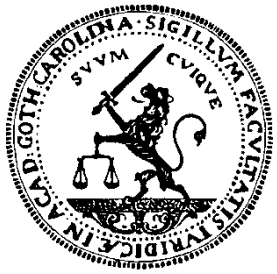

FACULTY OF LAW
Lund University

Joseph Goss

Grasshoppers Rather Than Ants?

Ideal Victims, Just-World Belief and the Reduction of Victim Compensation in Swedish Law

JURM02 Graduate Thesis

Graduate Thesis, Master of Laws program
30 higher education credits

Supervisor: Tova Bennet

Semester of graduation: Period 1 Autumn semester 2019

Contents

Summary

Monetary compensation to victims of crime can take different forms and be paid by different actors. The rules for calculating the compensation sometimes mandate reduction of the amount awarded for various reasons. This reduction can potentially be experienced by victims as a "secondary victimisation". In the present work, the factors behind reduction of victim compensation in Swedish law and what they suggest about the law's view of the victim are explored.

The author employs a variety of methodological approaches throughout the work. Established law on the reduction of damages, criminal injuries compensation and compensation under the Payment Services Act is determined through legal dogmatics. The legislative history of these rules as described in the parliamentary records is uncovered via a combination of legal historic and legal genetic approaches. The author uses two partially contrasting and partially complementary theoretical models from outside the legal field to analyse and discuss the rules on compensation reduction and their history.

First of these models is Christie's theory of the ideal victim, a classic in victimology which describes how victims exhibiting certain stereotypical characteristics match societal expectations of the victim and are thus more likely to receive support from others. The second model is Lerner's just-world hypothesis, a socio-psychological theory which provides an explanation for why some seemingly innocent victims are met with negative societal reactions. The author finds similarities between both models and the legal rules, but, perhaps unsurprisingly, markedly larger support for Christie's theory.

Three main factors behind victim compensation reduction in Swedish law are identified: the victim's moral standing, their causal connection to the crime, and their financial situation. Of these, the author deems causality the most significant factor today, whereas finances has been important historically. This suggests that a lack of causal contribution to the crime is a crucial aspect of the law's conception of the victim of crime.

Sammanfattning

Ekonomisk ersättning till brottsoffer kan ta olika former och betalas av olika aktörer. De regler som avgör ersättningens storlek föreskriver ibland jämkning eller sänkning av beloppet på diverse grunder. Denna jämkning kan av brottsoffer potentiellt upplevas som en "sekundär viktimisering". I detta arbete kartläggs grunderna för jämkning av ersättning till brottsoffer i svensk rätt och analyseras vad de antyder om rättens inställning till brottsoffer.

Författaren använder ett antal metodologiska angreppsätt i arbetet. Gällande rätt angående jämkning av skadestånd, jämkning av brottsskadeersättning och sänkning av ersättning enligt betaltjänstlagen bestäms rättsdogmatiskt. Reglernas bakgrund som den beskrivs i riksdagstrycket undersöks genom en kombination av rättshistoriska och rättsgenetiska metoder. Författaren tar två delvis kontrasterande och delvis kompletterande teoretiska modeller utanför rättsvetenskapen till hjälp för att analysera och diskutera reglerna om jämkning av ersättning och reglernas bakgrund.

Den första av dessa modeller är Christies teori om det ideala offret, en viktimologisk klassiker som beskriver hur offer med vissa stereotypa drag överensstämmer med samhälleliga förväntningar på offret och därmed mer sannolikt kommer att få stöd av andra. Den andra modellen är Lerners hypotes om en rättvis värld, en socialpsykologisk teori som ger en förklaring till varför vissa till synes oskyldiga offer bemöts negativt av andra. Författaren ser likheter mellan båda modellerna och rättsreglerna, men hittar, kanske som förväntat, tydligt större stöd för Christies teori.

Tre huvudsakliga faktorer bakom jämkning av ersättning till brottsoffer i svensk rätt identifieras: offrets moraliska ställning, offrets kausala samband med brottet, och offrets ekonomiska situation. Av dessa bedömer författaren kausalitet som den viktigaste faktorn idag, samtidigt som ekonomiska förhållanden haft stor betydelse historiskt. Detta tyder på att avsaknad av orsakssamband mellan brottsoffrets beteende och brottet är en avgörande del av rättens inställning till brottsoffret.

Abbreviations

bet.	utskottsbetänkande
CU	civilutskottet
dir.	kommittédirektiv
Ds	Departementsserien
edn	edition
ed(s)	editor(s)
et al	and others
EC	European Community
EU	European Union
INTERVICT	International Victimology Institute at Tilburg University
JT	Juridisk Tidskrift
JuU	justitieutskottet
KPI	konsumentprisindex
KU	konstitutionsutskottet
LU	lagutskottet
m. m.	med mera
mot.	motion
NJA	Nytt juridiskt arkiv
no	number
PhD	Doctor of Philosophy
PIN	personal identification number
prop.	proposition
rskr.	riksdagsskrivelse
s.	sida
SEK	Swedish krona
SFS	Svensk författningssamling
SOU	Statens offentliga utredningar
Su	statsutskottet
SvJT	Svensk Juristtidning
Sw.	Swedish
TfR	Tidsskrift for Rettsvitenskap
USC	United States Code
vol	volume

1. Introduction[1]

The Swedish Government stated in a 2014 bill that providing victims of crime with "financial compensation and reparation is a significant part of the work to reduce the harmful effects of crime".[2] Crime victims "must be acknowledged and know society to be on their side".[3] Victim compensation can take a variety of forms: damages from the perpetrator, criminal injuries compensation from the state, payments from public or private insurance, and so on.

Calculating the appropriate compensation is often a complicated matter, as is constructing and interpreting the legal provisions for the calculation. The present text deals with a particular issue sometimes raised in these situations: the downward adjustment of the victim's compensation. The law can prescribe such reduction on different grounds. Examples from Swedish legal history include the victim's contribution to their own victimisation and their financial situation.[4] Reduction of awarded compensation can, in the words of Ruth Mannelqvist, be experienced as a "secondary victimisation".[5] Thus, the stakes in reducing the victim's compensation are high. It is therefore worthwhile to explore the how and, to the extent it is possible, why of compensation reduction.

The purpose of this thesis is to serve as part of such an exploration by examining under what conditions Swedish law prescribes reduction of compensation to victims of crime and what this suggests about the law's conception of victimhood. I do this by studying the current Swedish rules for compensation reduction, as well as their legislative history, with two theoretical models, describing reactions to victims, as supporting analytical devices. The models are Nils Christie's *ideal victim* theory[6] and Melvin J Lerner's *just-world* hypothesis.[7] The just-world hypothesis is a theory in the field of social psychology concerning how people manage their perception of suffering in the world, while the ideal victim model is a victimological theory of the social definition of the victim. The idea is that using these models as a

[1] The title *Grasshoppers Rather Than Ants?* refers to a children's fable, as related in Melvin J Lerner, *The Belief in a Just World* (Plenum Press 1980) 13. In the tale, the diligent ant saves supplies during the summer while the indulgent grasshopper only lives for the day and ends up hungry and cold when winter comes. Lerner points to this fable as emblematic of a societal understanding of suffering as deserved and just.
[2] Prop. 2013/14:94 17. Author's translation.
[3] Prop. 2013/14:94 17.
[4] See below in section 4.2.
[5] See Ruth Mannelqvist, 'Brottsoffers möjlighet till upprättelse och kompensation vid kränkning' (*JT* 2006) 808.
[6] See Nils Christie, 'The Ideal Victim' in Ezzat A Fattah (ed), *From Crime Policy to Victim Policy* (Palgrave Macmillan 1986).
[7] See Lerner (1980).

framework for analysing and understanding the rules on compensation reduction can illustrate new or less studied aspects of the rules.

1.1. Research Questions and Scope

The overarching research questions employed in the thesis read as follows.

- **What factors determine whether the monetary compensation to victims of crime is to be reduced under Swedish law?**
- **What do the factors behind victim compensation reduction suggest about the conception of the victim of crime in Swedish law?**

The first question is designed to enable a comprehensive study of compensation reduction in Swedish law. While its constituent terms will be defined in the following, I would like to note at this early stage that the question allows both for detailed responses, on the level of strict analysis of isolated legal provisions, and generalised conclusions about the wider legal system. "Factors" thus covers both specific legal facts which are grounds for compensation reduction and the categories these facts imply when generalised. The second question operates solely on the level of generalisation: an attempt at further synthesising the source material into an overall assessment of the law's position in relation to victims of crime. The reasoning here is that the grounds for victim compensation reduction are revelatory about how the law sees victims of crime in general.

The forms of victim compensation directly covered in this work are damages, criminal injuries compensation (Sw. *brottsskadeersättning*) and a special compensation scheme established by the Payment Services Act (Sw. *lagen om betaltjänster)*. Tort law is an obvious choice for this study, as it is fundamental to the entire system of compensation. Criminal injuries compensation is a general scheme of major practical importance (payouts currently average roughly 100 million SEK per annum)[8] and is illustrative of how tort law principles are applied when payments are funded by the taxpayer. Compensation under the Payment Services Act is both a current issue[9] and an interesting counterpart to the other forms of compensation as it is not explicitly based on tort law principles. Collectively, these forms of compensation apply in a wide range of circumstances.

The major compensation system not covered in this work is insurance, both public and private. As for the former, examining, for instance, reduction of

[8] See Brottsoffermyndigheten, *Brottsoffermyndighetens årsredovisning 2018* (2019, www.brottsoffermyndigheten.se/default.aspx?id=13119, accessed 2019-11-27) 9.
[9] See Mattias Dellert, 'Nytt beslut: Bankerna kan bli skyldiga att betala om Bank-id kapas' (*SVT Nyheter* 2018, www.svt.se/nyheter/inrikes/privatpersoner-kan-fa-sta-for-hela-beloppet-om-bank-id-kapas, accessed 2019-12-05) and Johan Ronge, 'Man blev av med 120 000 i bluffen – får ingen ersättning' (*Expressen* 2018, www.expressen.se/dinapengar/far-inte-en-krona-efter-misstaget-med-bank-id-, accessed 2019-12-05).

government disability insurance to a victim chronically injured by a criminal act would not yield any results in this context beyond the observation that the calculation of benefits does not take into account the victim's contribution to their injury.[10] Private insurance is an area largely regulated by contracts, thus being of a different kind than the forms of compensation covered here.[11]

I solely consider compensation to natural persons. Analysing compensation involving legal persons would add an unnecessary layer of complexity. Such a study could however provide an interesting future counterpart to the present text. In addition, I only cover the general rules for compensation and its reduction, avoiding special regulations concerning children, the mentally ill, employers, and so on. I do not discriminate among various categories of crime. Compensation for offences against the person and property are both included as long as there is at least one individual victim with a possible right to compensation.

1.2. Methodology and Source Material

This section covers the overall methodology of the research project and this is where I justify the overarching selection of method and material. The following three chapters feature additional discussion on the specific methodological and source material choices relevant to that chapter.

The fundamental methodological assertion underpinning the present text is that relating legal rules about victim compensation to non-legal theories of social and psychological reactions to victimisations can provide something of value. As an application of the ideal victim and just-world models to the law and its history, I consider this research project to exist at the boundaries of traditional Nordic legal scholarship. Gothenburg University law professor Eva-Maria Svensson describes the current legal dogmatic mainstream in Swedish legal research as a compromise between normative and realist understandings of the law.[12] The point of departure of this text, both theoretically and practically, is that compromise. Not only because a legal dogmatic study forms a significant portion of the text, but also because it is precisely in the tension between normative and realist views that inserting non-legal theories serves a crucial function. When law is conceptualised solely as a system of disembodied norms, analysing them by way of sociological and, in particular, socio-psychological theories is of limited value. If law is conceptualised as nothing but what certain legal actors do, the generalising

[10] See Chapter 34–35 of the Swedish Social Insurance Code. This is not to say that the rules of social welfare systems are irrelevant to this research project, as is discussed below.
[11] Contract law can also be used to supersede the rules on damages through a settlement. The difference in kind between damages and insurance nonetheless remains, since the right to damages exists independently of any contract.
[12] See Eva-Maria Svensson, 'Boundary-work in legal scholarship' in Åsa Gunnarsson, Eva-Maria Svensson and Margaret Davies (eds), *Exploiting the limits of law* (Ashgate Publishing 2007) 27.

quality of such theories is largely lost.[13] In the space between these extreme positions, there is a place for my transplantation of the ideal victim and just-world models onto the law.

The primary source material of this thesis is current, established Swedish law on compensation reduction. Methodologically speaking, I use two separate, but intertwined, approaches to these rules. The first is, as alluded to above, traditional legal dogmatics.[14] By consulting the authoritative sources of law (primarily legislation, precedent from the higher courts and preparatory works) and analysing and interpreting them as generally accepted, I describe and systematise the law as it stands at the time of writing.[15] For the present purposes, however, this is necessary, but not sufficient. One reason for this is internal to the strict legal questions. Cases under the rules here analysed are rarely tried by the Supreme Court: indeed, when it comes to criminal injuries compensation, they cannot be.[16] Thus, a wider understanding of what forms precedent and by extension established law is required. Here, that means considering the decisions of quasi-judicial bodies such as the Committee for Criminal Injuries Compensation and the National Board for Consumer Disputes.[17]

The second reason for why a strict legal dogmatic analysis is insufficient is a more definitive departure from traditional Swedish legal scholarship. Exploiting this tradition's aforementioned tension between the normative and realist viewpoints, I introduce the ideal victim and just-world models into the analysis. Their function here is that they provide potential explanations for widely differing responses to victims. At one extreme, the just-world model predicts that the more seemingly innocent the victim, the more they will be blamed for their circumstances under certain conditions. At the other end, the ideal victim model would suggest that perceived innocence makes the victim a more genuine victim, and so less blameworthy. This contrast between the responses to victims predicted by the models has been noted in recent victimology.[18]

Thus, in conjunction with the legal dogmatic analysis, I also search for indicators of the law reflecting either an ideal victim or just-world view of the victim. The purpose of this analysis is not to proffer the processes described by either model as a causal explanation for the configuration of the law or to

[13] See Svensson (2007) 25–31 for further discussion of the underlying issues.
[14] See Claes Sandgren, *Rättsvetenskap för uppsatsförfattare* (3rd edn, Norstedts juridik 2015) 43–45.
[15] See Jan Kleineman, 'Rättsdogmatisk metod' in Maria Nääv and Mauro Zamboni (eds), *Juridisk metodlära* (2nd edn, Studentlitteratur 2018) 21–22.
[16] See Article 24 of the Criminal Injuries Compensation Act, according to which the relevant decisions cannot be appealed to the Supreme Court.
[17] See below in section 3.1.
[18] See Antony Pemberton, 'Dangerous Victimology: My lessons learned from Nils Christie' (*Temida* 2016) 264.

use the law as a test of the validity of the models. Instead, the models are used as supporting analytical devices in an attempt to enhance understanding of the law. The picture of the models is nuanced in the next chapter and I provide arguments throughout the text for why certain aspects of the legal rules and their legislative history resemble the models' predicted victim responses. Some examples of such indicators are also appropriate here. A finding which would support the argument that the law has similarities to the ideal victim model's predicted response to victims could be that having taken reasonable precautions against criminal injury is necessary to receive full compensation. An indicator that the law is closer to the just-world response would be that victims who appear to have done nothing to increase their risk of injury are treated less favourably than others. I consider this approach an implementation of the so called legal analytic method,[19] as I utilise theories and findings from other academic disciplines to further our understanding of the law.

