be ten thousand dinars and can be amended by decree. Al-Anaibi (n 19) 31; Diya in Islamic law refers to the blood money owed to a family for the killing of a loved one. It is a form of punishment for murder and bodily injury and 'in cases of deliberate homicide it is due only when the nearest relatives of the victim do not insist on Qisas (retaliation) against the culprit'. Farrukh B. Hakeem, M. R. Haberfeld and Arvind Verma, 'The Concept of Punishment Under Sharia', in Farrukh B. Hakeem, M. R. Haberfeld and Arvind Verma, *Policing Muslim Communities: Comparative International Context* (Springer New York 2012) 15.

⁶ Al-Anaibi (n 19) 31.

⁷ See Article 256 of the Kuwait Civil Code; Al-Anaibi (n 19)163.

⁸ For instance, the financial compensation for the damage of death adopted by the Iraqi legislature can be said to fail to be a real recognition of the gravity of such damage caused by terrorist acts and, also, makes unjust distinctions in the amount of compensation paid to various groups. For further details, see Al-Anaibi (n 24F) 222-233.

systems of compensation in the United States and Europe are normally provided to victims of crime for ‘medical expenses and costs for rehabilitation; loss of earnings, income or support; funeral or burial costs; childcare and transportation costs; psychological counselling’.¹ Nevertheless, it can be argued that all damages including death from illegal acts, should be compensated for if the state considers itself to be under a moral and legal obligation to provide justice for victims.

3. Other Forms of Reparations

In cases of mass violence against the right to life, it is doubtful whether the moral, political and legal principles which govern the state and society are sufficient to achieve justice for victims of such violence. One such difficulty may be attributed to the lack of a comprehensive view about the various measures of reparation available to remedy the damage caused by violations of the right to life, or even ignorance of what these reparation measures are capable of doing to restore to victims their sense of dignity and justice. Achieving justice for victims requires more than material compensation; as Walker notes, pure financial compensation is never sufficient to remedy grave harms, and is ‘not always necessary to reparations’.² Reparations should consist of acts which intentionally afford appropriate goods to victims to acknowledge the seriousness of the wrong, the responsibility of those who did the wrong, or the liability of those responsible for its repair and their intention of achieving justice for this specific wrong.³

This spirit and intention are crucial in determining what should be done for victims, even if it is appropriate in terms of the damage caused to make actual reparations.⁴ This means that any support or compensation given to victims by others, which is given in a voluntary spirit, as a good deed, does not in itself strictly constitute reparations since it is done without the intention of bearing the responsibility either for the wrong suffered or for redressing it.⁵

Many commentators consider that the recent moral and political conceptions of reparations which aim to restore dignity to victims and establish respectful, trustworthy and mutually accountable relationships within their communities are more important or

¹ Marlene A. Young, ‘The Role of Victim Compensation in Rebuilding Victims’ Lives’ International Organization for Victim Assistance, 4 <<https://www.iovahelp.org/About/MarleneAYoung/RoleOfVictComp.pdf>> accessed 6/7/2021.

² Margaret Urban Walker, ‘The Expressive Burden of Reparations: Putting Meaning into Money, Words, and Things’ in Alice MacLachlan and Allen Speight, *Justice Responsibility and Reconciliation in the Wake of Conflict* (Springer, Netherlands 2013) 208; see also Yael Danieli, ‘Healing Aspects of Reparations and Reparative Justice for Victims of Crime against Humanity’ in Jo-Ann M. Wemmers, *Reparation for Victims of Crimes Against Humanity: The Healing Role of Reparation* (Routledge 2014) 13.

³ Walker (n 63) 208.

⁴ Ibid 205.

