

**DOUBLE ACCOUNTING:
THE DUAL REGISTERS OF NARRATIVE EXPLANATION AND MONETARY COMPENSATION
AFTER THE MOSCOW THEATER SIEGE**

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On a rainy and cold Wednesday evening in late October 2002, 41 Chechen terrorists stormed a performance of the enormously popular Russian musical *Nord-Ost* (“North-East” – but in German) just as the second act began. The scene they interrupted featured soldiers, singing and dancing in uniform. At first, the audience didn’t understand that the shots fired over their heads by the intruders in black were real bullets announcing the start of an audacious terrorist attack. The reaction of the audience, captured by a camera inside the theater, recorded no shock, no shrieks and what seemed like a long pause before the terrorists on stage could convince their victims-to-be that their entrance was not part of the script. One theater-goer, who had previously been warned that the musical contained a big surprise in the second act, called on his cell phone to ask the friend who had warned him: Was this that surprise?²

The terrorists took the audience, cast, and crew hostage,³ holding more than 800 people inside the Dubrovka Theater for 57 hours while making demands on the Russian government to bring the

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² I was in Moscow during the theater siege in October 2002 and was therefore able to watch the live TV coverage of the three-day ordeal on Russian television. Many of those in the theater had cell phones and were calling out, in some cases live to radio and TV outlets, to report on what was happening inside the theater. As a result, the coverage was a mix of reports from people who were or had been inside while the whole event was going on and reports from those outside attempting to work out what the state reaction would be. Some of my observations in what follows comes from my own television viewing during the hostage siege itself.

³ There were a few cast and audience members who escaped before the terrorists managed to secure the theater. Then there were a few women, children and Muslims who were allowed to leave during the siege.

ongoing war in Chechnya to an end. The siege was finally broken when the special-forces troops of the FSB (the state security service) pumped a “sleeping gas” into the theater, knocking unconscious both terrorists and hostages. The special-forces troops eventually stormed the building and shot the immobile terrorists at close range before finally evacuating the bodies of the drugged theater-goers.

Russian television recorded hostages being brought out slung over rescuers’ shoulders, carried by hands and feet, or draped in the arms of their rescuers. But the rescuers were FSB agents, not medical personnel trained in the proper methods for evacuating unconscious people. They got people out however they could. In some cases, however, the inexperienced rescue caused some hostages to swallow their tongues or to choke to death on their own vomit, which was a predictable reaction to the gas. The rescuers didn’t know to keep breathing passages unobstructed as they carried the unconscious hostages out.

Once out, the hostages were far too numerous for the ambulances and stretchers awaiting them. Most of the bodies were laid out in the cold rain on the plaza in front of the theater before being stacked like firewood onto the floors and seats of waiting school buses. On television, the faces and bodies of the hostages appeared grotesquely distorted in the ways they came to rest. Many looked as if they were not merely asleep, but dead.

The rescue’s aftermath was uncoordinated. The buses full of unconscious hostages all went to the same nearby hospitals because there was no plan for triaging the hostages and taking only the most urgent cases to the closest ones. These close hospitals were quickly filled with hostages from the buses that reached them first, and the later buses wandered around Moscow looking for hospitals that still had space to take in the unconscious.

The doctors who eventually received the drugged hostages had no idea what the hostages suffered from. The contents of the gas were not revealed to medical personnel and so they didn’t know where to start in treating the unnatural casualties that arrived on their doorsteps.⁴ Doctors also generally did not know anything specific about the unconscious persons they treated, nor did they find out.⁵

For more than 48 hours after the rescue, the Russian government didn’t release the names of those who had died and those who had been hospitalized – even to their families. There was simply no information about where the hostages had been taken once they were rescued from the theater. (Were they taken to hospitals? To morgues? Which ones? Most importantly, who still lived and who had died?) Relatives and friends lined up outside hospitals and descended on morgues to ask whether their