But even with this extended analysis, there is still one component missing: a second legal point of reference. While damages, criminal injuries compensation, and compensation under the Payment Services Act are separate schemes, they are all still closely interrelated as part of the overall current Swedish victim support system. To truly fulfil the purpose of this project, I need material which can shine light on the alternative ways of constructing such a system. One potentially fruitful category of material could be foreign law. A comparative study is, however, not the path I have chosen. Instead, I have examined the history of the aforementioned compensation schemes through the lens of their legislative history. This approach goes one step beyond the legal dogmatic analysis described above in that I incorporate a wider range of parliamentary records, both temporally and substantively. I trace the roots of the compensation schemes to their legislative origins, focusing on the reduction rules but also relating the legislative context of the schemes at large. I generally avoid reaching beyond sources in the official records to keep the study limited. This part of the research project can be labelled as a combination of legal historic and legal genetic approaches.[20] As with the legal dogmatic study, I provide concurrent analysis on the basis of the just-world and ideal victim models.

The methodology of the final analysis is an attempt to draw on all the aforementioned pieces to achieve generalised conclusions. Claes Sandgren has lamented the lack of generalisation and theorising about the content of law in Swedish legal scholarship.[21] In line with his arguments, I use the findings from the analyses in the rest of the text to formulate general responses to the research questions. This could have been done without the theoretical models.

[19] See Sandgren (2015) 45–47.
[20] See Hannu Tapani Klami, *Föreläsningar över juridikens metodlära* (2nd edn, Iustus Förlag 1989) 115.
[21] See Claes Sandgren, 'Om teoribildning och rättsvetenskap' (*JT* 2004).

Indeed, not even the legal historic–genetic study is strictly necessary: it is possible and legitimate to make generalisations on the basis of only a legal dogmatic analysis.[22] However, the range of material here reviewed allows for more substantiated generalisations.

1.3. Terminology

In this section I provide definitions for some of the words and concepts frequently used in the text. Unless otherwise noted, the translations from Swedish are made according to the official glossary of the Swedish courts.[23]

Article One, Chapter One of the Penal Code (Sw. *brottsbalken*) gives a simple definition of a crime: an act which is punishable under the law.[24] *Victim* is a surprisingly difficult concept to define, even in the context of victims of crime. Swedish law lacks an authoritative definition of the victim of crime.[25] An adaption of the definition established by American federal law will serve as a working definition: "a person directly and proximately harmed as a result of the commission of a [crime]".[26] *Victimisation* requires the same legal conditions as "crime", however, I use it to emphasise the experience of the victim rather than the events as seen by an observer or the perpetrator.

Compensation is here defined as an amount of money to be awarded to a victim as a consequence of a crime. *Reduction* means that the law first establishes a general right to compensation and rules for its calculation, but this amount is under certain circumstances to be lowered or even eliminated completely. A form of reduction which fits this definition, but which I will nonetheless ignore in the following, is the administrative reduction of criminal injuries compensation, constructed as a deductible.

Finally, I use the words *idea* and *conception* to refer to shared mental representations of abstract concepts which can be reflected in a mass of legal rules.

1.4. Previous Research

To my knowledge, there is no other study with an approach identical to this one. But the intersection of victimology and law has been an emerging area of research for a few decades, and this research collectively gives the present thesis a solid foundation.

---

[22] See Sandgren (2004) 316.
[23] See Domstolsverket, *Svensk-engelsk ordlista* (2018, 5th edn, www.domstol.se/globalassets/filer/gemensamt-innehall/for-professionella-aktorer/svensk-engelsk_ordlista_2019.pdf, accessed 2019-12-02).
[24] Punishment here refers to incarceration and fines, see Article Three, Chapter One of the Penal Code.
[25] See Görel Granström and Ruth Mannelqvist, *Brottsoffer* (Studentlitteratur 2016) 21.
[26] Crime Victims' Rights Act of 2004, 18 USC §3771.

A centrepiece of that research has been produced at the International Victimology Institute at Tilburg University (INTERVICT).[27] For the present purposes, the work of Antony Pemberton as it pertains to ideal victim theory and just-world belief is perhaps the most crucial. Pemberton has supported the idea of the continuing victimological relevance of the two models,[28] while also relating them to each other and criticising both.[29] Writings by INTERVICT Research Fellow David Miers are also highly relevant as background and inspiration for this project. Miers has discussed how Christie's ideal victim theory matches the system's conditions for full compensation and how perceived blamelessness is a central tenet of the system's conception of victimhood.[30]

The main contribution to research into law and victimology in Swedish academia comes from the 2003–2007 project *Brottsoffer i rättsväsendet* (ca. "Victims of crime in the legal system") and subsequent research led by Görel Granström.[31] It is within this project that Ruth Mannelqvist has argued that provisions in Swedish law allowing reduction of compensation to victims of crime can be experienced as a secondary victimisation.[32] She also identified similar inadequacies in the coordination of the various systems for compensation.[33] Mannelqvist and Granström has argued for wider application of victimological perspectives in legal research, especially with regards to victim compensation.[34] The two researchers emphasised the vindicatory function of compensation and called for further studies into how the rules for reduction might affect this, not only to reveal systemic inconsistencies but

[27] See Tilburg University, 'About INTERVICT.' (2019, www.tilburguniversity.edu/research/institutes-and-research-groups/intervict/about, accessed 2019-10-28).
[28] See Antony Pemberton, 'Just-world victimology: revisiting Lerner in the study of victims of crime' in Hidemichi Morosawa, John Dussich and Gerd Ferdinand Kirchhoff (eds), *Victimology and human security* (Wolf Legal Publishers 2012) 46 and Pemberton (2016) 258.
[29] See Pemberton (2012) 54 and Pemberton (2016) 264.
[30] See David Miers, 'Looking beyond Great Britain: the development of criminal injuries compensation' in Sandra Walklate (ed), *Handbook of Victims and Victimology* (Routledge 2007). He has also studied victim compensation elsewhere, see David Miers, 'Taking the Law into their Own Hands: Victims as Offenders' in Adam Crawford and Jo Goodey (eds), *Integrating a Victim Perspective Within Criminal Justice* (Ashgate Publishing 2000) and David Miers, *Criminal Injuries Compensation* (Oxford University Press 2018).
[31] See Umeå universitet, 'Brottsoffer i rättsväsendet', (2019, www.umu.se/forskning/grupper/brottsoffer-i-rattsvasendet, accessed 2019-10-16).
[32] See Mannelqvist (*JT* 2006) 808.
[33] See Ruth Mannelqvist, 'Ersättningar till brottsoffer – samverkan eller kollision?' (*SvJT* 2006) 396.
[34] See Görel Granström and Ruth Mannelqvist, 'Rättsvetenskap och viktimologi' (*JT* 2007) 36.

also to increase awareness about the consequences of the criminal justice system for victims.[35]

Unrelated to the Umeå project, Karl Dahlstrand's 2012 dissertation provides an interesting empirical perspective on the Swedish public's willingness to calculate appropriate amounts to compensate for various criminal injuries.[36] A comprehensive overview of the relation between the victim of crime and the Swedish criminal justice system can be found in Magnus Lindgren's 2004 dissertation.[37] In a recent development, 2019's *Victim Support and the Welfare State* by Carina Gallo and Karin Svensson provides a compelling case study of the Swedish history of crime victim support.[38]

While the Swedish literature on victimology and law is relatively meagre, the traditional legal writing at Sweden's law faculties on victim compensation and its reduction has been extensive. The rules have been covered in detail by among others Jan Hellner and Marcus Radetzki as well as Bertil Bengtsson and Erland Strömbäck (damages in general),[39] Sandra Friberg (damages for violation of personal integrity)[40], and Anders Dereborg and Ann-Christine Lindeblad (criminal injuries compensation).[41] Theoretically significant work on damages for violation of personal integrity[42] and on criminals' right to compensation when they are victims of crime themselves has been carried out by Mårten Schultz.[43]

I would place this research project within the tradition of Granström and Mannelqvist as a response to their request for further examination of victim compensation from a victimological perspective. While I have opted to write this thesis not from a strict victim viewpoint but instead have taken a more theoretical position, I believe that my approach can still serve the two purposes suggested by Granström and Mannelqvist: revealing inconsistencies in the law and raising the legal community's awareness of the victim's experience in the criminal justice system.

---

[35] See Granström–Mannelqvist (2007) 35–36.
[36] See Karl Dahlstrand, *Kränkning och upprättelse* (Lund University 2012) 247–255.
[37] See Magnus Lindgren, *Brottsoffer i rättsprocessen* (Stockholm University 2004).
[38] See Carina Gallo and Karin Svensson, *Victim Support and the Welfare State* (Routledge 2019).
[39] See Jan Hellner and Marcus Radetzki, *Skadeståndsrätt* (10th ed, Norstedts juridik 2018) and Bertil Bengtsson and Erland Strömbäck, *Skadeståndslagen* (6th ed, Norstedts Juridik 2018).
[40] See Sandra Friberg, *Kränkningsersättning* (Uppsala University 2010).
[41] See Anders Dereborg and Ann-Christine Lindeblad, *Brottsskadelagen (2014:322)* (Norstedts juridik 2018).
[42] See Mårten Schultz, *Kränkning* (Jure Förlag 2008).
[43] See Mårten Schultz,"'Brottslingar förtjänar inte skadeståndsrättens skydd"' (*SvJT* 2007).

1.5. Structure of the Text

A theoretical chapter covering the ideal victim and just-world models follows upon this introduction. As I utilise the models to provide analysis and discussion throughout the text, this placement is inevitable. Chapter Three features overview and analysis of Swedish law on compensation reduction as it stands at the time of writing. This means that the text is achronical, as my retrospective on the legislative history of compensation reduction comes first in Chapter Four. There are two main reasons for presenting the material in this order. First, it naturally gives the reader who is unfamiliar with the legal matters at hand a more forgiving framework for understanding them. Second, placing the history after the present allows for a more integrated argument throughout the text, as this is primarily an exploration of the current state of affairs. Thus, this structure enables some preliminary conclusions to be drawn already after the third chapter. The main discussion of the results is, nonetheless, saved for the fifth and final chapter of the text.

2. Responding to Victims

In this second chapter I present my two selected theoretical models for victim responses. I discuss and justify the choice of the ideal victim model and the just-world hypothesis in the first section and describe their details later in the chapter. The final section features a summarising discussion.

2.1. Methodological Issues: Selecting Appropriate Models

The approach to the legal source material of this thesis necessitates the utilisation of theory from beyond the strict confines of the legal field. If possible the theories selected should serve to illuminate patterns in the law otherwise obscured.[44] The determination of the most appropriate theoretical models for this task inevitably involves a degree of subjectivity. I will in the following provide a very brief summary of the models and explain why I have selected these models and not potential alternatives.

The first model is the *ideal victim* model introduced by sociologist–criminologist Nils Christie in 1986.[45] Christie's main claim is that victims exhibiting certain stereotypical characteristics, such as being weak and morally unimpeachable, are considered more "authentic" victims. Thus, they are more likely to, for instance, receive government assistance. The second model is the *just-world hypothesis*, first proposed by social psychologists Melvin J Lerner and Carolyn H Simmons in 1966.[46] The fundamental idea is that people in general, at a basic level, interpret their lived experiences by assuming that people "get what they deserve".[47] Conversely, they deserve what they get, an attitude which under certain circumstances can produce seemingly absurd negative reactions to persons experiencing undeserved suffering.

A primary consideration for me in the selection of models has been their scope: they must be neither too broad nor too specific, easily applicable to victims of crime but not so narrow that they lack the power to illustrate the wider attitudes here studied. Models excluded on the first ground include general theories of ethics, such as Aristotle's twin concepts of distributive and compensatory justice.[48] Among the models I have considered too specific are

---

[44] For similar approaches, see Anna Christensen, 'Skydd för etablerad position – ett normativt grundmönster' (*TfR* 1996) and Kaarlo Tuori, *Critical Legal Positivism* (Ashgate Publishing 2002).
[45] See Christie (1986).
[46] See Melvin J Lerner and Carolyn H Simmons, 'Observer's Reaction to the "Innocent Victim": Compassion or Rejection?' *(Journal of Personality and Social Psychology* 1966).
[47] Lerner (1980) 11.
[48] For a discussion of Aristotelean justice and Swedish law on compensation, see Karl Dahlstrand, 'Ersättning för kränkning ur ett rättssociologiskt perspektiv. "En särskild

those dealing with certain groups of victims of crime. Another crucial parameter is, naturally, the quality or the explanatory power of the models. If this had been an empirical study, this could have been the end goal of the entire project: what model best explains the data? However, as noted by Sandgren, the strength of legal scholarship is usually in providing understanding, not explanation.[49] Accordingly, I do not test the models as hypotheses. Rather, I try to understand the law in light of them. To this end, I have selected models which other researchers have found useful: theories with proven impact. The work of Lerner and Simmons on the just-world hypothesis has been described as "groundbreaking"[50] and the theory has been of "continuing interest"[51] in research. Christie's model, meanwhile, has received accolades such as "remarkable and groundbreaking"[52] and "of great importance".[53]

But these are obviously not the only theories on the subject with an appropriate scope and detectable impact. The victim typologies of the pioneering victimologists[54] and the "rebellious victim" of modern Swedish victimology[55] both fit this description. I believe, however, the just-world hypothesis and the ideal victim model to be the optimal choices for this project as they are simultaneously contrasting and complementary. They predict virtually opposite reactions to "innocent" or "undeserving" victims under certain conditions. At the same time I believe that they can function together in the study of the law as rule and exception: as primary and secondary hypothesis. As a preliminary common-sense observation, I think most people would expect Christie's "ideal victims" to receive full compensation. For the instances where that is not the case, however, the counterintuitive findings of just-world scholarship might provide a way forward.[56]

---

typ av omtanke och kärlek"' in Claes Lernestedt and Henrik Tham (eds), *Brottsoffret och kriminalpolitiken* (Norstedts juridik 2011).

[49] See Sandgren (2015) 17.

[50] Carolyn L Hafer and Laurent Begué, 'Experimental Research on Just-World Theory: Problems, Developments and Future Challenges' (*Psychological Bulletin* 2005) 128.

[51] Adrian Furnham, 'Belief in a just world: research progress over the past decade' (*Personality and Individual Differences* 2003) 812.

[52] David Scott, 'Foreword: thinking beyond the ideal' in Marian Duggan (ed), *Revisiting the 'ideal victim'* (Policy Press 2016) xiv.

[53] Granström–Mannelqvist (2016) 11.

[54] See Hans von Hentig, *The Criminal and His Victim* (Yale University Press 1948). and Stephen Schafer, *The Victim and His Criminal* (Random House 1968).

[55] See Malin Åkerström and Ingrid Sahlin, *Det motspänstiga offret* (Studentlitteratur 2001).

[56] For a similar argument, see Alice Bosma, Eva Mulder and Antony Pemberton, 'The ideal victim through other(s´) eyes' in Marian Duggan (ed), *Revisiting the 'ideal victim'* (Policy Press 2018) 32–35.

2.2. The Ideal Victim Model

Nils Christie was a sociologist and professor of criminology at the law faculty of the University of Oslo and has been called "doyen of Norwegian criminology".[57] In 1986, Christie contributed a chapter, titled 'The Ideal Victim', to an anthology on criminal justice policy.