⁵ Ibid 206; for instance, the Victims Compensation Fund of 9/11 2001 in the United State reflects the intention of Congress and government to both protect the airline industry from crippling civil actions taken by victims and, also, to address the severe pain caused to victims. However, as Samuel Issacharoff and Anna Morawiec Mansfield suggest, that this Victims Compensation Fund ‘unlike traditional reparations which are closely related to a process of social reintegration of the victim, fostering civic trust and social solidarity, the Fund was not established to bring justice to the victims of the terrorist attacks on September 11, 2001. Also, unlike traditional reparations, the Fund did not seek to serve as a mechanism of corrective or distributive justice as a result of an authoritarian domestic regime or internal conflict’. Samuel Issacharoff and Anna Morawiec Mansfield, ‘Compensation for the Victims of September 11’ in Pablo De Greiff, *The Handbook of Reparations* (Oxford University Press 2006) 284.

even an alternative to the dominance of the legal perspective of juridical and tort-based measures of compensation for unjust loss or injury.¹ This is because the legal perspective of compensatory or reparative justice has been criticised as inadequately addressing grave human rights abuses and injustice.² Reparative justice is more about redressing ‘injustice and wrongful harms that aims at the reordering of individuals’ standing, their relationships and their communities’.³ In addition, from the psycho-social perspective, reparations ‘seek relief of the suffering, distress, anger and sense of violation experienced by victims’.⁴ However, this should not undermine the role of monetary compensation measures when these are effective in obtaining from the parties responsible for the wrong done, or for its repair, the intention to provide reparative justice for victims.⁵

3.1 The Communicative and Exemplifying Aspects of Gestures of Reparation

While the communicative aspect seeks to send a vindictory message to victims, wrongdoers, and communities acknowledging the reality of the wrong, the exemplifying aspect involves an act of repair which alludes to what the correct relationship should be between the victims and the parties responsible for making reparation.⁶ All forms of reparations, including purely material forms, have an essentially symbolic expressive or communicative function even though the term symbolic is mainly used for non-tangible measures such as the ‘publication of the truth about abuses, public apologies, memorial, or education projects’.⁷ Studies appear to suggest that ‘symbolic’ reparations are valued more highly by victims than monetary ones,⁸ and that financial payments are, therefore, less acceptable and may be challenging without gestures conveying acknowledgement and respect.⁹ Nevertheless, all reparations, whether material or symbolic in nature, are considered by victims to be communicative gestures.¹⁰ Walker explains that these communications are essential in creating ‘real effects of psychological, moral, social and political kinds’ and ‘if the reparative communication misfires or is poorly executed, very real effects often follow: the victims may be insulted, outraged, or bitterly disappointed, and may react with protest, withdrawal, or litigation’.¹¹ Therefore, the communicative dimension is essential to any reparations programmes or gestures because it conveys an

¹ Walker (n 63) 208; for instance, Roht-Arriaza called for collective and symbolic reparations to be made to communities. Roht-Arriaza (n 6) 159-160.

² Walker (n 63); Margaret Urban Walker, ‘Moral Vulnerability and the Task of Reparations’ in Catriona Mackenzie, Wendy Rogers and Susan Dodds, *Vulnerability: New Essays in Ethics and Feminist* (Oxford University Press 2013) 113.

³ Walker (n 63); Bernard Boxill, decades ago, deeply connected the concept of reparations with wrongfulness and responsibilities. Bernard R. Boxill, ‘The Morality of Reparation’ (1972) 2 *Social Theory and Practice* 113, 118.

⁴ Walker (n 63) 209.

⁵ Ibid.; Walker (n 68) 128.

⁶ Walker (n 63) 209.

⁷ Ibid.

⁸ Heather Strange, Justice for Victims of Young Offenders: The Centrality of Emotional Harm and Restoration, in Allison Morris and Gabrielle Maxwell, *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Hart Publishing 2001) 184-185; Doak (n 1) 216; Walker (n 15) 9; Jo-Ann M. Wemmers, ‘Restoring Justice for Victims of Crimes against Humanity’ in Jo-Ann M. Wemmers, *Reparation for Victims of Crimes Against Humanity: The Healing Role of Reparation* (Routledge 2014) 34.

⁹ Walker (n 63) 212.

¹⁰ Ibid.

