Crime and Compensation in North Africa
A Social Anthropology Essay

Yazid Ben Hounet
Foreword by John Comaroff
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Crime and Compensation. Both are historically labile, cultural-inflected constructs. Both are politically contentious social “facts”. Each is dialectically entailed in the other. Both have been with us, as “trouble” topics, since the dawn of modern anthropology: their ethnographic presence in the discipline begins with Malinowski’s epochal *Crime and Custom in Savage Society* (1926), tracks through Evans-Pritchard’s foundational *The Nuer* (1940), and moves beyond, into comparative legal studies, through Llewellyn and Hoebel’s realist classic, *The Cheyenne Way* (1941). What is more, they remain salient to such urgent issues of the present day as transitional justice, universal human rights, national truth-and-reconciliation processes, and reparations for historical harms, alike material and symbolic.

In this volume, Yazid Ben Hounet addresses the dialectic of crime and compensation in North Africa. His is both an historical anthropology and a conceptual reflection on the complex interplay between them. Compensation, in this context, has a deep history as a cultural practice. It is epitomised in the blood money (*diya*) conventionally tendered, among many Indigenous Peoples, in restitution for an act of deadly violence; tendered, that is, in order to prevent an equivalent retribution, a life for a life, as anthropological accounts have long told us. But what is the vernacular *meaning* of the practice, its enacted connotation? And how has it changed over time? Is it a gesture of submission, at once political and ritual, on the part of perpetrator/s to their victim/s, offered out of fear
of reprisal? Or, more pragmatically, is it the purchase of a life about to be taken? Is it itself a species of immanent violence, an unspoken threat to a victim’s people that its refusal would be an invitation to a tournament of blood-letting, to feud and fatality? Or is it just the opposite, a means of putting an end to a cycle of violence at the moment of its inevitable onset? This last set of Manichean choices, this either/or, echoes a debate about law itself: is it intrinsically violent, the silent means by which some human beings exercise dominance over others, or is it an instrument for the surcease of violence, a curb on the “natural” proclivity of humankind? Ben Hounet’s account of compensation opens up all these questions to broad-ranging scrutiny; all the more broad since he seeks to make sense of the phenomenon by putting its local manifestations in North Africa in conversation with national reconciliation initiatives. As it turns out, the two, the local and the national, are not unrelated in the troubled recent political history of Algeria, Morocco, and Sudan.

This is not easy. As it turns out, “compensation”, in the cultural repertoire/s of Euro-America—in which anthropology is irredeemably enmeshed—is a tricky, elusive signifier. It may refer, more or less synonymously, to a wage, an honorarium, an indemnity, a benefit, a reward, damages, restitution, a commission, an atonement; terms that do not all connote precisely the same thing. In psycho-speak, moreover, it is usually taken to be the “[conscious or unconscious] substitution or development of strength or capability…to offset [a] real or imagined deficiency”. And in politics, it invokes a quid pro quo, in which an illusion of equivalence is sustained to legitimise the practical arts of power brokerage. Given this broad, rather loose semantic range, the question of how to approach compensation, ethnographically and analytically, in contexts outside of Euro-America poses difficult problems of translation. This, as Ben Hounet notes, returns us to the hoary question, hotly debated in the 1960s, of the transitivity of “our” cultural concepts in making sense of “their” cultural practices. Unless one is to write of the latter purely in “their” vernacular—which negates any pretence of real transcultural

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11 Strictly speaking, in the business world, compensation usually covers both a wage and, if it is part of an employment contract, other financial benefits, such as retirement contributions, health care subsidies, and the like.