2.2.1. Main characteristics and relevance

In 'The Ideal Victim', Christie sets out to explore the sociology of the definition of victimhood: those characteristics that result in a person or a group being perceived as an ideal victim by society at large.[58] The example used in the text is that of an old lady, on her way home from a visit to her sickly sister, being violently robbed at midday by a strong man who uses her money to buy drugs.[59] Christie reinforces this image by providing an example of a "far from ideal victim": the young man at a bar who is beat up and robbed by an acquaintance. While Christie stresses that these are examples from his own culture, he undoubtedly considered the attributes in their general form widely applicable. The first five characteristics for ideal victim status listed are:

1. The victim is a weak person (or group).
2. The victim was doing something morally unquestionable, or even commendable, at the time of the crime.
3. The victim had taken reasonable precautions to avoid being victimised.
4. The offender is morally corrupt and stronger than the victim.
5. The victim and the offender had no prior relationship.[60]

Following a discussion on the developing views of women in various roles as ideal victims, Christie adds a sixth condition:

6. The victim has enough power to call attention to themselves and must be able to "claim the status of an ideal victim".[61]

The apparent contradiction between the first and sixth conditions is acknowledged in the text. Christie argues that an ideal victim must be so powerful that they are listened to by others, while at the same time being so weak as not to threaten other important interests.[62] Two abstract examples of the "non-ideal victim" are introduced to further this point: the *witch* and the *worker*.

---

[57] Ragnvald Kalleberg, 'Nils Christie' (2015, *Norsk biografisk leksikon*, www.nbl.snl.no/nils_christie, accessed 2019-10-15).
[58] See Christie (1986) 18.
[59] See Christie (1986) 18.
[60] See Christie (1986) 19.
[61] Christie (1986) 20.
[62] See Christie (1986) 20.

Regarding witches as non-ideal victims, Christie claims that while old women are today often ideal for victimhood, in Medieval societies they were not. Because of their important role in various stages of life (birth, sickness, and so on), older women had more power and agency than in the modern world. They had enough power, according to Christie, as to not receive the status of ideal victims, ultimately resulting in the witch-hunts.[63] As for the workers, they are characterised as non-ideal because they are "ignorant" victims without personalised offenders. Society in general and the education system in particular is, in Christie's view, set up against the working class, but no one individual bears responsibility for this situation. Thus, the continuous failures (educational, material, and so on) of workers lead them to consider themselves "losers", not victims, and they are unable to claim ideal victim status.[64]

The relevance of ideal victim theory in relation to the law on victim compensation is clear almost to the point of explicit. If appeals to natural law are avoided and the law is considered a human creation, a good "sociological definition" of victimhood should correspond quite well with the legal definition.[65] Of course, a direct translation from theoretical sociological markers to legal conditions would be inappropriate in many cases. But, for example, the requirement of the victim having taken reasonable precautions against crime will below be shown to often be a crucial aspect when determining whether full compensation should be awarded to them. And the more abstract conditions of Christie's theory, such as the victim being "appropriately strong", could potentially manifest itself in, for instance, which categories of victims legislation and case law actually deal with.

In its original expression the ideal victim model relied more or less entirely on anecdotal evidence.[66] Nonetheless, as referred to above, the theory is widely admired. Later research can, at least partially, explain why.

2.2.2. Subsequent developments

Alice Bosma, Eva Mulder and the aforementioned Antony Pemberton substantiated Christie's claims in 2018 by relating them to later theoretical developments.[67] One of these developments is the stereotype content model.[68] The model predicts what emotions people will feel and how they will behave toward certain groups depending on that group's perceived placement along the social dimensions of *warmth* and *competence*. Four main combinations are possible, with accompanying emotional and behavioural consequences:

[63] See Christie (1986) 22–23.
[64] See Christie (1986) 23–24.
[65] At least in a functioning democracy.
[66] See Pemberton (2012) 54.
[67] See Bosma–Mulder–Pemberton (2018).
[68] See Amy Cuddy, Susan Fiske and Peter Glick, 'Warmth and Competence as Universal Dimensions of Social Perception: The Stereotype Content Model and the BIAS Map' (*Advances in Experimental Social Psychology* 2008).

- Low warmth, low competence: *contemptuous prejudice*.
- Low warmth, high competence: *envious prejudice*.
- High warmth, low competence: *paternalistic prejudice*.
- High warmth, high competence: *admiration*.

Bosma et al consider Christie's ideal victim a recipient of paternalistic prejudice.[69] The stereotype content model predicts such a person to induce pity and sympathy in others. People might help the victim or neglect them, depending on what is convenient under the circumstances. Here is a suggestion that, unlike in Christie's original formulation, the ideal victim might not receive assistance after all, something to remember as we approach the just-world hypothesis in the following section. Victims that originally occupy a position of little warmth but high competence, like Christie's "witch", lose much of their perceived competence due to the victimisation and thus tend to face contemptuous prejudice, characterised by contempt, disgust and both passive and active harm.[70]

Bosma et al also apply moral typecasting theory to Christie's model.[71] They describe the theory's relevance in this context as a function of its explanation for the relationship between moral events and moral actors. A situation is perceived as containing a moral aspect if the individuals involved take on the separate roles of moral agent and moral patient. Bosma et al mainly relate this conclusion to Christie's characterisation of the offender. Moral typecasting theory can explain why victims whose offenders are not "big and bad" or, as for Christie's "worker", not even identifiable persons, are perceived as less than ideal.[72] The theory also informs understanding of Christie's condition that the victim should have no prior relationship to the perpetrator. Where there is such a relationship the separation of the actors into moral agent and moral patient is more difficult, thus resulting in a morally more ambiguous event, with consequences for the victim's status as ideal.[73]

There are undoubtedly advantages to ideal victim theory as an instrument for analysing law. But some shortfalls are becoming evident, the most glaring being its failure to account for the instances where seemingly innocent victims are blamed for their suffering. Hence, we proceed to the just-world hypothesis.

2.3. The Just-World Model

The idea of a *belief in a just world* was introduced by University of Kentucky social psychologists Melvin J Lerner and Carolyn H Simmons in a 1966

[69] See Bosma–Mulder–Pemberton (2018) 29.
[70] See Bosma–Mulder–Pemberton (2018) 30.
[71] See Bosma–Mulder–Pemberton (2018) 30.
[72] See Bosma–Mulder–Pemberton (2018) 31.
[73] See Bosma–Mulder–Pemberton (2018) 32.

article.[74] The article describes their experiments on how observers react to the suffering of victims. The authors concluded that the evidence they found of observers derogating innocent victims supported the view that the observers had a "great need to believe in a good and just world."[75] Here, then, is a theoretical explanation for why some victims who objectively appear deserving of compensation and support might not receive it in practice. Following a series of both supportive[76] and contradictory[77] experiments the theory was formalised in a 1980 monograph by Lerner.[78]

2.3.1. Main characteristics and relevance

In the first sentence of their original paper on just-world belief, Lerner and Simmons relate their research to that of Stanley Milgram, known for his experiments on obedience and the potential cruelty of seemingly ordinary people.[79] Their conclusion is that "the persecutor justifies his behavior by persuading himself that the victim deserved what happened to him".[80] However, Lerner and Simmons primarily aimed to study how observers psychologically manage the suffering they see in the world.[81] In Lerner's later theoretical formulation of the belief in a just world he attempted to explain the same mechanisms.[82]

Lerner describes a "just world" as a reality wherein people get the outcomes, positive or negative, which they are entitled to, according to mainly socially defined preconditions.[83] He further claims that belief in such a world is present to some degree among all normally functioning people.[84] This belief is, according to Lerner, necessary for people to "go about their daily lives with a sense of trust, hope, and confidence in their future".[85] However, a cursory examination of one's own or anybody else's lived experiences objectively disproves this belief: accidents, strikes of luck and so on make it clear that the world is not just.[86]

---

[74] See Lerner–Simmons (1966).
[75] See Lerner–Simmons (1966) 209.
[76] See Melvin J Lerner and Gail Matthews, 'Reactions to suffering of others under conditions of indirect responsibility' (*Journal of Personality and Social Psychology* 1967).
[77] See David Aderman, Sharon Brehm and Lawrence Katz,'Empathic observation of an innocent victim: The just world revisited' (*Journal of Personality and Social Psychology* 1974) and Robert Cialdini, Douglas Kenrick and James Hoerig, 'Victim derogation in the Lerner paradigm: Just world or just justification?' (*Journal of Personality and Social Psychology* 1976).
[78] See Lerner (1980).
[79] See Lerner–Simmons (1966) 203.
[80] Lerner–Simmons (1966) 203.
[81] See Lerner–Simmons (1966) 203.
[82] See Lerner (1980) 7.
[83] See Lerner (1980) 11.
[84] See Lerner (1980) 12.
[85] See Lerner (1980) 14.
[86] See Lerner (1980) 18–19.

Two "rational mechanisms" for coping with this perceived injustice are suggested by Lerner. The first is *prevention and restitution*. The original experiment supported the proposition that when the observer is able to help the sufferer, they are likely to do so and unlikely to denigrate them.[87] This finding suggests that a major reservation is necessary when using just-world theory to analyse the law: the legal system is arguably the primary societal institution for handling injustices. Thus, it could be expected to employ rational mechanisms like prevention and restitution most of the time, rather than the more sensational strategies described below. But there is, of course, no guarantee that the law is always rational.

The second of Lerner's "rational" mechanisms is *acceptance of one's limitations*.[88] Intuitively, this is a strategy that often makes sense for individuals: no single person wields the power to right all wrongs. Neither does the law, but the threshold for when accepting your limitations becomes a dereliction of duty is far lower for the legal system than for individuals.

Lerner also supplies two psychological "non-rational" defences employed by people when their belief in a just world is threatened. These are *denial-withdrawal* and *reinterpretation of the event*.[89] The former means organising both one's daily life and responding to specific events in a manner which reduces one's exposure to suffering. Some parallels could be drawn between this personal strategy and the boundaries of criminalisation, which victims are covered by the law on compensation, and so on, but such an exercise quickly becomes a tenuous imposition of psychology onto law.

The latter defence, reinterpretation, can be applied to the outcome or the cause of the event, or to the character of the victim. In the first case, an example is reinterpreting poverty as a virtue.[90] Reinterpretation of the cause often involves blaming the sufferer for having brought their hardship on themselves.[91] As for reinterpreting the victim's character, this can be accomplished by derogating the victim or relegating them to a group perceived as inferior.[92]

Explicit reinterpretation of crime-induced injury as something positive or outright denigration of the victim appears incompatible with modern legal systems. This is not to say that the underlying attitudes are never to be found among legal actors. But reinterpreting the victim as the cause of the crime would seem a more acceptable strategy in the legal setting. If the victim can be proven a vital link in the chain of events leading up to a crime the case can

[87] See Lerner–Simmons (1966) 208–209.
[88] See Lerner (1980) 19–20.
[89] See Lerner (1980) 20.
[90] See Lerner (1980) 20.
[91] See Lerner (1980) 21.
[92] See Lerner (1980) 21.

credibly be made that their right to compensation is forfeit. A crucial oversight in such an argument is of course that, if a crime has an individualised victim, that victim can also always be interpreted as at least part of its cause. The remaining question is where to draw the line.

Lerner argues that over time, these psychological defence mechanisms stabilise into long-term strategies that shape our worldview.[93] Principal among these are *ultimate justice* and the idea that there are *various "worlds"*. Ultimate justice is contrasted with the young child's belief in immanent justice: nature's immediate punishment of wrongdoing.[94] The more mature concept of ultimate justice involves accepting undeserved accidents and the like as a fact of life while believing in a world that, overall, is improving for everybody.[95] A logical continuation of this idea in the context of legal systems and victim support could be the utilisation of general welfare policy such as social insurance to compensate victims of crime instead of specific victim compensation schemes.

Regarding the idea of multiple "worlds", Lerner claims that a strategy to escape the continuous threats to one's belief in a just world is to construct social reality as divided into at least two separate entities: "our world", which is just, and the "world of victims", with inhabitants who cannot expect to receive the outcomes they deserve.[96] Rules excluding former criminals from certain forms of compensation could possibly be interpreted as an expression of a world of victims belief.

Finally, Lerner introduces another defence against threats to just-world belief, one "most of us are forced to adopt sooner or later".[97] The defence is to pretend, to oneself and others, that one does not actually believe in a just world, while simultaneously planning one's life under the assumption that the world is just.[98]

2.3.2. Subsequent developments

Later research into the just-world belief has been plentiful but also, according to Carolyn Hafer and Laurent Bègue, "unsystematic".[99] A few significant empirical and theoretical developments will be covered here.

Scholars have suggested several additional or modified strategies to cope with suffering while maintaining belief in a just world, one of these being *psychological distancing*.[100] Related to denial–withdrawal and the world of

[93] See Lerner (1980) 21.
[94] See Lerner (1980) 15.
[95] See Lerner (1980) 22–23.
[96] See Lerner (1980) 26.
[97] Lerner (1980) 171.
[98] See Lerner (1980) 171–172.
[99] See Hafer–Bègue (2005) 160.
[100] See Hafer–Bègue (2005) 146.

victims but distinct from both, this strategy of disassociating oneself from the victim allows one to believe that even if there is injustice in the wider world, it does not affect one's immediate environment.

A parallel development with implications for the just-world hypothesis concerns the so called severity effect.[101] Originally proposed by Elaine Walster in 1966, the theory is that the worse the consequences of an event, the higher the likelihood of blame being attributed to a specific person.[102] In 1997, Neal Feigenson, Jaihyun Park and Peter Salovey tested the effect in cases of victim blaming in mock legal proceedings, with results suggesting that jurors were more willing to emphasise the victim's responsibility for the outcome when that outcome caused greater suffering.[103]

2.4. Concluding Remarks: Two Contrasting Models

This overview of the ideal victim and just-world models and subsequent research leaves a distinctly double-edged impression. Possessing properties associated with the stereotypical victim can be expected to entitle the victim to societal support, including monetary compensation. At the same time, such properties also have the potential to leave the victim without support under certain circumstances. The value of analysing the law by way of these two particular theories is that they together have explanatory power for both outcomes.

This relation between the two theories is a point repeatedly raised by Pemberton.[104] If I were to interpret them schematically, they could potentially serve as the extremes of a single continuum describing on what grounds victims can be blamed for their own suffering. However, even an ordinal scale is probably too ostensibly precise to be useful in this context. But as a thought experiment, it illustrates how the models can work in tandem in illuminating the reasons for why responses to victims can vary widely.

---

[101] See Carolyn E Adams-Price, William T Dalton III and Roxana Sumrall, 'Victim Blaming in Young, Middle-Aged, and Older Adults: Variations on the Severity Effect' (*Journal of Adult Development* 2004) 289.
[102] See Elaine Walster, 'Assignment of responsibility for an accident' (*Journal of Personality and Social Psychology* 1966).
[103] See Neal Feigenson, Park Jaihyun and Peter Salovey, 'Effect of Blameworthiness and Outcome Severity on Attributions of Responsibility and Damage Awards in Comparative Negligence Cases' (*Law and Human Behavior* 1997) 610–611.
[104] See Pemberton (2012), Pemberton (2016) and Bosma–Mulder–Pemberton (2018).

3. Swedish Law on Reducing Compensation to Victims of Crime

This third chapter provides a detailed study of when victims of crime are to be compensated under established Swedish law and when this compensation is reduced. I include analysis of how the ideal victim and just-world models can give additional insight into the rules throughout the chapter. The first section of the chapter deals with a few methodological and source material selection issues. The following three sections cover, in turn, damages, criminal injuries compensation,[105] and compensation under the Payment Services Act. As in the previous chapter, the final section features a summarising discussion.