⁴ To this day, the identity of the gas has not been revealed. Some speculate that this is because the gas, if its properties were known, would have violated international prohibitions against the use of chemical weapons. Still others speculate that letting the terrorists know Russia’s secret weapon would enable them to prepare for it next time because there is in fact a good antidote. After all, apparently none of the special forces troops died, though they too spent hours in the theater after the gas was pumped in. But once the gas was used at Nord-Ost, the terrorists found an easy way to prevent gas from being used against them again in future attacks regardless of the specific chemicals it contained. When the Beslan terrorists took their hostages in the school in North Ossetia, they broke all of the windows to allow any gas that might be pumped in to be released immediately.

⁵ In some cases, victims in the theater were evacuated with their identity documents but it appeared that no one looked at them during the course of their treatment. For example, Nikolai Volkov, one of the parents who filed suit against the Moscow City government after Nord-Ost, complained in his statement of evidence for the court that his daughter had been listed as unidentified in City Morgue #23 for nearly two days after the “rescue,” when her passport was in her jacket pocket. Statement of Plaintiff Nikolai Volkov, 21 January 2003, available at www.zalozhniki.ru/trial/21040.html.

loved ones were there – only to be told that names would not be released. The names of the dead were finally made public – and the families were told – only two days after the rescue was over.

By the time the official toll was finalized, 130 hostages had died.⁶ Only two of the hostages had been killed directly by the terrorists – shot in the early phase of the attack as the terrorists established control over the theater. The other 128 people were felled by the sleeping gas itself, or by the inept rescue, or by the delay in receiving medical attention, or by the trip to hospitals stacked in buses, or by the inadequate medical attention they eventually received because the doctors who treated the hostages didn't know what to treat or whom they were treating. We will probably never know what killed the hostages exactly, since a suspiciously large number of death certificates indicated that the deaths were due to medical conditions that preexisted the hostage-taking. Of those who survived, many continue to have debilitating symptoms. The survivors discovered that better medical attention at the time might well have brought them through the event with their health intact. With this casualty toll and the burgeoning health problems among the survivors, the creative rescue no longer seemed the success it had seemed at the start.

In the immediate aftermath of the *Nord-Ost* hostage taking, the Moscow city government gave out immediate cash payments for survivors and relatives of victims. The family of each hostage who died in the attack received 100,000 rubles (about \$3,300 at the time); those who survived received 50,000 rubles (half as much). For those who died, Moscow also provided a coffin and a funeral. For those in the cast and crew of the musical, Moscow paid their salaries, subsidized reconstruction of the theater, and financed the re-launch of the musical in the same place three months later. There were some hints more a year after the event that the Moscow city government had mobilized a number of private donors to create a compensation fund for the victims that paid out generous benefits.⁷ But, if true, details of the fund were hard to come by.

For the vast majority of victims, both survivors and the families of those who died, these cash payments were sufficient. For a few, however, they were not. Some of the former hostages and family members of those who died began to demand recognition, explanations, memorialization and further compensation. Some of the survivors – but in the end, only about 80 of the families⁸ – turned to law. What could law give them?

⁶ There are still some controversies over just how many people died because an official list of names was never released. The website for the group Nord-Ost Justice, for example, still asserts (though the number has not been modified since 24 January 2003) that there are still 67 people missing who have never been accounted for. Nord-Ost Justice has also set the total number of those who died at 137, above and beyond those missing. Unlike the official government tally, however, this website provides a list of specific names of victims. See <http://www.nordostjustice.org/victims.html?PHPSESSID=6ceb8a143c7f0f06473103f399394a4d>.

⁷ Cite to Washington Post story. I talked to the Russian reporter for the Washington Post about her sources on this fund and she said that she had been unable to track down any more detail than what was in print. Apart from this one story, I have seen no other mention of the private compensation fund.