understanding—that problem is simply there, intractably. “Thick description” in the hermeneutic tradition maybe posited as something of a solution, but it leads away from anthropological theory towards literary non-fiction, albeit sometimes evocatively-rich, informative, and illuminating non-fiction. For his part, Ben Hounet, whose approach to the analysis of crime and compensation owes a great deal to the venerable traditions of legal realism and anthropological processualism, addresses the problem by working, very deliberately and inductively, from the vernacular to the conceptual, from facts and fictions “on the ground” to grounded theory. This is a useful strategy in the circumstances, one that makes a cogent methodological point. What, in North Africa, “they” see as an appropriate form of action in the wake of an act of violence, be it a payment of diya or something else, maybe translated into Anthropologese as “compensation” as long as it does not involve an equivalence—like a reciprocal killing. Compensation, in short, maybe taken to be the displacement of an immanent act of negative reciprocity (broadly speaking, vengeance) into the transaction of something that maybe construed positively. It is a tender of social and material value; potentially, in fact, capital to be invested in wealth in people and/or property. The harm done and the things restituted, of course, can never be strictly equivalent in actual, actuarial, or affective terms; a life, after all, is irreplaceable, a prized possession is not simply substituted by another of like kind. Indeed, in one sense, compensation is a symbolic practice that seeks to repair the irreparable, to redeem the irredeemable, to balance incommensurables. This, perhaps, explains why, in any given situation, its tender is prone to argument both before and after the fact—all the more so if it plays out a prior political script involving power relations among the parties concerned.

It is also why compensation sui generis is so open to contestation, whatever form it takes, whatever may motivate it. And why it is so liable to change as its lived forms are negotiated and renegotiated over time and across space—all the while retaining more than a trace of its long-standing cultural salience. This, Ben Hounet shows us, is as true of everyday life in many North African communities as it is of national processes of reconciliation and restitution, although the substance of the reparations tendered in each of those contexts may vary widely and maybe regarded in very different ways. These days in Algeria, Morocco, and Sudan, it appears, compensation, however it maybe translated, is widely perceived as a desirable and necessary form of sanction, albeit as a wholly insufficient one, by
the increasing number of people who see themselves as victims of violation of one sort of another. This, clearly, is a compelling reason to pay it carefully grounded anthropological attention, however elusive it maybe to conceptualise in theory.

But what of crime? With the recent renaissance of anthropological interest in the topic, the attention of the discipline has largely turned away from (more or less complex, more or less subtle) functionalist explanations. Instead, it has evinced an urge to deconstruct the concept, taking the term itself to refer to an assemblage of disparate phenomena rather than to a coherent, unitary one. The meaning and materiality of crime are everywhere imbricated in the play of power and legitimation, in the counterpoint of political economy and the semiotic ordering of the social world. And everywhere it is open to the cross-currents of history; to be sure, drawing the line between the legal and the illegal, like drawing the Schmittian line between friend and enemy, is one of the most critical features, and crucial entitlements, of sovereign authority. Theorising crime is not the focal issue of Ben Hounet’s concerns here. But his awareness of this post-functionalist take on the phenomenon lies quietly behind his context-sensitive approach to compensation. To the degree that crime-and-compensation, historically hyphenated, are caught up in the same labile vicissitudes of time and place, they demand to be treated together, each a condition of the other’s form and content.

And so we read on, into Crime and Compensation in Algeria, Morocco, and Sudan, past and present. What is to be found on the pages below is a deeply thoughtful reflection on the dialectic in which crime and compensation are caught up: on how vernacular cultural practices infuse thoroughly contemporary historical circumstances as they play themselves out in both local and national contexts, each impacting on the other. The ways in which violation—of persons, properties, rights, entitlements, of life and liberty and dignity—is to be restituted, how rupture is to be repaired, is the perennial stuff of politics, the perennial concern of civil society, the perennial substance of the law, here as elsewhere. Its grounded interrogation in North Africa, Yazid Ben Hounet makes plain, is acutely relevant to life across an increasingly fractious planet.

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CONTENTS

1 Introduction 1
   Bibliography 9

2 What Reconciling Means 11
   2.1 From the Ground up: Returning to a Local Perspective 14
   2.2 On Observation… 17
   2.3 … and on Comparison 20
   Bibliography 25

3 On Compensation 29
   3.1 Compensation (Blood Money) in Anthropology 32
   3.2 The Invention of “Customary Laws” and Blood Money 36
   3.3 A Law in Evolution or the Evolution of Law? 41
   Bibliography 46

4 Compensation in North Africa 49
   4.1 The Diya 51
   4.2 The Evolution and Adaptation of the Diya 57
   Bibliography 65

5 Punishing Crime 69
   5.1 On the Concept of Crime in Social Anthropology 70
   5.2 Crimes and Punishment 73
   5.3 Perception of Crime: On Intentionality 76
5.4 On Intentionality in Exceptional Circumstances: Armed Conflict 78
Bibliography 83