3.1. Methodological Issues: Limits of Legal Dogmatics

As I alluded to in Chapter One cases relevant to this research project are often decided by quasi-judicial bodies. This raises the question of how to most appropriately incorporate their decisions into the legal dogmatic analysis. The solution here employed is to deem the case law of the Committee for Criminal Injuries Compensation and the National Board for Consumer Disputes authoritative on criminal injuries compensation and compensation under the Payment Services Act, respectively. I consider a wide range of decisions to ensure that my conclusions about how the law is applied are substantiated.

I have selected which cases to cover from the quasi-judicial bodies by first searching their online databases for relevant decisions.[106] After excluding cases obviously outside of the scope of this text,[107] I have included all decisions which have been tried under the rules currently in force or those essentially identical.

My overview of the law on damages is based on the annotated edition of the Tort Liability Act by Bengtsson and Strömbäck.[108] The section on criminal injuries compensation is based on the extensive review of the Criminal Injuries Compensation Act and its application in practice by Anders Dereborg and Ann-Christine Lindeblad.[109] No similar works have, unsurprisingly, been

[105] The Courts' glossary recommends conjugating it as "criminal injury compensation", while I in this text follow the example of the Crime Victim Compensation and Support Authority.
[106] For cases from the Committee for Criminal Injuries Compensation, this involved a keyword search for "jämkning" (ca. adjustment). As for the National Board for Consumer Disputes, the decisions are thematically categorised. There is a "bank" category with few enough cases that keyword searching was unnecessary and I could with little effort find the cases dealing with compensation under the Payment Services Act in the list.
[107] For example, cases only dealing with evidentiary questions.
[108] See Bengtsson–Strömbäck (2018).
[109] See Dereborg–Lindeblad (2018).

written on the much narrower issue of compensation under the Payment Services Act. The section on such compensation is therefore entirely reliant on my own research into the preparatory works and case law.

3.2. Damages

Historically, damages have been the main redress for criminal injury in Sweden, at times even serving as substitute for capital punishment.[110] The close relationship between civil damages and the criminal law into the modern era is emphasised by the fact that until 1972 legislation on the matter was to be found in the Penal Law of 1864. The primary legislation on damages in Sweden today is the Tort Liability Act of 1972 (SFS 1972:207, Sw. *skadeståndslagen*).

3.2.1. General rules

The Tort Liability Act is subsidiary, see Chapter 1, Article 1. The rules described below could thus be overridden by a contract, for instance, through a settlement. This possibility is not considered any further here.

Chapter 2, Article 1 of the Act states that the one causing intentional or negligent personal injury (Sw. *personskada*) or property damage (Sw. *sakskada*) is to indemnify the injured party for their loss. Pure financial loss (Sw. *ren förmögenhetsskada*)[111] is to be compensated in cases where the loss is caused by a criminal act, see Chapter 2, Article 2.[112] Serious violation of personal integrity (Sw. *kränkning*) due to a criminal assault on the person or a person's liberty, peace or honour is also ground for damages under Chapter 2, Article 3 of the Tort Liability Act. This is compensation for a special kind of non-pecuniary damage not necessarily related to personal injury or property damage.[113]

Chapter 5, Article 1 stipulates that the damages in cases of personal injury should cover medical and other costs for the injured person (including reasonable compensation to their next of kin), loss of income, temporary and long-term pain and suffering, and other serious inconveniences as a result of the injury. Compensation for property damage includes compensation for the value of the damaged property or the cost of repair and the lost value, other costs incurred due to the damage, and loss of income or loss due to interruption of economic activity, see Chapter 5, Article 7 of the Tort Liability Act. Under Chapter 5, Article 6, compensation for violation of personal integrity is calculated according to what is reasonable when the nature and

[110] See Marie Lindstedt Cronberg, 'Från målsägande till brottsoffer. Milstolpar och kursändringar längs med vägen' in Claes Lernestedt and Henrik Tham (eds), *Brottsoffret och kriminalpolitiken* (Norstedts juridik 2011) 55.
[111] The recommended translation is "pure economical loss", see Domstolverket (2019). I prefer "pure financial loss" for pure aesthetic reasons.
[112] In Swedish, *skada* is used for all these forms of damage and injury. Thus, I will hereon use "damage" and "injury" interchangeably when referring to all variations.
[113] See Bengtsson–Strömbäck (2018) 73.

duration of the act is taken into account. In particular, it should be considered whether the act contained any degrading elements, typically induces serious fear for life and health, was directed towards someone unable to defend their personal integrity, abused a position of trust or dependence, or typically attracts general attention. The seminal case is NJA 2007 s. 540, where the Supreme Court, in a case involving abuse of a sleeping child, stated that what is to be compensated is not the violation itself but the injury typically caused by it. Thus, it is not the direct experience of the victim which primarily determines the amount – in this case the child had been asleep throughout the abuse – but rather an objectivised understanding of the violation caused by the assault.[114] There are no codified rules for the calculation of damages in cases of pure financial loss.

Procedural regulation is also of interest in this context. Chapter 22, Article 1 of the Code of Judicial Procedure enables the injured party in a criminal procedure to claim civil damages in conjunction with the criminal trial of the defendant. Joint proceedings are not mandatory and the claim can be presented in a separate civil process when not included in the criminal trial. However, if it is, under most circumstances Chapter 22, Article 2 of the Code of Judicial Procedure obliges the prosecutor to institute this civil claim alongside the criminal charges.

3.2.2. Grounds for reduction

Reduction of damages is regulated in Chapter 6, Article 1 of the Tort Liability Act. Compensation for injury to the person can be reduced if the injured party was complicit in the damage through intent or gross negligence. A lower threshold, contribution to the damage on the side of the injured party not necessarily rising to the degree of intent or gross negligence, is applicable in cases of reduction of compensation for property damage or pure financial loss. In either case, the reduction amount is to be reasonably determined with consideration to the respective level of contribution of the parties and other circumstances, primarily the parties' respective financial situations.[115] Damages awarded corresponding to Chapter 2, Article 3 of the Tort Liability Act (compensation for serious violation of personal integrity) cannot be reduced under the current law.[116]

There is an inevitable tension when pure tort law is used to compensate for criminal damage. The intrinsic aspiration of the rules on damages to treat the parties as equals and the law as a way to restore a lost balance, evident in the consideration of the parties' respective contributions to the injury, clash with the ostensibly dichotomous victim–offender interactions of criminal law. With damages as the way to compensation, it is inevitable that the victim must face their own possible complicity in their suffering. A moderating factor

[114] See Schultz (2008) 28–29.
[115] See prop. 2000/01:68 43–44.
[116] See Bengtsson–Strömbäck (2018) 442.

is the duty of prosecutors to institute the victim's private claim to compensation: a clear reinforcement of the victim's position in the formal trial setting. At this point, this situation could be understood within both the ideal victim and just-world frameworks. Further exploration is required.

Setting aside the highly theoretical case of intentional complicity in crime-induced injury to one's own person, the most important strictly legal issue regarding reduction of damages for personal injury is to define *gross negligence*. However, Supreme Court precedent on the matter in this context is limited, the only relevant case being NJA 1995 s. 661.[117]

> **NJA 1995 s. 661**. A man, B, faced charges of attempted manslaughter (Sw. *dråp*)[118] as he, according to the indictment, had shot another man. This man, K, had been an accomplice in the armed robbery of a store owned by a friend of B, and B had fired the shots in direct response to the robbery attempt. K claimed 150 000 SEK in damages from B, one third of the amount corresponding to personal injury and two thirds for serious violation of personal integrity. The Supreme Court ruled that the injuries suffered by K typically gives one a right to compensation of 15 000 SEK. However, continued the Court, it had been grossly negligent of him to partake in the armed robbery attempt, and this amount should therefore be reduced to 5 000 SEK. K:s willful participation in the robbery also led the Court to conclude that no serious violation of his personal integrity had occurred, thus leaving his final award at 5 000 SEK.

I find this case and the two rules it suggests to be highly notable. The first rule is that gross negligence can lead to substantial reduction of damages, even when the victim has suffered intentional, potentially lethal violence. It is difficult not to conclude that the Court has, to some extent, accounted for the victim's moral failure in participating in a serious crime. This becomes apparent in the Court's reasoning as to the second rule: that willingly partaking in such a crime precludes one from having one's integrity violated in the legal sense. There can be no question that these arguments align closely with the general idea of ideal victim theory. The injured robber is probably an even more non-ideal victim than Christie's man at the bar. While the victim's contribution as a ground for reduction appears appropriate under the circumstances, what stands out is his exclusion from compensation for violation of personal integrity. Miers, studying the situation in Britain, made similar observations.[119] Those were, however, made in the context of state compensation schemes, not a private law relationship. It is perhaps an inevitable consequence of the aforementioned tension inherent in employing private law to compensate for crime that being shot can be ruled *not* a serious violation of personal integrity. Still, it is a noteworthy conclusion, and we will

[117] See Bengtsson–Strömbäck (2018) 443–444.
[118] Manslaughter is, according to the official glossary of the Swedish courts (Domstolsverket 2019), the recommended translation of *dråp*. It should be noted that dråp is constructed as a lesser form of murder and requires intent for conviction, Chapter 3, Article 2 of the Penal Code.
[119] See Miers (2007) 347–348.

return to these issues in the upcoming study on the legislative history of these rules.

As for reduction of damages for property damage and pure financial loss due to contribution on the side of the injured party the legal source material is even more sparse than in cases of personal injury and serious violation of personal integrity.[120] The court is to determine the relative contribution of each party, usually resulting in a reduction of one third, two thirds or the entire sum when the amount is adjusted.[121]

3.3. Criminal Injuries Compensation

The origins of the Swedish scheme for criminal injuries compensation from the state are to be found in 1948 and the so called "escapee appropriation" (Sw. *rymlingsanslaget*): a system for compensating those injured by prison-breakers and the like.[122] The current order with a specialised government agency administering a general compensation scheme for victims of crime was established by the 1978 Criminal Injuries Compensation Act, which has since been replaced by the Criminal Injuries Compensation Act of 2014 (SFS 2014:322, Sw. *brottsskadelagen*).

3.3.1. General rules

Criminal injuries compensation is regulated in the Criminal Injuries Compensation Act and its accompanying Government Ordinance (SFS 2014:327, Sw. *brottsskadeförordningen*). Article 1–3 of the Act stipulates a general right to government compensation, within certain jurisdictional limits, for those damaged by a crime. This form of compensation is subsidiary to other compensation, for instance damages or insurance payments, which the victim has received or is likely to receive, see Article 10.

Article 4 of the Criminal Injuries Compensation Act grants compensation, calculated in accordance with the provisions of the Tort Liabilities Act, for personal injury. Criminal injuries compensation is also to be granted as under the Tort Liability Act for serious violations of personal integrity, see Article 5 of the Criminal Injuries Compensation Act. Unlike under the Tort Liability Act, there are grounds for compensation for violation of personal integrity only when damage has been done to a person or their liberty or peace, not their honour, except in cases of grave defamation.

Regarding property damage due to a crime, there is a general right to criminal injuries compensation only when the perpetrator had escaped the custody of the state, see Article 6 of the Criminal Injuries Compensation Act. Article 7 establishes even stricter conditions in cases of pure financial loss, requiring further special circumstances for a right to compensation even when the

[120] See Bengtsson–Strömbäck (2018) 450.
[121] See Bengtsson–Strömbäck (2018) 451.
[122] See Dereborg–Lindeblad (2018) 12 and Chapter 4 of this text.

perpetrator had escaped state custody at the time of the crime. However, both property damage and pure financial loss can give rise to a right to criminal injuries compensation under Article 8 of the Act if the injured person's livelihood is threatened by the damage or if compensation otherwise appears particularly important.

Cases under the Criminal Injuries Compensation Act are decided by the Crime Victim Compensation and Support Authority (Sw. *Brottsoffermyndigheten*), see Article 21. Legally significant cases are tried at the Authority's Committee for Criminal Injuries Compensation (Sw. *Nämnden för brottsskadeersättning*), composed of experts in the field directly appointed by the Government, see Article 22 of the Act.[123] While undoubtedly a lesser authority in the Swedish legal system than, for example, the Supreme Court, the Committee is the primary interpreter of the Criminal Injuries Compensation Act and its decisions have precedential value.[124]

3.3.2. Grounds for reduction

The main rule on reduction of criminal injuries compensation is Article 12 of the Criminal Injuries Compensation Act. The text states that compensation can be reduced, if equitable, if the victim through their behaviour in connection to the crime or in a similar manner, intentionally or negligently, has increased the risk of damage. Additionally, with regards to property damage or pure financial loss, compensation can be reduced, again if equitable, when the injured party has increased the damage risk by not implementing customary precautionary measures, whether intentionally or negligently. Ever since the first Criminal Injuries Compensation Act of 1978, however, the conditions for reduction of criminal injuries compensation have been less strict than those for reduction of damages. According to the preparatory works of the original legislation, the reason is the criminal justice context of this form of compensation. In this context it was considered reasonable to reduce the government compensation to individuals who engage in criminal or otherwise reprehensible activity, provoke the perpetrator, or fraternise with strangers under circumstances conducive to criminal damage.[125]

---

[123] It should be noted that at the time of writing, three of the six commissioners are also among the jurists mentioned above in section 1.4 (previous research). These are the chairperson of the Committee, Ann-Christine Lindeblad, one of two deputy chairpersons, Anders Dereborg, and commissioner Mårten Schultz. The Authority provides a list of current commissioners on its website. There is undoubtedly a lack of independence in the source material, however, due to the nature of the normative reality that is the primary object of study in legal dogmatics, this is unavoidable and also less of an issue than in empirical research.

[124] See Dereborg–Lindeblad (2018) 159 and Mårten Schultz, 'Framtidens brottsskadeersättning' (*SvJT* 2012) 596. See also Brottsoffermyndigheten, *Brottsoffermyndighetens referatsamling 2017* (Wolters Kluwer 2016) 6 and the Supreme Court in NJA 1997 s. 315.

[125] See prop. 1977/78:126 25–26.

A set of decisions from the Committee on Criminal Injuries Compensation represents the case law on reduction of criminal injuries compensation. As one might expect considering the strict conditions for granting compensation in cases of property damage or pure financial loss, the cases exclusively concern personal injury or serious violation of personal integrity.

In several decisions, compensation is reduced due to the applicant's involvement in criminal activity. Full reduction, meaning that no compensation is awarded whatsoever, is commonly applied when the applicant has committed serious offences and their injury appears a direct consequence thereof.

> **3101/2011**. A man applied for criminal injuries compensation for personal injury and violation of personal integrity after having been the victim of, among other crimes, threats and false imprisonment. The crimes were part of a campaign to prevent the man from testifying in a separate case where he had been involved in an attempted robbery. The Committee ruled that the man had increased his risk of injury by partaking in this crime in such a way that his right to compensation should be adjusted down to zero.

> **8273/2007**. A young man had been assaulted by a group of six men as revenge for an earlier assault committed by the victim. The Committee decided that this assault had increased the victim's risk of injury and that his compensation should be reduced to zero.

These cases share several characteristics with NJA 1995 s. 661. While the connections between the victims' crimes and their victimisations are not as instant as in that case, the causal link is still undeniable. But the outcome can be different when the applicant's crimes are several years in the past.

> **9769/2009**. A man had suffered attempted grave extortion due to an alleged debt originating from drug sales four years ago. While the conditions for reduction of compensation were technically fulfilled according to the Committee, the time span between the applicant's own criminality and his victimisation and the other (not further defined) circumstances led the Committee not to apply any reduction.

There is no requirement that any specific serious crime committed by the applicant is proven or even made likely for reduction to occur. Rather, general involvement with criminal individuals, groups or situations with bearing on the victimisation appears sufficient.