⁸ It is hard to know what the total number of cases would have been if everyone had sued. If there were more than 800 people in the theater (one estimate put the number at 912), then one might imagine a number of claims equal to the number of victims. But it is conceivable that a person who was killed in the hostage incident might have both parents as well as a surviving spouse and children, each of whom might bring separate lawsuits, particularly if the person who died contributed to the material support of all of them. Some of those killed may have had no surviving next-of-kin to bring suit. Since people often went to see *Nord-Ost* as families, there might be multiple victims in one family, which would reduce the number of separate suits filed per person killed. So while it is tempting to calculate the 81 cases with 84 litigants (the estimated final number of cases) as a percentage of the raw number of people in the theater, this is probably not the right measure of the potential lawsuits that could be brought out of the incident.

The Promise of Law I: Narrative and Trauma

By now, it is a theoretical commonplace in the socio-legal literature that trials can reenact losses and provide occasions on which traumatic events can be relived and ultimately reframed (and cured) through the construction of a new narrative of the event.⁹ But how can law heal trauma?

While we don't have good studies of the effects of trials on healing trauma, we do have a lot of information about the beneficial effects of working trauma into narrative. People who suffer from the aftermath of trauma (post-traumatic stress disorder) are speeded in their healing by "narrative exposure therapy," which gets the traumatized person to confront the worst traumas by narrating them, reworking them, and reworking them again, each time moving the narrative toward more coherence and completeness.¹⁰ People who work toward more coherent narratives of their trauma and loss have been documented to have a variety of positive effects, ranging from increased immune system function¹¹ to the reduction of physical symptoms of trauma,¹² to the ability to construct a more positive identity.¹³ Writing or talking about traumatic experiences is even more effective at improving both mental outlook and physical health than merely thinking about them.¹⁴ Clearly, being able to publicly confront and narrate a trauma helps to heal it.

The very reenactment of the moment of initial suffering in a court of law parallels the structure of trauma, which has as its signature element the repetition of the injury, the recycling of pain, the constant search for the remaining secrets through the obsessive reliving of the moment of trauma.¹⁵

⁹ Patrick Ewick & Susan S. Silbey, *Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative*, 29 *Law & Soc'y Rev.* 197, 221 (1995); David R. Papke (ed.), *Narrative and the Legal Discourse: A Reader In Storytelling And The Law* (1991); Kathryn Abrams, *Hearing the Call of Stories*, 79 *Cal. L. Rev.* 971 (1991); Robert M. Cover, *The Supreme Court 1982 Term-- Foreword: Nomos and Narrative*, 97 *Harv. L. Rev.* 4 (1983); Robin West, *Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory*, 60 *N.Y.U. L. Rev.* 145, 209 (1985).

¹⁰ Frank Neuner, Margarete Schauer, Christine Klaschik, Unni Karunakara and Thomas Elbert, *A Comparison of Narrative Exposure Therapy, Supportive Counseling, and Psychoeducation for Treating Posttraumatic Stress Disorder in an African Refugee Settlement*. 72(4) *Journal of Consulting and Clinical Psychology* 579-587, Aug 2004.

¹¹ James W. Pennebaker, Janice K. Kiecott-Glaser, Ronald Glaser, "Disclosure of Trauma and Immune Function: Health Implications for Psychotherapy." Pp. 301-312 in Robin Kowalski and Mark Leary (eds.), *The Interface of Social and Clinical Psychology* (Psychology Press, 2004).

¹² Ana J. Cienfuegos and Cristina Monelli, *The testimony of political repression as a therapeutic instrument*. 53(1) *American Journal of Orthopsychiatry* 43-51, Jan. 1983

¹³ Linda Francis, "The Health Benefits of Narrative: Why and How?" Paper presented at the annual meetings of the American Sociological Association, 2000.

¹⁴ Sonja Lyubomirsky, Lorie Sousa and Rene Dickerhoof, *The Costs and Benefits of Writing, Talking, and Thinking About Life's Triumphs and Defeats*, 90(4) *Journal of Personality and Social Psychology* 692-708, Apr 2006, .