¹¹ Ibid.

important vindicatory message.¹ This vindicatory message may be sent explicitly by means of a complete apology, accepting responsibility for the wrong or its repair and the repudiation of the behaviour involved.² Failure to convey this message in programmes of reparations would result in a lack of clarity about the attitude of the responsible parties towards past wrongs and their duty of justice to respond to them, or show a lack of proper respect or real care for those who are owed reparations.³

However, there is the risk that reparations programmes are perceived as an isolated gesture if they seem to only send a vindicatory message.⁴ For such programmes to transcend this, they need to exemplify a rectified relationship that, if sustained, becomes the basis for acceptable and stable moral, civil, and political relations.⁵ The purpose of this exemplifying reparative function is to convey to victims and society the appropriate attitude for amend-makers to take to demonstrate respect, compassion and responsibility.⁶ It has been suggested that, for the exemplification function of reparations to be convincing, the vindicatory message should send the right message regarding the reparations process to give the hope that the right moral relationship will be established between victims and responsible parties, which may lead to the rebuilding of trust. In turn, this may mean that some confidence will emerge that gross violence will not be repeated in future.⁷ Further, it has been specifically suggested that restoration of the correct moral relationship of confidence, trust and hope damaged by serious wrongdoings is essential for any gestures or programmes which seriously intend to comprehensively repair wrongs on the social and civic level.⁸ Any serious wrongdoing against individuals raises the question of whether the moral standards that govern the relationship of an individual with others, and the interest and dignity of individuals harmed by wrongdoing, are being taken seriously.⁹ In other words, it means 'what are the shared norms' of 'our mutual expectations of each other's behaviour' and how do we 'express the authority of those standards' when they are violated and 'authority [is] in question'.¹⁰

It is the responsibility of communities to answer this question,¹¹ because having taken upon themselves the basic duty of producing standards of responsibility, they have a duty to take action against violations of these standards in order to: reaffirm moral

¹ Ibid.

² There is considerable evidence that 'victims place a high value on receiving apologies and this prospect is often an important factor influencing their decision to become involved in mediation and restorative justice programs'. Jonathan Doak, 'Enriching Trial Justice for Crime Victims in Common Law System: Lessons from Transitional Environments' (2015) *International Review of Victimology* 1, 12.

³ According to Walker, the adequacy of gestures of reparations must be judged on the strength of their interactiveness, usefulness, fittingness, and effectiveness. For further details, see Walker (n 63) 213-216.

⁴ Ibid. 217.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid 220.

⁸ For further details, see Walker (n 15) 23-28, 73-74, 107-108; Walker (n 63) 209-2011; Walker (n 68) 111-124.

⁹ Walker (n 15) 29.

¹⁰ Ibid.

¹¹ The concept of community should be taken in a wide sense to include, for instance, a neighbourhood or society or nation and, perhaps, a 'world community' or a 'community of nations'. A community requires a 'collective of moral judges to whom people look as a reference point for the validity of claims of injury and claims of repair'. Ibid. 30.

understandings which have been contravened by wrongdoing; clarify their scope; and, stabilise confidence in their authority.¹ If community standards are found to lack respect for some of its members, the community has an obligation to take action to change them.²

3.2 Problems in Achieving Reparation Gestures

It is unlikely that the expressive function of these reparations gestures will be fully achieved for a variety of reasons. First, the adequacy of all reparations messages is restricted by the inevitable economic, political and social pressures surrounding mass reparations for HR violations.³ More importantly, such achievement depends on the willingness of the state and society to comply with these messages of reparations, specifically the exemplifying commitment to the repairing of future right relationship, in order to adequately respond to the mass violations of HR. It also depends on the actual status of victims in moral, social and legal systems. This is because victims in many states, and specifically in Iraq, have faced marginalisation, indifference, denial and abandonment. It has been further suggested that despite the internal clarity of reparations measures and homogenous forms of justice on reparations, there are difficulties with reparations programmes involving victims who are 'marginalized or [have] unequal status', including women and minority ethnic or indigenous populations. This leads to 'disrespect or mistreatment despite a reparations effort for particular injustice at a particular point in time'.⁴

Secondly, the demands of different features of the expressive adequacy of a reparations process may create a tension between them.⁵ Symbolic reparations, which involve acknowledgment of serious wrongs to victims and the taking of responsibility for them, are often considered by victims to be the most fitting. On the other hand, material compensation may be more easily deliverable and less socially controversial when a society is in an unsettled political state.⁶ However, victims often place much greater value upon public acknowledgement of wrong, which explains why they may often be dissatisfied with money payments alone.⁷ The reparative importance of money payments depends on whether, along with other gestures, it carries a message of acknowledgement of wrong, and thus affirms reciprocal accountability under shared standards.⁸ Although money in itself does not count as reparations, when the state is involved it is clearly a powerful means of accountability.⁹ Even when this is so, taking responsibility for wrong, which is the essence of accountability, is often of greater importance for victims.¹⁰

¹ Ibid.