> **1786/2018**. A man had been approached at a sports facility by two others and shot in the chest and legs. The man survived and applied for criminal injuries compensation for personal injury and serious violation of personal integrity. The Committee determined that because the shooting was most likely the result of a dispute in "criminal circles", his compensation should be fully reduced.

> **5847/2013**. A man had been robbed when riding in an unregistered taxi car and applied for compensation for serious violation of personal integrity. The

compensation such a crime typically entitles the victim to was in this case halved because the man had increased his damage risk by utilising the services of an unregistered taxi.

7572/2008. A man had been killed during a party in the clubhouse of a crime-linked organisation. While the deceased's next of kin are usually awarded certain compensation for personal injury in the form of pain and suffering, all such compensation was reduced to zero in this case. The Committee reasoned that the man had increased his risk by visiting the clubhouse and there socialised with individuals prone to severe violence.

3995/2008. A man had been assaulted by two strangers at an illicit night club. His compensation was reduced to half the original amount because he had increased his risk of injury by going to the club.

It is possible to see these decisions as lending support to the argument that criminal injuries compensation appears more closely aligned with ideal victim theory than the rules on damages. A much wider range of victim behaviour can result in reduction of criminal injuries compensation than when damages to crime victims are calculated, as is also made clear in the text of the legislation and its preparatory works. That factors on the side of the victim less directly connected to the crime could lead to reduced compensation can be construed as supporting the main argument of the ideal victim model: victims fulfilling societal expectations for that role are considered more authentic. But a credible just-world interpretation of the legal facts can also be made. The wide range of potentially culpable behaviour expands the possibilities of finding something to hold otherwise "innocent" victims responsible for.

In extraordinary situations the compensation can be reduced even when the victim has no relevant previous connection to criminal activity whatsoever.

10106/2017. A man had been kidnapped in Mali while travelling from Sweden towards South Africa on a motorcycle. He was held for several years by al-Qaeda. Travel to Mali was at the time discouraged by the Swedish Ministry for Foreign Affairs because of, among other dangers, the kidnapping hazard. The country was not part of the man's original itinerary. The detour to Mali was ruled by the Committee to be an increase of the man's risk of injury, albeit a negligent one. Because of the severity of the victimisation his compensation was halved, not fully reduced.[126]

3.4. Compensation under the Payment Services Act

The right to compensation under the provisions of the Payment Services Act (SFS 2010:751) differs from damages and criminal injuries compensation in two important aspects. First, it is not explicitly based on tort law principles,

[126] In relation to compensation for injury to the person, this case should be interpreted somewhat cautiously. Because of the severity of the injury suffered by the victim, his compensation hit the ceiling for compensation for personal injury (910 000 SEK), even when it had been reduced. Thus, this reduction had no material impact on the applicant.

but is instead a highly specialised compensation regime. It is applicable only to losses incurred when certain payment services are used without proper authorisation and technically amounts to an account refund. As only compensation for crime-induced damage is relevant here, criminal fraud of some sort is usually involved. Second, the compensation is to be paid by neither the perpetrator nor the state, but rather by a third actor: the payment services provider, usually a bank.

3.4.1. General rules

The compensation regime outlined by the Payment Services Act has its origins in the First[127] and Second[128] European Union directives on Payment Services. It should be noted that in consumer relationships, which is what is relevant here,[129] the Act is binding and the provisions cannot be modified by contract, see Chapter 1, Article 11 of the Payment Services Act. Chapter 5a, Article 1 stipulates a general right to practically immediate restoration of the account balance after an unauthorised transaction. A transaction is unauthorised if it has been performed without the consent of the account owner, see Chapter 1, article 4. The limits of the right to compensation are constructed as a series of exceptions in the following sections of the Payment Services Act.

3.4.2. Grounds for reduction

If an account owner has failed to protect their personalised security credentials (for instance the PIN of their credit or debit card, see Chapter 1, Article 4 of the Payment Services Act), they are themselves responsible for the losses incurred as a result of unauthorised transactions up to a limit of 400 SEK, see Chapter 5a, Article 2. Chapter 5a, Article 3 excludes the account owner from the right to full compensation if they, in a grossly negligent manner, have disregarded their obligations under Chapter 5, Article 6 of the Act. These obligations are to protect their personalised security credentials, to instantly inform the provider if a payment instrument of theirs has been lost or used without authorisation, and to follow the conditions of their contract with the provider. The preparatory works of the now repealed Unauthorised Transactions with Payment Instruments Act (SFS 2017:738, Sw. *lag om obehöriga transaktioner med betalningsinstrument*), which featured a rule later replaced by the essentially identical Chapter 5a, Article 3 of the Payment Services Act, elaborated on what constitutes gross negligence in this context. It was emphasised that only significant departures from the expected

[127] See Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.
[128] See Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) no 1093/2010, and repealing Directive 2007/64/EC.
[129] See the delimitation concerning legal persons in section 1.1 above.

diligence, not mild carelessness or temporary forgetfulness, would meet the definition of gross negligence.[130]

Account owner liability under Chapter 5a, Article 3 of the Payment Services Act is limited to 12 000 SEK, unless their behaviour was extraordinarily negligent, which is a higher threshold than gross negligence. If so, the account owner suffers the full loss and is not be granted any compensation whatsoever. The preparatory works discuss at some length what is intended by extraordinary negligence. The account owner's behaviour towards the payment services provider should be sufficiently culpable that forcing the provider to pay compensation would be offensive. Leaving a credit card unattended in crowded areas or in a nightclub bar for running transactions during an extended period of time are examples of the indifference towards unauthorised transactions required on the part of the account owner for them to be fully liable.[131]

There are no instances of disputes concerning the 400 SEK reduction of compensation provided for in Chapter 5a, Article 2 in the public record, probably due to the limited amount of money involved in such cases. But disputes over what constitutes gross negligence under Chapter 5a, Article 3 of the Payment Services Act are common at the National Board for Consumer Disputes.

All here related cases involve fraudsters contacting bank customers over the phone or social media claiming to representent the bank or some other institution with a degree of authority, such as the police. I only consider decisions wherein victim negligence under Chapter 5a, Article 3 of the Payment Services Act (or the corresponding provision in the earlier law) was tried on the merits.[132]

Grossly but not extraordinary negligent victim behaviour usually involves having provided the fraudsters access while under pressure or when other exculpating factors are present.

> **2017-13660**. HB was exposed to a multi-step fraud to which he lost 140 000 SEK by using BankID, an authentication service, on the request of a man pretending to call from HB's bank from a spoofed phone number matching that of the bank's customer service function. The caller claimed that HB's account was currently the target of an unauthorised transaction and that he must confirm his identity via BankID to block the charge. The Board ruled that HB's use of BankID to authenticate himself towards the bank when told so by a cold caller, which in reality allowed the fraudsters to transfer money

[130] See prop. 2009/10:122 27.
[131] See prop. 2009/10:122 29.
[132] This excludes cases where the main question is evidential (2014-10437 and 2015-07403), the transaction is determined to be authorised under the legal definition (2018-06551), or the precedential value concerns the applicability of certain terms and conditions (2018-13498).

away from his account and was in violation of the terms and conditions for BankID, had been grossly negligent. HB was thus liable for 12 000 SEK, however, since the fraud was cunning, HB was under pressure, and he did not understand the potential consequences of his BankID use, his behaviour was not deemed extraordinarily negligent.

2017-10285. While her husband was hospitalised, IJ had received a call from a man called Jan claiming to work at her bank's security department. "Jan" told her that her husband's debit card had been compromised and that she, since the husband was unable to do so himself, had to block the card by providing Jan codes from her bank-issued security device. With reference to a poor Internet connection, Jan convinced IJ to read him four such codes, which allowed the perpetrators to transfer almost 200 000 SEK from her account. Giving others access to these codes violated the terms of the bank's internet services and the Board considered this conduct grossly negligent. It was, however, not extraordinarily negligent, with reference to, among other factors, the pressured situation IJ had been in, her age (she was over 80 years old at the time), and the specific information the fraudster had concerning her husband's health.

The victims in these cases, especially the latter one, resemble Christie's ideal victim. The Board explicitly refers to IJ's age as a reason to consider potentially extraordinarily negligent behaviour as only grossly negligent. Nonetheless, these are victims that are held partially accountable – the 12 000 SEK reduction – for their contribution to their own victimisation. The sequence of events was swift and evidently several victims fell prey to similar crimes. There is undoubtedly an argument to be made that the belief in a just world could be at play here.

Extraordinary negligence on the behalf of the victim and the accompanying full liability for losses incurred requires similar conditions as in the two cases related above, but also aggravating factors or at least a lack of exculpatory circumstances.

2017-12130. The BankID belonging to MF had been compromised and used to transfer 120 000 SEK from his account without authorisation. Although MF claimed otherwise, the Board determined that he had provided security codes to a calling fraudster at least three times. The Board ruled that while MF hardly could have understood the far-reaching consequences of his actions, this repeated breach of the terms and conditions and lack of exculpatory factors meant that his behaviour had been extraordinarily culpable.

2013-04700. A fraudster had taken control of a Facebook account and used it to contact J, a friend of the original account owner. The fraudster asked J to assist them with some online banking issues and J provided them with several codes from her security device over the course of more than an hour, allowing the fraudster to transfer money from her account three times, one of which was later blocked by the bank. The Board determined that J had been extraordinarily culpable because the transactions would have been impossible without her cooperation and because of the repetition and duration of her actions.

The circumstances in the two latter cases are not a significant departure from those in the former two. But the practical consequences for the victims are very different. HB and IJ each lost 12 000 SEK, a substantial amount, but for most not life-changing. MF suffered a loss of 120 000 SEK and while the precise extent of J's loss was not stated in the decision, it also clearly exceeded 12 000 SEK. IJ's age and the impact of her husband's failing health lend themselves well to a comparison to Christie's conditions, but there is no obvious reason as to why HB should be more of an ideal victim than MF and J. However, as there is no apparent reason to consider them less responsible for their victimisation either, the just-world hypothesis appears a poor explanation.

3.5. Concluding Remarks: Victim Behaviour in the Crosshairs

We are now at the point in the study where disparate observations can be transformed into preliminary conclusions. There are clear similarities between the rules on damages, criminal injuries compensation and compensation under the Payment Services Act regarding reduction of compensation to victims of crime. As for damages, victim contribution to the damage is crucial, although financial considerations are also to be made. Criminal injuries compensation can be reduced due to a much wider range of risk-increasing victim behaviour, but finances are not relevant in the most common personal injury cases. Reduction of compensation under the Payment Services Act is largely dependent on victim behaviour but victim characteristics such as age are also taken into account.

Overall, the victim's behaviour is coming forward as the primary factor in reducing their compensation. But it is still difficult to define what kind of behaviour in general leads to the victim receiving less than full compensation. There is a stark difference between the robber injured by shooting in NJA 1995 s. 661 and the fraud victims denied compensation under the Payment Services Act. As previously mentioned, Miers has proposed that both victim contribution to the injury and immoral behaviour in general play a part.[133] However, whether his hypothesis holds true for Sweden is still unanswered, and the relationship between the two categories of behaviour is not clear. And as expected, the explanatory power of the ideal victim model seems most significant so far, but the just-world hypothesis has also been useful. However, neither model has up to this point been able to supply a straightforward analysis of the factors determining which victims receive reduced compensation.

Further investigation of these factors in general and the very different categories of victim behaviour giving rise to compensation reduction in particular is required. For that, we leave the present for now to study how the law on victim compensation has developed over time.

[133] See Miers (2007) 347–348.

4. Legislative History of Victim Compensation

This fourth chapter features a detailed review of how compensation to victims of crime has developed and changed in Sweden in the roughly seven decades or so since the end of the Second World War. I draw comparisons to the ideal victim and just-world models where appropriate. These comparisons primarily deal with the earlier history, as the later changes closely resemble the current rules which were analysed in the same way in Chapter Three. As in the previous two chapters, I conclude this part of the text with some remarks on the material thus far and on where we are going from here.

4.1. Methodological Issues: Extensive Source Material

In the next section, I attempt to provide a comprehensive review of the legislative history of the relevant rules, beginning after the Second World War. The choice to place the starting point here is thematic. The 1948 introduction of a scheme to compensate those injured by runaways from state institutions is generally regarded as the progenitor of the current system of victim compensation.[134]

My selection of which legislative changes to include in this review is mainly based on Dereborg–Lindblad's presentation of the history of criminal injuries compensation.[135] I cover all the changes there considered "important" except those which clearly fall outside the scope of this study.[136] Due to the close connection between criminal injuries compensation and tort law principles, the records of these changes also include the major changes as to damages for criminal injury. The legislative history of Payment Services Act compensation is shorter and I cover every relevant material change together in the last of the following nine subsections.

4.2. Victim Compensation and its Reduction in the Official Records

This is a lengthy section with a fairly concise mission statement: identifying the legislative origins of the three compensation schemes, the significant

[134] See Dereborg–Lindeblad (2018) 12 and Gallo–Svensson (2019) 28–29.
[135] See Dereborg–Lindeblad (2018) 12–13.
[136] These are SFS 1979:1103 (addition of a second vice chairperson to the Committee and an administrative limit of 10 SEK for when compensation is not paid), SFS 1981:819 (debt enforcement limits), SFS 1984:935 (no standard reduction in fugitive cases or when there are other special circumstances), SFS 2005:955 (administrative accommodations to EU directive), SFS 2006:933 (jurisdictional changes and the addition of a non-reducible form of compensation to children having witnessed certain crimes), and SFS 2010:1227 (references to the repealed National Insurance Act changed to the new Social Insurance Code).

changes to them, and the major arguments for why compensation should, in some instances, be reduced.

4.2.1. The fugitive scheme

The roots of the current Swedish system, where the state takes an active and significant role in compensating victims of crime monetarily, trace back to the parliamentary session of 1947.[137] Four motions by different Members of the Riksdag called for a system whereby damage and loss caused by fugitives from state institutions, such as mental hospitals, would be compensated with public funds.[138] Compensation had been paid by the government on an ad hoc basis in a few such cases in the preceding years.[139] A fifth motion requested a state-funded compensation scheme for all criminal damage suffered by those in need and not covered by other compensation.[140]

Both systems captured the attention of the full Riksdag, which in a written communication to the Government noted that a general compensation regime, as proposed by the fifth motion, would constitute a "valuable supplement to the legal protection, which society through its institutions provides to the individual citizen".[141] An inquiry into such a system could, according to the Riksdag, be limited to considering compensation only in the most pressing cases. But even a limited inquiry was assumed to be a highly complex task and the Riksdag recommended postponing any action on it.[142]

The Government agreed with the main arguments of the Riksdag and proposed a trial appropriation of 5 000 SEK for the fugitive cases,[143] approximately 100 000 SEK in today's value: a miniscule portion of total government expenditure.[144] In the Government bill, the reciting Minister for Health and Social Affairs argued that the cost for compensating for damages caused by those escaped from state institutions could be considered part of the cost of operations for these institutions. This because such compensation would be necessary to ensure the legitimacy of a more open and community-oriented form of care.[145]

Such a line of reasoning lacks any counterpart in the ideal victim model. The clear division between victim and offender suggested by Christie's theory is

---

[137] See SOU 1977:36 66.
[138] See mot. 1947:84 (Second Chamber), mot. 1947:139 (Second Chamber), mot. 1947:221 (Second Chamber) and mot. 1947:276 (Second Chamber).
[139] See prop. 1948:87 2–3.
[140] See mot. 1947:279 (Second Chamber).
[141] Rskr. 1947:475. Author's translation.
[142] See rskr. 1947:475.
[143] See prop. 1948:87 5.
[144] See Statistiska centralbyrån, 'KPI, historiska tal, 1830–' (2019, www.scb.se/hitta-statistik/statistik-efter-amne/priser-och-konsumtion/konsumentprisindex/konsumentprisindex-kpi/pong/tabell-och-diagram/konsumentprisindex-kpi/kpi-historiska-tal-1830, accessed 2019-12-09).
[145] See prop. 1948:87 3–4.

here upended by the construction of the offender as a patient and the victim's compensation as a cost of operations. Perhaps it can instead be understood as an implementation of Lerner's first rational mechanism: restitution. This was a limited problem which, at least in the sense of compensation, appeared solvable for the state. The unwillingness of the state apparatus to deal with the much wider issue of state compensation for crime in general supports this view. Interestingly, the argument for compensation as a prerequisite to rehabilitation of offenders seems almost lost in later years,[146] as both the previous chapter and the following sections show.