¹⁵ ". . . what is at the heart of Freud's writings on trauma . . . is that trauma seems to be much more than a pathology, or the simple illness of a wounded psyche: it is always the story of a wound that cries out, that addresses us in the attempt to tell us of a reality or truth that is not otherwise available. This truth, in its delayed appearance and its belated address, cannot be linked only to what is known, but also to what remains unknown in our very actions and our language." Cathy Caruth, *Unclaimed Experience: Trauma, Narrative and History* (Johns Hopkins U Press, 1996) at p. 4.

Trials have just this structure, in which the initial trauma is reenacted in search of knowledge that was unknowable at the time of injury.¹⁶ What happened? What caused this injury? Who is to blame? Those who have been traumatized can, through a trial, live out in public what they endure in private – the constant replay of the horrific. But trials, at least in theory, promise knowledge, narrative and therefore closure.

Some of the accounts about how trials work to heal wounds emphasize how important it is for victims to be able to “tell their stories” in court,¹⁷ to be heard and acknowledged *as victims*.¹⁸ Victims can call the trial into being through their initial complaints;¹⁹ victims are at the center of the proceedings because it is only the harm *to them* that converts a particular event into a matter of concern to law. Moreover, victims can demand to know the unknowable – to require the production of evidence, to call upon those who have been silent to speak (or at least to require them to enact their silence publicly and deliberately).²⁰ Trials are places where victims convert purely private pain into a public accounting.

In a trial, the gap in knowledge surrounding the trauma – the secret element that causes the trauma to be relived over and over – is filled in through an attempt to gather all available evidence. The causes and effects of the trauma are determined through the assessment of this evidence. In trials, then, trauma is replayed, neutralized through the production of knowledge and packaged into an official narrative of injury, loss, blame²¹ – and a new configuration of suffering.

Under the authority of a judge, the narratives filling in the previously missing knowledge are stamped with public approval.²² If the agent of the injury is found guilty or liable, he – recast as perpetrator – is then made to carry the burden of suffering after the trial, taking the suffering of the

¹⁶ Shoshanna Feldman, *The Juridical Unconscious*.

¹⁷ See the Michigan Law Review special issue on storytelling in 1989, particularly my foreword: Kim Lane Scheppele, “Telling Stories,” 87 Mich. L. Rev. 2073-2098 (1989) and Patricia Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity*, 87 Mich. L. Rev. 2128 (1989).

¹⁸ Wendy Brown has eloquently described the way in which victimhood -- achieved through building self-image around injury -- has become an important basis for political identity in modern America and she has analyzed the way that rights-claims have contributed to that process. Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton University Press, 1995). This is Brown’s diagnosis of modern victim-based politics, much of her book is a critique of this view.

¹⁹ While prosecutors/procurators in the criminal justice system have a major role filtering complaints before they are made the subject of criminal trials, private law is usually not confined in this way. Anyone with a cognizable legal claim can bring the case as a private-law matter.

²⁰ In most legal systems, defendants may not be compelled to speak at the criminal trial that will determine their guilt and punishment, though legal systems differ in whether that silence can be held against them. The right to remain silent does not generally extend to private-law challenges, however.

²¹ W. Bennett & M. Feldman, *Reconstructing Reality in the Courtroom* (1981); Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 Buff. L. Rev. 1 (1990); William M. O’Barr & John M. Conley, *Litigant Satisfaction Versus Legal Adequacy in Small Claims Court Narratives*, 19 Law & Soc’y Rev. 661, 698 (1985).

²² Kim Lane Scheppele, *Just the Facts, Ma’am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth*, 37 N.Y. L. Sch. L. Rev. 123 (1992); Richard K. Sherwin, *Law Frames: Historical Truth and Narrative Necessity in a Criminal Case*, 47 Stan. L. Rev. 39, 72-74 (1994).

victim onto himself from that moment forward. Victims will be recognized as individuals who have suffered, who have survived, who have earned their status as victims to be compensated. Perpetrators will shoulder the burden of victims without possessing the elevated status of certified victims. They will have to pay. Justice will be done.