² Ibid.

³ Walker (n 63) 221.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ There may be a temptation to offset some forms of adequacy against others. For instance, in the aftermath of conflict, governments may seek to make reparations by material investment in affected communities. By doing this as collective reparation, it can 'mute or cancel the fittingness of what is offered, as victims find what they receive is perhaps only what they deserved as citizens regardless of the specific injuries they have suffered, and that the public goods offered equally benefit others who are not victims (and in some situation those who have been perpetrated'. Ibid.

⁸ Walker (n 68) 128.

⁹ Ibid.

¹⁰ For instance, monetary reparations programmes by countries such as Germany, Argentina, and Chile have been made in stages and have expanded the norms of accountability for victims of human rights abuses, thus, increasing the numbers of victims to be compensated. Ibid.

Nevertheless, in some cases money is considered by victims to be reparation, even when acknowledgement of responsibility or of the obligation to provide justice are lacking on the part of those responsible.¹

Finally, it has been claimed that it is unrealistic to expect that gestures of reparations, specifically in attempting to acknowledge the reciprocal accountability relations between victims and those responsible for the violations or their repair, should be burdened with too much responsibility for the restoration of right future relationships.² Reparation gestures concern what can be achieved in the present to deal with the past relative position of victims and responsible parties; this might be seen as 'a bridge from a past, not just of unrepaired harms but also of accountability denied to a present of reciprocal accountability acknowledged'. This view clarifies the complexity of the 'threats, wounds, tentative steps, and difficult new understandings' so typical of reparations.³ Ideally, hope of better future relations between victims and responsible parties is created when successful reparations operations, which embody fair terms of accountability and shared recognition of the moral standards predicated by them, are undertaken.⁴

The provision of reparations may best be understood as 'a maker of present achievement in the history of relations among people or among peoples, an achievement measured by its distance from the past scene of wrongdoing'.⁵ In addition, in the aftermath of gross violence, the expectation that reparations by themselves are capable of achieving long-term trusting relations may be unrealistic, since reparations 'can only at best set an example and make a promise or commitment based on what achieved in the present instance'.⁶ Where the wrongs of the past have given rise to reasonable fear, disillusionment, hatred, or cynicism, in the present, reparations gestures can help to create hope for the future, which, in turn, provides motivation to build the right relations that are heralded by good reparative interaction.⁷

4. Conclusion

The death of a victim is a real and serious form of damage and any attempt to rely on theoretical objections or pragmatic reasons to deny the legitimacy and eligibility of a victim's next of kin to receive compensation undermines any adequate recognition of the seriousness of violations of the right to life. It follows that, if the death of a victim is considered only to be a matter of compensation for the material and moral suffering caused by his or her death, this is insufficient for it to be claimed that justice has been done. While, certainly, a victim cannot ever be compensated for his loss of life, a distinction should be made between the acknowledgment that a victim has been damaged by his death and, thus, has the right to be compensated for the wrongness of the actions of those responsible for the damage and, similarly, to have his symbolic right to

¹ Ibid. 128-129; however, a comparative study of the status of victims in Chile, Argentina, El Salvador, Guatemala and South Africa, carried out primarily through interviews, found that 'for the victims, moral and legal measures of reparation are fundamental, while monetary compensation is controversial and problematic. [...] All agreed that compensation was never enough, or even the most important thing. They especially noted the hollowness of material reparations when there has been a pronounced reluctance to prosecute those responsible'. See Roht-Arriaza (n 6) 180.

² For further details, see Walker (n 68) 125-127.