The minister also listed a series of borderline cases where a right to compensation could be posited, such as the situation where a mentally ill person could not be placed at an institution due to lack of resources and they then proceeded to cause damage to person or property. According to the minister this and similar cases raised the problem of whether the state should, in principle, compensate all injuries caused by the failure of its protective measures. As previously mentioned, the Government's proposal was limited to the fugitive cases, but the minister noted that experiences from the scheme would be valuable source material for future inquiries into the matter.[147]

The Minister for Health and Social Affairs also discussed whether the injured's financial position should be considered when determining the right to compensation: on the one hand, taking no such consideration appeared most in line with the relevant (tort law) principles, on the other, it would be appropriate for a trial system to concentrate efforts on the most pressing cases.[148] The latter path was chosen, without guidelines on how the injured party's financials should influence the right to compensation other than that the limits should not be strict. Applications were to be tried by the Government on a discretionary basis.[149] The Government's proposed "escapee appropriation" was passed by the Riksdag for the fiscal year of 1948/49.[150] Following Committee and floor debates, however, the formulation concerning the financial position of the victim was changed: it should now "as a rule" not cause reduction of the compensation.[151] This trial scheme was active for roughly two decades and certain principles for the decisions developed over time: tort law principles were usually adhered to, meaning that full compensation was paid with few exceptions and without means testing.[152]

The fugitive scheme appeared in a legal environment where the only significant possibility of compensation for criminal injury was damages, at the

[146] See section 4.2.4. for an exception.
[147] See prop. 1948:87 5.
[148] See prop. 1948:87 4.
[149] See prop. 1948:87 5.
[150] See rskr. 1948:245.
[151] See bet. 1948:Su93 and bet. 1948:Su106.
[152] See prop. 1977/78:126 8.

time regulated in Chapter Six of the Penal Law of 1864.[153] The law stipulated a general right to damages for intentionally or negligently caused personal injury and property damage. It also featured a precursor to the current rule on damages for integrity violation in the form of compensation for certain psychological suffering caused by crime.[154] Even though a new Penal Code entered into force in 1965, the 1864 chapter on damages stayed on the books until the introduction of the Tort Liability Act of 1972.[155]

4.2.2. The trial scheme

The next major development in Swedish victim compensation regulation occurred in the early 1970s.[156] The Government's proposed budget for the fiscal year of 1971/72 included a new expense: one million SEK intended for compensating personal injuries caused by crime.[157] The reciting minister, writing in the budget bill, stated that there was a clear need for a compensation scheme specific to victims of crime, as there was often little chance of receiving compensation from the offender. While the coverage of both public and private insurance had improved in the preceding years, there remained a need for a government scheme specifically to compensate those injured by crime, especially for the poor. The minister noted that there was reason to consider certain other groups, such as those having suffered injuries in accidents for which no one was to blame, as deserving and in need of compensation.[158] The minister followed this by arguing that special regulation for victims of crime was nonetheless motivated, but that it should be limited only to the most pressing social needs. The proposed system shared with the fugitive scheme the discretionary nature of the decisions and the fact that cases were to be tried by the Government on tort law principles. However, compensation for non-pecuniary damage was only to be paid under special circumstances.[159]

The idea of state compensation to victims of crime was well-received in the Riksdag. The Riksdag's Committee on Justice noted, in line with the minister, that despite the ongoing expansion of the social welfare system supplementary measures by the state specific to victims of crime were warranted.[160] The Committee and Riksdag majorities approved the Government's proposal without modifying it.[161] The rules were printed in the Swedish Code of Statutes as Notice on Public Funds Compensation for Injury to the Person as the Result of Crime (SFS 1971:505, Sw. *kungörelse om*

[153] See Friberg (2010) 51–53.
[154] See Friberg (2010) 48–50.
[155] See Friberg (2010) 51.
[156] See Dereborg–Lindblad (2018) 12, Gallo–Svensson (2019) 30–31 and SOU 1977:36 49–51.
[157] See prop. 1971:1, appendix 4, 14.
[158] See prop. 1971:1, appendix 4, 16.
[159] See prop. 1971:1, appendix 4, 16.
[160] See bet. 1971:JuU5 5.
[161] See rskr. 1971:101.

ersättning av allmänna medel för personskada på grund av brott). Opposition criticism in the Riksdag was limited to arguing that the proposal was too restrictive, in that it only compensated for injury to the person and stipulated means testing.[162]

Where the fugitive scheme was an instance of the state attempting to solve a limited problem, the government here tried its hands at a much larger issue. But the solution is only available to a narrow range of victims: the poorer ones. This could be interpreted as an application of Lerner's second rational mechanism – acceptance of one's limitations – or instead an approach tinged by ideal victim views, as only the financially weak victims are covered.

4.2.3. The early changes to the Tort Liability Act

The passing of Sweden's first independent tort law codification in the form of the 1972 Tort Liability Act would appear a significant occurrence in the sequence of events here related. However, there were no relevant material changes to the previous situation in the law as originally implemented.[163] But material changes of practical significance soon followed. One Government report from 1971 proposed adjustment of damages when excessively burdensome with respect to the financial situations of the parties.[164] The parties' finances should also be considered when damages were to be reduced due to the contribution of the injured party. A 1973 report advocated updated rules on damages for injury to the person whereby compensation for lost income would more accurately reflect financial consequences rather than medical invalidity.[165] The 1973 report also suggested a stricter formulation of the contribution rule proposed in 1971 so that compensation awarded as a result of injury to the person could only be reduced due to intent, gross negligence or under otherwise extraordinary circumstances.

The Government in 1975 introduced several changes to the Tort Liability Act, adhering closely to the proposals in the aforementioned reports. The reciting minister stated that tort law as a protection against the consequences of injuries, crucial as it had been in past eras, was now far less important due to the expansion of both public and private insurance.[166] But damages still served a purpose, the minister continued, as the social insurance system was, while universal, sometimes inadequate in compensating for all financial losses and private insurance schemes did not cover the whole population.[167] This development of tort law into a supplement to insurance was to the minister both reasonable and desirable as it promoted social justice and rational resource allocation.[168]

---

[162] See mot. 1971:172, mot. 1971:329, mot. 1971:330 and mot. 1971:331.
[163] See prop. 1972:5 1.
[164] See SOU 1971:83.
[165] See SOU 1973:51.
[166] See prop. 1975:12 98.
[167] See prop. 1975:12 99.
[168] See prop. 1975:12 100.

The choice to make the conditions for reduction of damages stricter in cases of personal injury is interesting in relation to the theoretical models. It is difficult to argue that it in any way places blame on the seemingly innocent victims, so a just-world analysis is of little value. At the same time, the change must be assumed to provide full compensation to more of Christie's "non-ideal victims". Maybe this situation, where more victims are unequivocally embraced by the law, reveals the limits of using these two models in the present context. It is, however, worth noting that this change applied only to compensation paid by the perpetrator. As the next section shows, taxpayer funds are more closely guarded.

4.2.4. The first Criminal Injuries Compensation Act

In the budget bill for the fiscal year of 1974/1975, the Government presented its conclusions regarding the trial scheme of criminal injuries compensation introduced in 1971. The minister noted that only a single application had been denied due to the financial situation of the applicant and that it was now time to specify more precisely the conditions under which compensation was to be granted.[169] Among the minister's suggestions for these conditions were lifting the limits on compensation for non-pecuniary damage but keeping the possibility for discretion in the determination of whether the victim contributing to the damage should result in reduction of the compensation.[170]

The Riksdag Committee on Justice agreed with the general sentiment of the Government's proposal but argued that an official inquiry into how the criminal injuries compensation system could be expanded was warranted.[171] An official inquiry was launched on behalf of the Government.[172] A report was published in 1977, containing suggestions for a permanent system of criminal injuries compensation. These suggestions included a new government agency (the Criminal Injuries Committee, Sw. *brottsskadenämnden*) to try applications for both fugitive and other criminal damage, a general right to compensation for injury to the person without means testing and a right to compensation for property damage and, under extraordinary circumstances, pure financial loss if the victim's livelihood would otherwise be at risk.[173]

In 1978, the Government proposed a Criminal Injuries Compensation Act with provisions almost identical to those suggested by the inquiry.[174] In the bill to the Riksdag, the minister reiterated the importance of the current state victim compensation scheme as a supplement to compensation by way of damages (in practice often not paid by a penniless or unknown perpetrator) or

[169] See prop. 1974:1, appendix 4, 112.
[170] See prop. 1974:1, appendix 4, 113.
[171] See bet. 1974:JuU1 4–5.
[172] See SOU 1977:36.
[173] See SOU 1977:36 7–9.
[174] See prop. 1977/78:126 2–5.

social or private insurance (not always a full coverage, especially for poor victims).[175] The minister argued in favour of expansion and permanentation of the trial scheme as beneficial to victims and offenders alike. Societal solidarity with the victim demanded increased state support and could simultaneously enhance the population's appreciation of a community-oriented system of offender care and rehabilitation. Financial concerns made the minister limit the scope of the general compensation system to the most pressing needs, but these were here defined as personal injury, as well as property damage and pure financial loss when it threatened the victim's livelihood.[176] Within these limits the compensation was to be calculated according to tort law principles, that is, as a rule full compensation for the injury should be awarded.[177] Reduction of the compensation was, however, to be possible in a much wider range of circumstances than under the then relatively recently introduced Tort Liability Act.[178] The new legislation was to include a reference to the reduction article in that act, but would also allow for reduction of compensation due to factors on the victim's side other than contribution to the injury if special circumstances were at hand. Unlike under the Tort Liability Act compensation for psychological suffering unrelated to personal injury could not be awarded according to the proposed legislation.[179]

The Riksdag Committee on Justice noted that it was "incredibly difficult" to determine where to draw the line on the extent of the state's responsibility for compensating criminal damage but did not object to what it called the Government's "restrictive" proposal.[180] The Riksdag passed the Government's bill with only minor changes requested by the Committee[181] and the first Criminal Injuries Compensation Act (SFS 1978:413) went into force that year.

As previously noted regarding the current criminal injuries compensation scheme, such constructions do almost inevitably reflect some kind of ideal victim view. Miers provided an explanation for why some victims are excluded from criminal injuries compensation: it is necessary for the legitimacy of a publicly funded scheme.[182]

4.2.5. "An increasingly significant area of interest"

As noted by Tham[183] and Lindgren[184] there was much legislative activity concerning victims in the following years. The original wording of the

[175] See prop. 1977/78:126 9.
[176] See prop. 1977/78:126 9.
[177] See prop. 1977/78:126 11.
[178] See prop. 1977/78:126 100.
[179] See prop. 1977/78:126 40.
[180] See bet. 1977/78:JuU32 8.
[181] See bet. 1977/78:JuU32 11 and rskr. 1977/78:280.
[182] See Miers (2007) 341.
[183] See Henrik Tham, 'Brottsoffrets uppkomst och utveckling som offentlig fråga i Sverige' in Claes Lernestedt and Henrik Tham (eds), *Brottsoffret och kriminalpolitiken* (Norstedts juridik 2011) 25.
[184] See Lindgren (2004) 98.

Criminal Injuries Compensation Act which excluded victims of crime who had experienced psychological suffering, but not any physical injury to the person, was deemed unsatisfactory by the Government.[185] The Government in 1987 proposed an addition to the Act under which compensation for such suffering, caused by crimes against liberty or through some form of assault, could be awarded.[186] The Riksdag Committee on Justice had no objection to this proposal[187] and it was approved by floor vote.[188]

A 1994 Government bill introduced several major changes to the Swedish victim regulation.[189] A Crime Victim Fund with resources to support victim-related organisations and activity, such as support services and research, was proposed, to exist in parallel with the current criminal injuries compensation scheme.[190] A new government agency replacing the Criminal Injuries Committee, the Crime Victim Compensation and Support Authority, was also proposed to manage the Crime Victim Fund.[191] A Committee on Criminal Injuries Compensation would remain within the organisational structure of the new Authority to decide cases of a precedential nature or otherwise of importance.[192] The Government justified the creation of a government agency with general responsibility for crime victim issues by stating that this would provide "considerably improved conditions for overview, coordination and development in an increasingly significant area of interest for the state".[193] The Committee on Justice left the here related proposals without material changes.[194] The full Riksdag followed the Committee and approved the Government's bill.[195]

I am not alone in perceiving this flurry of legislative activity as an effort by the state to more openly embrace the crime victim.[196] Compared to how the fugitive scheme was justified a distinct shift in tone and emphasis has occurred. Clear boundaries are here set up between victims and offenders, whereas the ultimate goal of the fugitive scheme was for the benefit of the perpetrators and their fellow inmates and patients.

4.2.6. Expanded possibilities of reduction

The increased attention paid to victims did not only reinforce their legal position, however. A 1997 internal inquiry at the Ministry of Justice suggested changes to the Criminal Injuries Compensation Act with the explicit purpose

[185] See prop. 1987/88:92 6.
[186] See prop. 1987/88:92 6.
[187] See bet. 1987/88:JuU37 5.
[188] See rskr. 1987/88:240.
[189] See prop. 1993/94:143.
[190] See prop. 1993/94:143 20.
[191] See prop. 1993/94:143 33.
[192] See prop. 1993/94:143 35.
[193] Prop. 1993/94:143 34. Author's translation.
[194] See bet. 1993/94:JuU25 34-35.
[195] See rskr. 1993/94:320.
[196] See Tham (2011) 25 and Gallo–Svensson (2019) 61.

of reducing compensation for personal injury in more cases.[197] The Government proposed changes whereby the condition of special circumstances for reduction of compensation for personal injury where to be replaced by a general determination of equitability (Sw. *allmän skälighetsbedömning*) of whether the victim culpably increased their risk of injury, so that reduction would happen more often than previously.[198] The Riksdag Committee on Justice supported the Government's proposal, but noted that the increased space for reduction should not be used in a way yielding unacceptable social and humanitarian results.[199] In particular, the Committee majority emphasised that reduction in cases of sexual crimes or serious violence perpetrated by men against women could never reasonably be applied even under the proposed rules. The Riksdag passed the Government's bill which became law in 1999.[200]

There are clear parallels to the ideal victim model here. These changes are a strong sign of criminal injuries compensation moving in a direction where compensation is primarily reserved for the "innocent" victims.