The Promise of Law II: Money and the Restoration of “Wholeness”

The turn to law, however, may presume a different connection between trauma and law. Through suing in a private-law action, victims seek compensation for losses. Courts cannot bring back the dead or heal wounds or replace the irreplaceable or restore a world turned upside down, but it can command the payment of money for loss.²³ The payment of money to someone who has suffered a loss cannot restore the particular detail of the *status quo ante*; it can, however, provide a medium through which value passes from the wrongdoer to the victim. Money’s very anonymity enables it to be used as symbolic compensation because it has the potential to be changed, on the receiving end, into something different than it meant in the hands of the wrongdoer.

Here, the metaphors within which the law operates reveal how this is supposed to happen. In private-law matters, where one party sues another seeking compensation, these sums are called “damages” because they symbolically act to substitute themselves for the damage caused. Money should “make whole” the victim, as if the victim is incomplete without compensation. Victims “recover” payment, as they would recover from an illness. On the surface of language, then compensation fills a lack²⁴ by using money to fill the place of trauma, which is then healed in consequence. The victim “recovers” by being “made whole” because they are given “damages.” Instead of reframing, narrativizing and packaging a story of how the trauma occurred so as to heal the wound through the recovery of knowledge about it, damage payments attempt to evaluate, assess and replace the trauma with money. Here, the healing of trauma is imagined to occur through the use of money as public recognition of the fault of another, as symbolic substitute for what is now gone, and as the transfer from guilty hands to innocent hands of an abstract medium that can be used to reconstruct something else in place of the loss. But how does money do this?

On one hand, money, as an abstract form is a great leveler of particularity and distinction. That may be why the payment of money for a life may seem a denigration of the value of that particular life. As Georg Simmel noted in the *Philosophy of Money*, money can reduce “qualitative determinations to quantitative ones”²⁵ and, in so doing, becomes “the most terrible destroyer of form.”²⁶ As a result of this ability to wash away the particular, money exchanged for property can be, according to Simmel, “that form of property that most effectively liberates the individual from the unifying bonds that extend from other objects of possession.”²⁷ But when money is paid to compensation for injury in law, “[t]he legal

²³ In some legal systems and in some circumstances, courts can command the “specific performance” of particular actions or can require the restoration of a circumstance to the status quo ante, but in general money is what courts offer. Criminal law, which adds the deprivation of liberty or death to the payment of money, has its own logics.

²⁴ The idea of the lack has been elaborated by Jacques Lacan as the space that is opened up by trauma. [FILL IN LACAN REFERENCE.]

²⁵ Georg Simmel, *The Philosophy of Money* at 277.

²⁶ Simmel at 272.

²⁷ Simmel at 354.

retribution for injustice and injury that one person inflicts upon another becomes more and more restricted to cases in which the interest of the victim is expressible in money terms.”²⁸ As a result, Simmel argued that law cannot really express the value of human life or other key values in monetary terms, unless the amount of money offered for a life is extremely large:

One of the reasons for the numerous injustices and tragic situations in life may be that personal values cannot be balanced by or equated with the money that is offered for them. Yet, on the other hand, the awareness of personal values, the pride in individual aspects of life arises precisely through the knowledge that they cannot be outweighed by any amount of merely quantitative values. As is so often recognized, this inadequacy is modified by very large sums as equivalents because they, for their part, are imbued with that ‘super-additum,’ with fantastic possibilities that transcend the definiteness of numbers. They correspond to the personality incarnated in but yet transcending every individual achievement.²⁹

Simmel’s analysis holds out the possibility that there is a point where the merely quantitative value of money can represent a qualitative distinction – where the amount of money is so large that it comes to stand for something apart from its numerical value. Hence, money damages may have to appear in very large numbers to account for the value of a life despite its abstract and leveling quality.