6 Repairing Crime 87
6.1 Universality and Degrees of Reparation 91
6.2 Compensation, Reparation, and Morality 97
6.3 Compensation... and Overlooking Individual Guilt and Responsibility 100
Bibliography 104

7 States and Mediators: Towards a New Reparation Paradigm 107
7.1 States and Mediators: Coercive Logics 108
7.2 A New Paradigm of Reparation? Individuals, Persons, and Trauma 116
7.3 How Can Trauma Be Compensated? 120
Bibliography 122

8 Conclusion 125
8.1 Expanding the Question: Death, forgiveness, and Dignity 129
Bibliography 133

Index 135
List of Tables

| Table 3.1 | Distribution of blood money (case 1)—Retrieved from Howell, p. 50 | 40 |
| Table 3.2 | Kitui Akamba Civil Sanctions Code—A. S. Diamond (1951: 115) | 43 |
| Table 6.1 | A summary of forms of reparation and propensities of acceptance of compensation | 103 |
CHAPTER 1

Introduction

**Abstract** As this twenty-first century took off, Algeria, Morocco, and North Sudan launched some much-publicised “reconciliation” policies, or, in the case of North Sudan, “pacification” policies. At the centre of these reconciliation and pacification mechanisms lies a practice, one that has been scarcely studied: (monetary) compensation for the crimes committed. How can compensation be implemented and accepted by the victims themselves and by society? Is compensation necessary, sufficient, admissible? How can compensation be implemented and accepted by the victims themselves and by society?

**Keywords** Compensation · Crime · Algeria · Morocco · Sudan

As this twenty-first century took off, Algeria, Morocco, and North Sudan launched some much-publicised “reconciliation” policies, or, in the case of North Sudan, “pacification” policies. Algeria, following its Clemency policy (1995) and Civil Concord Law (1999), held a referendum in 2005 and subsequently implemented the measures of its Charter for Peace and National Reconciliation. This Charter is Algeria’s latest policy aimed at settling the accounts of a murderous decade (1990s) between the state and armed Islamic groups. In Morocco, an arbitration committee was
set up in 1999, followed by the Equity and Reconciliation Commission in 2004 to turn the page on the “Years of Lead” (a period during the rule of King Hassan II) during which state crimes were committed (torture, imprisonment, murder, etc.). Finally, in Sudan (North Sudan since 2011) peace negotiations unfolded in 1989 and a peace process has been ongoing since 2005 aimed to resolve violent conflicts, fighting, and war crimes that are shaking Darfur and North Kordofan. At the centre of these reconciliation and pacification mechanisms lies a practice, one that has been scarcely studied: (monetary) compensation for the crimes committed.

I have been conducting research in these three countries for several years now and I hope that this work, grounded in fieldwork in North Africa, will provide the reader with insights into the subject. What are the various meanings of the concept of compensation when directed towards repairing crime? Is compensation necessary, sufficient, admissible? How can compensation be implemented and accepted by the victims themselves and by society? Raising these questions naturally leads us to discuss the concepts of crime, punishment, reparation, and reconciliation. We are brought to examine how these notions are apprehended today in these three North African countries and how they were understood in the past.

The form of an “essay” was chosen for this work for three major reasons. First, the subject does not lend itself very well to long-term ethnography: not only is the issue a painful one, but certain taboos exist around compensatory and financial measures. Families are reluctant to approach the subject of crime and even more disinclined to talk about compensation, the acceptance of which can sometimes feel as a form of betrayal. Furthermore, though I have conducted my own investigations on the subject, this work also draws on studies by other researchers. A few years ago, Paul Dresch, an anthropologist specialising in Yemen and an Oxford University professor, explained to me how exceedingly difficult it was for him, throughout his inquiries, to understand the transactions related to blood money (diya in Arabic) in Yemeni tribes. Who exactly contributed to blood money? Who received it? Through which channels? I was able to witness these obstacles myself. For almost ten years, I attempted in fits and starts to collect data and information on compensatory measures in North Africa. In fact, the anthropological literature on the question is relatively poor from an ethnographic viewpoint, despite a few references to the use of blood money (i.e. compensation in cases of crime or serious bodily harm). Blood money is a particularly