³ Ibid 127.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

retributive justice secured against those responsible, and for it to be recognised that no compensation would ever be able to make up for such damage. Therefore, it is argued that the symbolic recognition of a victim's right to both retributive and compensatory justice needs to be considered as an integral part of any domestic justice system in order to demonstrate that the death of a victim has been taken seriously.

However, to adequately respond to the implications of violations of the right to life of individuals caused by serious acts of violence, the best scenario is that all forms of reparations gestures, both material and symbolic, must carry, in principle, an expressive vindictory message. This message should include a genuine intention to address the implications of violence against the right to life by standing with victims, through acknowledgement and confirmation of their entitlement to stand in equal moral relations of accountability, to witness condemnation of, and receive genuine apology for, serious wrongs committed, and oblige those responsible for these or for their repair to make amends as a matter of justice. Reparations should also be forward-looking, through setting an example and making a commitment based on what is done in the present to deal with the implications of violence in the hope that right relationships of confidence, trust and hope between victims, responsible parties and their communities will be restored in future.¹ This is why it has been suggested that, in spite of the fact that problems may arise from the inability to achieve what this message involves, because of economic, political and social pressure or the marginalising of victims in states, reparations for mass violations of human rights would, nevertheless, be incomplete should it be concluded merely with the fulfilment of obligations to repair these past violations in the present.² Rather, reparations are the beginning of a long process of creating commitments, in the hope that what is done in the present will set a good example for the emergence and restoration of consistent right relationships between victims, responsible parties and their communities.³

The community in any state where grave human rights abuses occur against its members, specifically, has a duty to lead the social process of moral validation by which victims should feel confident that they are entitled to share the community's norms of accountability and recognise that they are valued members of that community. This moral validation requires a community to respond to claims of serious wrongdoing and to evidence concerning it with careful attention by affirming the standards violated and by confirming the reality of the injury to the victim, an injury which deserves redress.⁴ In the absence of such validation by wrongdoers or the community, it could be said that victims and others will question whether the violation of human rights and the moral standards governing responsibility for wrongs are being taken seriously.⁵ Realistically, re-building or re-affirming these moral standards or, even changing them because of the enormity of indiscriminate violence, is too difficult to establish unless the roots of violence are seriously tackled.

¹ Leif Wenar, 'Reparations for the Future' (2006) 37 *Journal of Social Philosophy* 396, 404-405.

² Walker (n 63) 220.

³ Ibid.

⁴ Walker (n 68) 122.

⁵ Ibid 122-123.

References

A. Young M, 'The Role of Victim Compensation in Rebuilding Victims' Lives' International Organization for Victim Assistance, 4 <
<https://www.iovahelp.org/About/MarleneAYoung/RoleOfVictComp.pdf>> accessed 6/7/2021.

Abdel Mawla T, Compensation for Physical Damages in Civil Law in terms of Jurisprudence and the Judiciary (Dar Alfikr and Law, Mansoura 2000).

Al-Anaibi F K, The Damage of Death and its Compensation: Comparative Study, (MSc thesis, University of Babylon 2007).

AL-Anaibi F, The Rights of Victims of Violence by None-State Actors in Iraq post-2003 (PhD thesis, Durham University 2018).

B. Hakeem F, M. R. Haberfeld and Verma A, 'The Concept of Punishment Under Sharia', in Farrukh B. Hakeem, M. R. Haberfeld and Arvind Verma, *Policing Muslim Communities: Comparative International Context* (Springer New York 2012).

Bassiouni C, 'International Recognition of Victims Rights' (2006) 6 *Human Rights Law Review* 203.

Cane P, Atiyah's Accidents Compensation and the Law (7th edn, Cambridge University Press 2006).

Danieli Y, 'Healing Aspects of Reparations and Reparative Justice for Victims of Crime against Humanity' in Jo-Ann M. Wemmers, *Reparation for Victims of Crimes Against Humanity: The Healing Role of Reparation* (Routledge 2014).

De Greiff P, 'Justice and Reparations' in Pablo De Greiff, *The Handbook of Reparations* (Oxford University Press 2006).

Doak J, Victim's Rights, Human rights and Criminal Justice: Preconceiving the Role of Third Parties (Hart Publishing 2008).