On the other hand, as Simmel explained, the value of money itself has its origins in determinations of human worth. The *Wergild*, or the payment of money to atone for a crime, measured in money the value of a life lost, and this practice was common just when money was coming into its own.³⁰ As Simmel shows, at their origin, these fines were linked to standards of value that measured human worth in various ways – the “measure of a man” of different social classes, the daily wage, the value of labor, for example. As a result, the amount of money to be paid for a life varied with the social status of that life and therefore expressed, with some variation, the value of the particular life lost. The monetary fine tracked the value of the life lost in terms of the monetized value of some *aspect* of that life – social status, wages, daily labor – some aspect that could stand for the whole. Later Enlightenment views of the essential equality of persons changed these calculations so that “value lies in human beings merely because they are human beings.”³¹

But whether the value of life corresponds to social status (and therefore varies with the social standing of the person) or whether it is the same for all (and therefore reflects Kantian views of the essential moral equality of all persons), the idea “so very important in cultural history, that man as such can be compensated for by money”³² has carried over to modern trials, and to the payment of money damages for lives lost, injuries sustained and property destroyed. Against this background, money can substitute for the value of a life by putting itself on the same footing as the monetization of something about that life (e.g. lost wages). And, as Simmel noted, eventually in the evolution of law on the point,

²⁸ Simmel at 367.

²⁹ Simmel at 406.

³⁰ Simmel at 355.

³¹ Simmel at 362.

³² Simmel at 360.

money came to be used also not just for compensation for losses, but for punishment of the particular offender for the particular offense.³³

We get, then, three different theories from Simmel about how money can compensate for the value of a life. On one hand, money is the great leveler and therefore is unable to reflect either distinguishing features of particular individuals/objects or sources of value beyond market logics. On the other hand, money also has, through its history, in fact found ways both to compensate and to punish in highly nuanced ways by standing for *parts* of human life and not for the whole, compensating by metonymy, by substituting a part for the whole. As a third possibility, in thinking about the meaning of money damages in law, Simmel notes that the incommensurable may be honored and marked by particularly large sums of money, sums whose very size represents a qualitative break with mere numericity. Money levels out all distinctive value, substitutes the measure of a part for the measure of the whole, or transcends its own quantitative meaning by becoming so large as to restore qualitative distinction.

We need, therefore, to look more closely at how money works in concrete instances in law to work out which of Simmel's characterizations seems most apposite. And this directs us to look precisely at how money is concretely attached to losses. As Viviana Zelizer explained so persuasively in *The Social Meaning of Money*,³⁴ the money doesn't live in purely abstract form in most social settings. It often comes "earmarked"³⁵ for specific purposes. In law, the determination of damages always reflect earmarks – allocating this much for paying the victim's bills, this much for her "pain and suffering," this much to punish the harm-producer. The money is, of course, added up into an undifferentiated sum, in the end, but it is parceled out for different reasons and for different purposes in the course of the legal process. Sometimes monetization will fail to capture the core value being compensated; other times monetization can symbolically represent only part of what is at stake; on other occasions, money can make a qualitative statement. Simmel's triple-pronged analysis may not be contradictory, but may merely express different aspects of the legal process. The breakdown of money into earmarked categories allows us to track the socially variable quality of its uses in law.

Money and Loss

Every legal system comes with its own typology within which money is allocated to losses. In the common-law world (Britain and its former colonies, including the US), the primary way of earmarking money is to divide it into *compensatory damages* and *punitive damages*. In civil-law systems (most of the rest of the world, including Russia), money is earmarked into categories that reflect either *material damages* or *moral damages*. The contrast between the world's two primary legal/conceptual schemes is useful for seeing what is actually being measured with these different sorts of damages.