4.2.7. From psychological suffering to integrity violation

The Government had in 1988 commissioned an inquiry to review the rules on compensation for non-pecuniary damage suffered in conjunction with personal injury.[201] The inquiry produced three reports of which the two later ones are of interest here.[202] The first of these dealt with the right to compensation for psychological suffering as a result of a violation of personal integrity during a crime[203] and the second with compensation for non-pecuniary crime-induced damage generally.[204]

In a 2000 Government bill proposing changes to the Tort Liability Act and the Criminal Injuries Compensation Act based on the findings in the reports, the reciting minister stated that the expansion of public and private insurance had created a situation wherein these schemes compensate most personal injuries.[205] The main function of tort law as to personal injuries had thus, according to the minister, become to compensate for the accompanying non-pecuniary damage. This should be interpreted as referring to both damages and criminal injuries compensation as they both rely on tort law

[197] See Ds 1997:45 37.
[198] See prop. 1998/99:41 16.
[199] See bet. 1998/99JuU20 5.
[200] See rskr. 1998/99:175.
[201] See dir. 1988:76.
[202] The first, SOU 1991:34, was devoted to compensation to persons infected with HIV.
[203] See SOU 1992:84.
[204] See SOU 1995:33.
[205] See prop. 2000/01:68 17.

principles. The express purpose of the proposals was to reinforce the right to non-pecuniary damages.[206]

No changes to the rules for reduction of damages were proposed, but the article on compensation for psychological suffering as a result of a crime was to be updated to closely resemble the one currently in effect.[207] The wording psychological suffering (Sw. *psykiskt lidande*) was replaced by serious violation of personal integrity (Sw. *kränkning*) and the "nature and duration" of the criminal act was to be the main factor in determining the severity of the violation. Changes to the Criminal Injuries Compensation Act essentially identical to those concerning damages were also proposed.[208] The Riksdag Committee on Justice left the proposals on compensation for violation of personal integrity without any comment other than a recommendation to pass them,[209] which the Riksdag also did.[210]

4.2.8. The second Criminal Injuries Compensation Act

In 2010, the Government appointed an inquiry to perform a "broad review" of the 1978 Criminal Injuries Compensation Act.[211] The inquiry was to consider whether the Crime Victim Compensation and Support Authority should be allowed to continue to perform its own compensation calculations when a court had already done so and whether the right to criminal injuries compensation should be extended to severe defamation crimes. The main conclusions on these points were presented in a 2012 report.[212]

The response to the findings of the inquiry was decidedly mixed. Its proposals not to extend the right to criminal injuries compensation to victims of defamation crimes[213] and to remove the reference to the reduction rule in the Tort Liability Act were largely positively received.[214] The Government's draft for a new Criminal Injuries Compensation Act included both.[215] The inquiry's proposed limitation, but not elimination, of the power of the Crime Victim Compensation and Support Authority to perform its own compensation calculations after a court had already done so was however criticised from several angles, the proposal considered to expansive by some consultation bodies and too strict by others.[216] The Government's bill to the Riksdag took a middle way whereby the Crime Victim Compensation and Support Authority would not be allowed to reduce compensation for violation of personal

[206] See prop. 2000/01:68 1.
[207] See prop. 2000/01:68 47–53.
[208] See prop. 2000/01:68 57.
[209] See bet. 2000/01:LU19 4.
[210] See rskr. 2000/01:216.
[211] See dir. 2010:84.
[212] See SOU 2012:26.
[213] See prop. 2013/14:94 22.
[214] See prop. 2013/14:94 60.
[215] See prop. 2013/14:94 5–11.
[216] See prop. 2013/14:94 25.

integrity when the issue had been tried by a court on the merits.[217] The Government's proposal faced no significant opposition in the Riksdag[218] and was approved by the full body,[219] entering into force in 2014 as the Criminal Injuries Compensation Act (SFS 2014:322) and repealing the previous Act.

Attention soon returned to matter of victims of defamation crimes being excluded from criminal injuries compensation. The increase in quantity and severity of such criminality online and the evolving legal situation, where the Committee for Criminal Injuries Compensation had awarded compensation for violation of the victim's peace[220] caused by defamation,[221] was used by the Government to justify extending criminal injuries compensation to victims of grave defamation.[222] The proposal was passed without opposition[223] in the Riksdag.[224]

4.2.9. Payment Services Act compensation

The current rules on Payment Services Act compensation can be traced to Article 24 of the Consumer Credit Act of 1979.[225] The rule limited the liability of the holder of a credit card when the card was used without their permission, except when they had willfully given their card to someone else, lost the card through gross negligence, or otherwise lost the card and not immediately reported this to the creditor. As examples of what could constitute gross negligence in this context the Government provided leaving the card in an unsupervised pocket, bag or vehicle.[226] The Riksdag passed the Government's bill without any changes to Article 24.[227] This rule was transferred materially unmodified to the 1993 Consumer Credit Act, with a statement in the Government bill that it was most likely analogously applicable to payment cards other than credit cards.[228]

Multiple government inquiries in the following decades recommended updating these rules, but their work did not directly result in legislative changes.[229] The need for modifications did however become apparent after the 2007 passing of the first European Union directive on payment services.[230] An

[217] See prop. 2013/14:94 24.
[218] See bet. 2013/14:JuU38.
[219] See rskr. 2013/14:255.
[220] As described above, while damages can be awarded for violation of personal integrity due to a criminal assault on the person or the person's liberty, peace or honour, honour is generally excluded as a ground for criminal injuries compensation.
[221] See the Committee's decisions 5675/2015 and 7308/2015.
[222] See prop. 2016/17:222 84.
[223] See bet. 2017/18:KU13 30–33.
[224] See rskr. 2017/18:36.
[225] See prop. 1991/92:83 144, prop. 2009/10:122 12 and prop. 2017/18:77 193.
[226] See prop. 1976/77:123 191.
[227] See rskr. 1977/78:25.
[228] See prop. 1991/92:83 144.
[229] See SOU 1995:69, SOU 2000:29 and SOU 2005:108.
[230] See 2007/64/EC.

internal inquiry at the Ministry of Justice prepared a proposal for a new Unauthorised Transactions with Payment Instruments Act to accommodate Swedish law to the European requirements for regulating account holder liability for unauthorised transactions.[231] The Government, in turn, proposed the new law to the Riksdag, with rules almost identical to the ones in force today. The central tenets of when the bank is to compensate the account holder for losses incurred through unauthorised transactions have been related in Chapter Three. The Government's proposal met no opposition in the Riksdag.[232] The articles of the Unauthorised Transactions with Payment Instruments Act were in 2018 transferred to the Payment Services Act without modifications relevant to the present purposes.[233]

4.3. Concluding Remarks: From Victim to Crime Victim

This review of the legislative history of crime-related damages, criminal injuries compensation and compensation under the Payment Services Act has provided some insights into the questions remaining after Chapter Three. The main alternative, and precursor, to reducing victim compensation due to the behaviour of the victim is, at least in Sweden, to reduce it for the victims who do not need it. A shift appears to have occurred, where victims of crime were in the early 1970s regarded as a marginalised group among others, and to which state resources should be directed when most pressing. In later years, an individualised view of the victim seems to dominate, with an increased focus on compensation for violation of personal integrity and expanded possibilities for reduction of criminal injuries compensation due to the victim's behaviour. The lack of offender rehabilitation facilitation as motivation for victim compensation schemes in later years only serves to emphasise decreased dedication to the marginalised in general.

These findings show that victim behaviour is not the only imaginable factor in reducing the victim's compensation. Can it also illuminate the other issue raised at the end of Chapter Three, namely, the difference and connection between holding the victim responsible for behaviour contributing to their victimisation and questionable behaviour at large? The answer is a strong "maybe" and we will see why in the following final chapter.

[231] See Ds 2008:68.
[232] See bet. 2009/10:CU19 10 and rskr. 2009/10:365.
[233] See prop. 2017/18:77 193.

5. Findings and Conclusions

In this final chapter I formulate my two main conclusions. Number one, which provides the primary response to the first research question, is that there are three main factors behind victim compensation reduction: the victim's moral standing, the victim's causal contribution to their victimisation, and the victim's financial situation. Conclusion number two, primarily responding to the second research question, is that currently the second of these factors is emphasised: the law views a lack of contribution to the crime as the vital property of the victim. I will in the following discuss these results and then conclude the thesis with some thoughts on the material, methodology and findings.

5.1. The Three Factors

A running theme throughout this text has been the difficulty in analysing why a certain kind of victim behaviour leads to reduced compensation. The question is one of separating moral blame from causal blame, that is, determining whether the victim is ineligible for full compensation because of morally reprehensible behaviour or behaviour which links them too closely to their particular victimisation. My conclusion is that, while the two have repeatedly been conflated in Swedish law, they can be separated from each other. Thus, we find ourselves with three main factors behind victim compensation reduction: morality, causality, and finances.

The material covered in Chapters Three and Four concerning damages and criminal injuries compensation supplies ample evidence that morally questionable victims are likely to receive reduced compensation or be excluded from compensation altogether. Traces of this strand of thought can be found in the law on damages as well, such as in NJA 1995 s. 661, but it is completely absent in the rules on compensation in the Payment Services Act. But the most glaring example is the statement in the Government bill proposing the first Criminal Injuries Compensation Act stipulating that it would be reasonable to reduce compensation for persons with a history of criminality or other reprehensible behaviour. There is an internally coherent argument to be made that victim compensation should not be paid to proven criminals, but the inclusion of other, not clearly defined immoral activities is certainly a step beyond that. The rare application of this reduction rule by the Committee for Criminal Injuries Compensation, countered by lawmakers in the 1999 changes, is perhaps a sign of the legal establishment recognising this issue.

But even after the expansion of the possibilities for reduction in 1999, the wording of the law and the decisions has always been that the reprehensible behaviour was negligent because it increased the risk of injury, as in the Committee cases 5847/2013 and 3995/2008. Certainly, contribution to one's

own injury can be a valid reason to reduce the compensation. This is a prominent factor in reducing both damages and compensation under the Payment Services Act: for the latter, the exclusive reason in the case law here studied.

The third main factor behind reduced compensation is finances or, more generally, need. This can take two different forms. Either, as in the trial scheme of the early 1970s and to this day in cases of criminal injuries compensation not for personal injury, a simple means test whereby only the victims most in need receive full compensation. Or, as under the Tort Liability Act after it was amended in 1975, a general determination of equitability where both the victim's and the perpetrator's financial situation are considered.

As this review of the results makes apparent, there is no single factor which decides whether a victim receives full compensation. Instead, the factors have shifted over time and they vary depending on under which compensation scheme compensation is claimed. Nonetheless, there is clear support in the law on compensation reduction as it stands at the time of writing for deeming the victim's degree of contribution to the damage they have suffered the primary factor. It is a cornerstone of tort law; it is dominating as the explicitly stated reason for reduction of criminal injuries compensation; it is the sole prerequisite for reduction of compensation under the Payment Services Act. This finding has significant implications for our understanding of the law's conception of victimhood.

5.2. Conceptions of the Victim

In this section, I will use the findings above as a point of departure for a discussion of all three factors in light of the ideal victim and just-world models.

5.2.1. The blame-free victim

A lack of causal responsibility for the crime and corollary injury has, as a generalisation, been established as the main factor in awarding victims of crime full compensation. This suggests that the law's idea of the victim of crime is as primarily a blame-free victim.

That result lends itself well to an ideal victim interpretation. Actively taking precautions against crime, or at the very least not precipitating it in any way, is the third of Christie's six conditions for ideal victim status. The other conditions also, more or less directly, point towards the ideal victim not having anything else than their victimisation to do with the crime. Not having any previous knowledge of the perpetrator limits the space for viewing the victim as a blameworthy link in the chain of events leading up to the crime. Similarly, the conditions requiring the ideal victim's offender to be relatively powerful inherently shifts causal blame towards the offender. All things

considered, it would often be a good prediction that the causally blameless victim, Christie's ideal victim, and the victim receiving full compensation under Swedish law is one and the same.

The ideal victim theory being such an obvious fit for analysing the blame-free victim does not imply that the just-world hypothesis is worthless in the present context. A superficial conclusion would be that, since the law apparently rewards the victims who are not to blame causally for their injury, the just-world model's ideas of why exactly those victims are sometimes treated poorly is inapplicable here. Some of Lerner's proposed mechanisms do, however, suggest otherwise. First and foremost, the concept of reinterpretation of the cause of the injury as defence against perceived suffering is crucial to this issue. This mechanism supplies a potential explanation for the prevalence of victim contribution as reason to reduce compensation: when the just-world beliefs of legal decision-makers are threatened by undeserved suffering they find a way to hold the victim responsible. Other Lerner mechanisms, such as denial-withdrawal, might work in analogous ways, as might the severity effect. A more granular analysis of these ideas requires moral and psychological considerations beyond the scope of this study. But what can be said here is that, while the just-world hypothesis potentially undermines the ideal victim interpretation above, it only strengthens the proposition that the victim being free from causal blame is vital to the law's conception of the victim of crime.

"Blame-free" can be used as a synonym for "innocent". But here, I have been careful to separate the two. The next subsection shows how and why I consider them distinct.

5.2.2. The innocent victim

As noted in the first section of this chapter, moral and causal blame are sometimes combined or conflated. But they are separate concepts, and while the latter was moments ago described as most important in relation to this project and its research questions, the former is also worth examining. There is a strain of moral innocence to the law's conception of the victim. It can be observed in one of the grounds for reduction of criminal injuries compensation: reprehensible, but not necessarily criminal, behaviour.

The ideal victim model is illustrative here as well. Carrying out a morally unquestionable project at the time of the crime is one of the conditions for ideal victim status. It is worth noting that whereas the descriptive Christie avoids explicitly including moral breaches on the part of the victim wholly unrelated to the crime, the Government bill introducing the first Criminal Injuries Compensation Act seemingly does. In practice, however, only those moral failures which negligently increase the risk of injury are deemed relevant. Thus, moral blame is less prominent a factor than causal blame in Swedish law, but it is not without impact.

The relationship between the just-world hypothesis and moral innocence as an aspect of the law's idea of the victim is similar to that between the hypothesis and the blame-free victim. It lacks any real explanatory power on the surface level: it is inconceivable that any primary legal source would explicitly state that morally innocent victims are to receive reduced compensation. But some of the strategies proposed by Lerner can potentially explain why moral considerations are made in the first place, such as reinterpretation of the victim's character. The suffering of innocents can be managed by branding them as participants in "reprehensible activity". Once again, however, further exploration of these processes would be a diversion into a discussion on morality and psychology for which the background is lacking in this text.

5.2.3. The necessitous victim

Finances as a factor for compensation reduction has largely fallen out of fashion. But traces of it can still be found and further exploration of the necessitous victim can illuminate the rise of causal contribution as the main determinant.

An ideal victim analysis of reducing compensation due to financial considerations is not as straightforward as in the previous sections on causal and moral blame. There is no "rich victims are less ideal" condition. The condition for the victim's weakness can possibly be construed as such, but even so, finances are not as crucial to the ideal victim model as the two previous factors.

The explanatory power of the just-world model is seemingly no more significant. A pure application of the belief in a just world would reasonably result in persons who have not only suffered criminal injury but are also poor receiving little support. As noted above in section 4.2.2., however, providing these and only these victims with compensation can be an expression of Lerner's acceptance of one's limitations mechanism. The resources of the state are finite and in the 1970s, they were directed based on need. Today, the focus is rather on the victim's behaviour.

5.3. Final Thoughts

When reduction is applied on the basis of either of the first two factors, what this signals to the victim and others is, fundamentally, that the victim on some level deserved to suffer. The idea is that, on either the practical or the metaphorical plane, the victim brought at least some of their injury upon themselves. There is no other reasonable interpretation. Of course, this does not mean that all victim compensation reduction is wrong. But it is a testament to the point that I, with support from Mannelqvist, made in the introduction of this text: victim compensation reduction is a high-stakes game. Especially when the victim is blamed in such an explicit manner.

Reduction based on need is of a different nature. Unlike reduction due to moral or causal factors, such reduction does not ultimately rest on the idea of blame. This is best explained by the temporal differences. Needs-based reduction does not take aim at factors necessarily present at the time of the crime. Theoretically, the same could be said for moral blame, but as the present study has shown, this does not happen in practice.