Feinberg J, The Moral Limits of the Criminal Law Volume 1: Harm to others (Oxford University Press 1987).

Hedley S, 'Death and Tort' in Belinda Brooks-Gordon et al, *Death Rites and Rights* (Hart Publication Ltd 2007).

Issacharoff S and Anna Mansfield A M, 'Compensation for the Victims of September 11' in Pablo De Greiff, *The Handbook of Reparations* (Oxford University Press 2006).

Doak J, 'Enriching Trial Justice for Crime Victims in Common Law System: Lessons from Transitional Environments' (2015) *International Review of Victimology* 1.

Khalifa M S, The Right to Life and Bodily Integrity: A Comparative Study of Civil and Islamic Law (Dar-Alnahda Arab, Cairo 1996).

M. Stern J, 'Defending Damages in Death Actions' (1997) 23 *Litigations* 45.

M. Wemmers J, 'Restoring Justice for Victims of Crimes against Humanity' in Jo-Ann M. Wemmers, *Reparation for Victims of Crimes Against Humanity: The Healing Role of Reparation* (Routledge 2014).

McMahan J, 'Death and the Value of Life', (1988) 99 *The University of Chicago Press* 32.

Mohammed Sharif I M, Physical Damage and Compensation in Tort: A Comparative Study (PhD thesis, University of Baghdad 2002).

Naji Yaqout M N, Compensation for the Loss of Life Expectancy: A Comparative Study in Civil Liability in Anglo-American law, the Egyptian and French law (Modern Arab printing press, 1980).

Partridge E, 'Posthumous Interests and Posthumous Respect' (1981) 91 *The University of Chicago Press* 243.

Price D, Property, Harm and the Corpse, in Belinda Brooks- Gordon et al, *Death Rites and Rights* (Hart Publication Ltd 2007).

R. Boxill B, 'The Morality of Reparation' (1972) 2 *Social Theory and Practice* 113.

Raz J, The Morality of Freedom (Oxford: Clarendon Press 1986).

Roht-Arriaza N, 'Reparations Decisions and Dilemmas' (2004) 27 *Hastings International and Comparative Law Review* 157.

Saul B, 'Compensation for Unlawful Death in International Law: A Focus on the Inter-American Court of Human Rights' (2004) 19 *American University International Law Review* 523.

Strange H, Justice for Victims of Young Offenders: The Centrality of Emotional Harm and Restoration, in Allison Morris and Gabrielle Maxwell, *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Hart Publishing 2001).

United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Proclaimed by General Assembly resolution 60/147 of 16 December 2005.

Urban Walker M, Moral Repair: Reconstructing Moral Relations after Wrongdoing (Cambridge University Press, 2006).

Walker M U, 'Moral Vulnerability and the Task of Reparations' in Catriona Mackenzie, Wendy Rogers and Susan Dodds, *Vulnerability: New Essays in Ethics and Feminist* (Oxford University Press 2013).

Walker M U, 'The Expressive Burden of Reparations: Putting Meaning into Money, Words, and Things' in Alice MacLachlan and Allen Speight, *Justice Responsibility and Reconciliation in the Wake of Conflict* (Springer, Netherlands 2013).

Walter Glannon W, 'Persons, Lives, and Posthumous Harms' (2001) 32 *Journal of Social Philosophy* 127.

Wenar L, 'Reparations for the Future' (2006) 37 *Journal of Social Philosophy* 396.

List of Cases

Hicks v Chief Constable of South Yorkshire Police [1992] 1 All ER 690 (CA).

Oliver v Ashman [1962] 2 QB 210 (CA).

Pickett v British Rail Engineering Ltd [1980] AC 136 (HL).

The Egyptian Court of Cassation decision No 1466 for the year 48 in 23.01.1981.

The Egyptian Court of Cassation decision No 3063 for the year 61 Q in 21/05/1997.

The Egyptian Court of Cassation decision No 352 for the year 31Q in 02/17/1966.

The Egyptian Court of Cassation decision No 4 for the year 43Q in 03/07/1974

The Egyptian Court of Cassation decision No 651 for the year 52 Q in 12/01/1986.