In the common-law world, compensatory damages consist of money paid to compensate the victim. It combines "economic losses" – which is to say, those losses that already came in monetary terms, like lost salary, out-of-pocket expenses for health care and how much it cost to fix the car – with "non-economic losses" – which is to say, losses whose monetary equivalents must be established first through law because the losses were not already measured in currency. Non-economic losses include

³³ Simmel at 364.

³⁴ Zelizer, *Social Meaning*.

³⁵ Zelizer, *Social Meaning* at 21 ff.

payments to victims for intangible things like “pain and suffering” (roughly – the degree of trauma experienced either by the surviving complainant or by someone who has died and to whom the complainant stood in close relation), emotional distress (to capture non-bodily injury) or loss of companionship (to capture the value of the intimate bonds that are broken when a spouse dies).³⁶ Courts and lawyers struggle with how to measure losses in money; even already-monetized losses can be very hard to assess and sum properly. (Is the car “totaled” or merely severely damaged? Does the lost salary include the raise the person surely would have gotten had she lived to finish what she had been working on?) But the non-monetized losses are where most of the controversy lies. (Should the survivor be compensated more once she knows that her loved one suffered before he died? Does the fact that the complainant was betrayed by a person he trusted entitle him to greater compensation than if he had simply been swindled by a stranger? Should the person married 40 years be compensated more for the loss of companionship of a spouse than the person married 5 years?) In common-law legal systems, compensation consists in summing economic and non-economic losses, on the theory that the underlying harm was experienced in these two ways and so compensation should acknowledge these two ways as well. Money awarded to compensate, regardless of whether it was already expressed in monetary terms or not, is all on one side of the ledger in common-law systems.

In this common-law world, the other side of the ledger holds *punitive damages*. Punitive damages peg the amount of money to be paid to the degree of blameworthiness of the harm-producer or to the deterrent effect of the sanctions on the defendant or others. Here, the money that changes hands encodes the fault of the perpetrator and the extent to which such conduct should be discouraged; its amount measures how awful and how immoral (or illegal) the underlying act was. Punitive damages not only serve to punish the ones who have to pay, but they are generally and crucially paid to the one who has experienced the loss that the wrongdoer caused. As a result, it is possible for a victim of trauma not only to be compensated for losses, but also to be paid an additional amount for the outrageousness of the action that caused the harm. As we can see, then, common-law systems compute damages by function enabling punishment to be contrasted with compensation.

In the civil-law world (most countries outside Britain and its former colonies – including Russia), money is earmarked differently. The usual division of damages in private-law actions in civil-law countries is between *material damages* and *moral damages*, and the dividing line between the two is figured differently than the compensatory/punitive divide in the common law. Material damages sum all of those elements of loss that already had monetary values before the injury occurred; moral damages express all of the not-already-monetized values.

Material damages replace those losses whose value already was established in currency before the losses occurred. So, for example in Russia,³⁷ material damages include lost wages, payments for health-related expenses growing out of the event, and the cost to replace property that has been damaged. They are precisely considered *material* damages because they rely on the fact that the amounts in question have already been monetized before any legal action started, and so the court only has to take into its own calculations the assessments of value that have already been made outside the law. If someone made \$500/month before dying, the law would take the amount at face value as a measure of what his salary loss had been.

³⁶ Non-economic damages are typically not awarded in cases involving mere harm to property caused by mere negligence. Even though someone might experience great mental anguish as the result of seeing her favorite vase toppled by a careless guest, a court will only award her the monetary value of the vase for the guest’s negligence, not additional non-economic damages for her anguish.

³⁷ These calculations and how they are to be made are laid out in the Russian Civil Code, Chapter 59.