This project has produced one primary material result: a lack of causal contribution to the crime is crucial to the conception of the victim in current Swedish law. Financial need has decreased in importance as a factor in the reduction of victim compensation, while the weight placed on the victim's moral standing appears more or less the same over the time period here studied. Future studies could explore these issues further by, for instance, questioning whether the exclusion of victims of most property crimes from criminal injuries compensation is an indicator of financial need being considered elsewhere in the system for victim compensation.

Beyond these conclusions, my hope and belief is that I have also provided some support for the view that a theoretically inclusive legal scholarship is possible and desirable. There are certainly issues remaining in the application of non-legal theoretical models to legal rules, some of which are relevant to the present work. Among these are the ontological problems inherent in studying the law through the lens of results from other, more or less empirical, fields. I nonetheless believe the utilisation of advances in the social and behavioural sciences to be a key component in the future success of legal scholarship. This is not a usurpation, a defeat where jurists lose methodological battles, but rather a necessary reinforcement of law as an academic endeavour.

Bibliography

Literature

Adams-Price, Carolyn E – Dalton III, William T – Sumrall, Roxana (2004). 'Victim Blaming in Young, Middle-Aged, and Older Adults: Variations on the Severity Effect'. *Journal of Adult Development*, vol 11, no 4: 289–295.

Aderman, David – Brehm, Sharon – Katz, Lawrence (1974). 'Empathic observation of an innocent victim: The just world revisited'. *Journal of Personality and Social Psychology*, vol 29, no 3: 342–347.

Bengtsson, Bertil – Strömbäck, Erland (2018). *Skadeståndslagen. En kommentar*. 6th edn. Norstedts Juridik.

Bosma, Alice – Mulder, Eva – Pemberton, Antony (2018). 'The ideal victim through other(s´) eyes'. In Marian Duggan (ed), *Revisiting the 'ideal victim'. Developments in critical victimology*: 27–42. Policy Press.

Brottsoffermyndigheten (2016). *Brottsoffermyndighetens referatsamling 2017*. Wolters Kluwer.

Christensen, Anna (1996). 'Skydd för etablerad position – ett normativt grundmönster'. *Tidsskrift for Rettsvitenskap*, vol 109: 519–574.

Christie, Nils (1986). 'The Ideal Victim'. In Ezzat A Fattah (ed), *From Crime Policy to Victim Policy. Reorienting the Justice System*: 17–30. Palgrave Macmillan.

Cialdini, Robert – Kenrick, Douglas – Hoerig, James (1976). 'Victim derogation in the Lerner paradigm: Just world or just justification?' *Journal of Personality and Social Psychology*, vol 33, no 6: 719–724.

Cuddy, Amy – Fiske, Susan – Glick, Peter (2008). 'Warmth and Competence as Universal Dimensions of Social Perception: The Stereotype Content Model and the BIAS Map'. *Advances in Experimental Social Psychology*, vol 40: 61–149.

Dahlstrand, Karl (2011). 'Ersättning för kränkning ur ett rättssociologiskt perspektiv. "En särskild typ av omtanke och kärlek"'. In Claes Lernestedt – Henrik Tham (eds), *Brottsoffret och kriminalpolitiken*: 359–380. Norstedts juridik.

–– (2012). *Kränkning och upprättelse. En rättssociologisk studie av kränkningsersättning till brottsoffer*. PhD dissertation. Lund University.

Dereborg, Anders – Lindeblad, Ann-Christine (2018). *Brottsskadelagen (2014:322). En kommentar*. Norstedts juridik.

Feigenson, Neal – Jaihyun, Park – Salovey, Peter (1997). 'Effect of Blameworthiness and Outcome Severity on Attributions of Responsibility and Damage Awards in Comparative Negligence Cases'. *Law and Human Behavior*, vol 21, no 6: 597–617.

Friberg, Sandra (2010). *Kränkningsersättning. Skadestånd för kränkning genom brott*. PhD dissertation. Uppsala University.

Furnham, Adrian (2003). 'Belief in a just world: research progress over the past decade'. *Personality and Individual Differences*, vol 34, no 5: 795–817.

Gallo, Carina – Svensson, Karin (2019). *Victim Support and the Welfare State*. Routledge.

Granström, Görel – Mannelqvist, Ruth (2007). 'Rättsvetenskap och viktimologi'. *Juridisk Tidskrift*, 2007–08, no 1: 28–43.

–– Mannelqvist, Ruth (2016). *Brottsoffer. Rättsliga perspektiv*. Studentlitteratur.

Hafer, Carolyn – Begué, Laurent (2005). 'Experimental Research on Just-World Theory: Problems, Developments and Future Challenges'. *Psychological Bulletin*, vol 131, no 1: 128–167.

Hellner, Jan – Radetzki, Marcus (2018). *Skadeståndsrätt*. 10th edn. Norstedts juridik.

Hentig, Hans von (1948). *The Criminal and His Victim. Studies in the Sociobiology of Crime*. Yale University Press.

Klami, Hannu Tapani (1989). *Föreläsningar över juridikens metodlära*. 2nd edn. Iustus Förlag.

Kleineman, Jan (2018). 'Rättsdogmatisk metod'. In Maria Nääv – Mauro Zamboni (eds), *Juridisk metodlära*, 2nd ed: 21–46. Studentlitteratur.

Lerner, Melvin J – Simmons, Carolyn H (1966). 'Observer's Reaction to the "Innocent Victim": Compassion or Rejection?' *Journal of Personality and Social Psychology*, vol 4, no 9: 203–210.

–– Matthews, Gail (1967). 'Reactions to suffering of others under conditions of indirect responsibility'. *Journal of Personality and Social Psychology*, vol 45, no 3: 319–325.

–– (1980). *The Belief in a Just World. A Fundamental Delusion*. Plenum Press.

Lindgren, Magnus (2004). *Brottsoffer i rättsprocessen. Om ideala brottsoffer och goda myndigheter*. PhD dissertation. Stockholm University.

Lindstedt Cronberg, Marie (2011). 'Från målsägande till brottsoffer. Milstolpar och kursändringar längs med vägen'. In Claes Lernestedt – Henrik Tham (eds), *Brottsoffret och kriminalpolitiken*: 51–63. Norstedts juridik.

Mannelqvist, Ruth (2006). 'Brottsoffers möjlighet till upprättelse och kompensation vid kränkning'. *Juridisk Tidskrift*, 2005–06, no 4: 790–808.

–– (2006). 'Ersättningar till brottsoffer – samverkan eller kollision?' *Svensk Juristtidning*: 379–396.

Miers, David (2000). 'Taking the Law into their Own Hands: Victims as Offenders'. In Adam Crawford – Jo Goodey (eds), *Integrating a Victim Perspective Within Criminal Justice*: 77–96. Ashgate Publishing.

–– (2007). 'Looking beyond Great Britain: the development of criminal injuries compensation'. In Sandra Walklate (ed), *Handbook of Victims and Victimology*: 337–362. Routledge.

–– (2018). *Criminal Injuries Compensation. State and Offender Compensation for Violent Crime*. Oxford University Press.

Pemberton, Antony (2012). 'Just-world victimology: revisiting Lerner in the study of victims of crime'. In Hidemichi Morosawa – John Dussich – Gerd Ferdinand Kirchhoff (eds), *Victimology and human security. New horizons*: 45–69. Wolf Legal Publishers.

–– (2016). 'Dangerous Victimology: My lessons learned from Nils Christie.' *Temida*, vol 19, no 2: 257–276.

Sandgren, Claes (2004). 'Om teoribildning och rättsvetenskap'. *Juridisk Tidskrift*, 2004–05, no 2: 297–333.

–– (2015). *Rättsvetenskap för uppsatsförfattare*. 3rd edn. Norstedts juridik.

Schafer, Stephen (1968). *The Victim and His Criminal. A Study in Functional Responsibility*. Random House.

Schultz, Mårten (2007). '"Brottslingar förtjänar inte skadeståndsrättens skydd"'. *Svensk Juristtidning*: 477–498.

–– (2008). *Kränkning. Studier i skadeståndsrättslig argumentation*. Jure Förlag.

–– (2012). 'Framtidens brottsskadeersättning'. *Svensk Juristtidning*: 591–606.

Scott, David (2016). 'Foreword: thinking beyond the ideal'. In Marian Duggan (ed), *Revisiting the 'ideal victim'. Developments in critical victimology*: xiii–xvi. Policy Press.

Svensson, Eva-Maria (2007). 'Boundary-work in legal scholarship'. In Åsa Gunnarsson – Eva-Maria Svensson – Margaret Davies (eds), *Exploiting the limits of law. Swedish feminism and the challenge to pessimism*: 23–47. Ashgate Publishing.

Tham, Henrik (2011). 'Brottsoffrets uppkomst och utveckling som offentlig fråga i Sverige'. In Claes Lernestedt – Henrik Tham (eds), *Brottsoffret och kriminalpolitiken*: 23–49. Norstedts juridik.

Tuori, Kaarlo (2002). *Critical Legal Positivism*. Ashgate Publishing.

Walster, Elaine (1966). 'Assignment of responsibility for an accident'. *Journal of Personality and Social Psychology*, vol 3, no 1: 73–79.

Åkerström, Malin – Sahlin, Ingrid (2001). *Det motspänstiga offret*. Studentlitteratur.

Official documents

Commissions of inquiry
Dir. 1988:76. Ersättning för ideell skada i samband med personskada m. m.
Dir. 2010:84. En översyn av brottsskadelagen.

Government ministry reports
Ds 1997:45. Några frågor om brottsskadeersättning.
Ds 2008:86. Betalningsansvar vid obehöriga transaktioner.

Motions by Members of the Riksdag
Mot. 1947:84 (Second Chamber).
Mot. 1947:139 (Second Chamber).
Mot. 1947:221 (Second Chamber).
Mot. 1947:276 (Second Chamber).
Mot. 1947:279 (Second Chamber).
Mot. 1971:172.
Mot. 1971:329.
Mot. 1971:330.
Mot. 1971:331.

Riksdag Committee reports
Bet. 1948:Su93.
Bet. 1948:Su106.
Bet. 1971:JuU5.
Bet. 1974:JuU1.

Bet. 1977/78:JuU32.
Bet. 1987/88:JuU37.
Bet. 1993/93:JuU25.
Bet. 1998/99:JuU20.
Bet. 2000/01:LU19.
Bet. 2009/10:CU19.
Bet. 2013/14:JuU38.
Bet. 2017/18:KU13

Swedish Government bills
Prop. 1948:87. Ersättning för skador vållade av personer som avvikit från vissa anstalter.
Prop. 1971:1. Statsverkets tillstånd och behov under budgetåret 1971/72.
Prop. 1972:5. Förslag till skadeståndslag m. m.
Prop. 1974:1. Statsverkets tillstånd och behov under budgetåret 1974/75.
Prop. 1975:12. Ändring i skadeståndslagen (1972:207) m. m.
Prop. 1976/77:123. Konsumentkreditlag m. m.
Prop. 1977/78:126. Ersättning för brottsskador.
Prop. 1987/88:92. Ändring i brottsskadelagen.
Prop. 1991/92:83. Ny konsumentkreditlag.
Prop. 1993/94:143. Brottsoffren i blickpunkten – en brottsofferfond och andra åtgärder för att stärka brottsoffrens ställning.
Prop. 1998/99:41. Ändringar i brottsskadelagen.
Prop. 2000/01:68. Ersättning för ideell skada.
Prop. 2009/10:122. Obehöriga transaktioner med betalningsinstrument.
Prop. 2013/14:94. En ny brottsskadelag.
Prop. 2016/17:222. Ett stärkt straffrättsligt skydd för den personliga integriteten.
Prop. 2017/18:77. Nya regler om betaltjänster.

Swedish Government Official Reports
SOU 1971:83. Skadestånd III. En allmän regel om jämkning av skadestånd mm.
SOU 1973:51. Skadestånd V. Skadestånd vid personskada.
SOU 1977:36. Ersättning för brottsskador.
SOU 1991:34. Ersättning för ideell skada till HIV-smittade.
SOU 1992:84. Ersättning för kränkning genom brott.
SOU 1995:33. Ersättning för ideell skada vid personskada.
SOU 1995:69. Betaltjänster.
SOU 2000:29. Starka konsumenter i en gränslös värld.
SOU 2005:108. Betalningsansvar vid obehörig användning av kontokort mm.
SOU 2012:26. En ny brottsskadelag.

Written communications from the Riksdag
Rskr. 1947:475.
Rskr. 1948:245.

Rskr. 1971:101.
Rskr. 1972:192.
Rskr. 1977/78:25.
Rskr. 1977/78:280.
Rskr. 1987/88:240.
Rskr. 1993/94:320.
Rskr. 1998/99:175.
Rskr. 2000/01:216.
Rskr. 2009/10:365.
Rskr. 2013/14:255.
Rskr. 2017/18:36.

Online sources

Brottsoffermyndigheten (2019). *Brottsoffermyndighetens årsredovisning 2018*. www.brottsoffermyndigheten.se/default.aspx?id=13119. Accessed 2019-11-27.

Dellert, Mattias (2018). 'Nytt beslut: Bankerna kan bli skyldiga att betala om Bank-id kapas'. *SVT Nyheter*. www.svt.se/nyheter/inrikes/privatpersoner-kan-fa-sta-for-hela-beloppet-om-bank-id-kapas. Accessed 2019-12-05.

Domstolsverket (2019). *Svensk-engelsk ordlista*. 5th edn. www.domstol.se/globalassets/filer/gemensamt-innehall/for-professionella-aktorer/svensk-engelsk_ordlista_2019.pdf. Accessed 2019-12-02.

Kalleberg, Ragnvald (2015). 'Nils Christie'. *Norsk biografisk leksikon*. www.nbl.snl.no/nils_christie. Accessed 2019-10-15.

Ronge, Johan (2018). 'Man blev av med 120 000 i bluffen – får ingen ersättning'. *Expressen*. www.expressen.se/dinapengar/far-inte-en-krona-efter-misstaget-med-bank-id-/. Accessed 2019-12-05.

Statistiska centralbyrån (2019). 'KPI, historiska tal, 1830–'. www.scb.se/hitta-statistik/statistik-efter-amne/priser-och-konsumtion/konsumentprisindex/konsumentprisindex-kpi/pong/tabell-och-diagram/konsumentprisindex-kpi/kpi-historiska-tal-1830/. Accessed 2019-12-09.

Tilburg University (2019). 'About INTERVICT'. www.tilburguniversity.edu/research/institutes-and-research-groups/intervict/about. Accessed 2019-10-28.

Umeå universitet (2019). 'Brottsoffer i rättsväsendet'. www.umu.se/forskning/grupper/brottsoffer-i-rattsvasendet. Accessed 2019-10-16.

Table of Cases

Committee for Criminal Injuries Compensation

Ärende 8273/2007.
Ärende 3995/2008.
Ärende 7572/2008.
Ärende 9769/2009.
Ärende 3101/2011.
Ärende 5847/2013.
Ärende 5675/2015.
Ärende 7308/2015.
Ärende 10106/2017.
Ärende 1786/2018.

National Board for Consumer Disputes

Ärende 2013-04700.
Ärende 2014-10437.
Ärende 2015-07403.
Ärende 2017-10285.
Ärende 2017-12130.
Ärende 2017-13660.
Ärende 2018-06551.
Ärende 2018-13498.

Supreme Court of Sweden

NJA 1995 s. 661.
NJA 1997 s. 315.
NJA 2007 s. 540.