Moral damages, on the other hand, require summing a variety of things that were not already monetized before the legal action started. As a first step in this process, judges have to determine how to attach a money value to “non-material values.” But what are non-material values? According to Art. 150 of the Russian Civil Code, non-material values include:

Life and health, dignity of personality, personal inviolability, honor and good name, business reputation, inviolability of private life, person and family secrecy, the right of freedom of movement, of choice of place of abode and residence, right to one’s name, right of authorship, other personal nonproperty rights and other nonmaterial values belonging to a citizen from birth or by virtue of a statute . . .³⁸

These values are not only “inalienable and nontransferable” under Russian law,³⁹ but they are protected by law *as* non-material values.⁴⁰ The violation of non-material values requires compensation when a violator causes “moral harm” (which the Russian Civil Code defines as “physical or mental suffering”).⁴¹

And how is the degree of “moral harm” assessed? The judge will add to the harm to non-material values an assessment of the blameworthiness of the violator. The Russian Civil Code gives a (very) general formula:

In determining the amount of compensation for moral harm, the court shall take into account the degree of fault of the violator and other circumstances worthy of attention. The court must also consider the degree of physical and mental suffering connected with the individual peculiarities of the person to whom the harm was caused.⁴²

In other words, in Russian law, the blameworthiness of the violator is combined with an assessment the suffering caused by the infringement of non-material values *to this particular person* to get a monetary figure that represents moral damages.

In Russian law, however, moral damages are not available for a court to award in every case where physical and mental suffering may occur. Moral damages may only be sought for those violations of non-material values where the Civil Code or a separate statute explicitly say they can be. So, for example, defamation cases provide the most publicly visible area of law in which moral damages have figured because the harm in question is primarily dignitary.⁴³ But there are no moral damages in ordinary contracts cases, for example.

Both civil-law and common-law systems, then, attempt to group three different sorts of assessments of the monetary value of a loss into two categories, but they do so differently, as Table 1 shows:

³⁸ Russian Civil Code, Chapter 8, Art. 150(1).

³⁹ Russian Civil Code, Art. 150(1).

⁴⁰ Russian Civil Code, Art. 150(2).

⁴¹ Russian Civil Code, Art. 151.

⁴² Russian Civil Code, Art. 151.

⁴³ Peter Krug, *Civil Defamation Law And The Press In Russia: Private And Public Interests, The 1995 Civil Code, And The Constitution*, 13 CARDOZO ARTS & ENT LJ 847(1995).

Table 1: Allocating Money to Trauma in Different Legal Systems

	Compensation for monetized losses	Compensation for non-monetized losses	Punishment of the wrongdoer
Common law system	Compensatory Damages	Compensatory Damages	Punitive Damages
Civil law system	Material Damages	Moral Damages	Moral Damages

The major difference between civil-law and common-law systems is that common-law systems group payments by function, drawing a sharp line between compensation and punishment, while civil-law systems group payments by the sort of activity that has to be performed by the judge, putting previously monetized amounts where the judge does not have to work out values herself on one side and the not-already-monetized damages where judges have to convert value to money on the other.

Law's Double Promise

For the traumatized person who approaches the law to seek “relief” (another interesting word), the law offers two ways to think about how the trauma is treated. In the narrative approach to trauma, the lawsuit provides a way to acquire and frame knowledge and to relive the trauma in the courtroom with the prospect of curing the trauma through the presentation of new evidence. The victim seeks to achieve a certifiable story that documents what produced the trauma and what the trauma means. The trauma is healed by replaying the event until the loss is filled with knowledge and the narrative is coherent and complete. In the compensatory approach to trauma, by contrast, the lawsuit provides a way to convert the specificity of the loss into the generality of money and then, eventually, back into a specific new life. Money is the medium that permits the traumatized person to reconstruct a new life after the trauma, even though it is also to some degree, the measure of immeasurable things.

It is crucial for the legitimation that law provides that the certification of facts through a trial and the payment of money through the award of damages are linked. Law provides a *double accounting* – 1) an account that narrates what happened and then 2) an account that converts the losses documented in the narrative into money. The trial first establishes public facts, reveals mysteries, probes causation and frames an official story. Then, there is an assessment of damages that monetizes elements of the official narrative by converting the persons, capacities and things lost as well as the fault, outrage and suffering revealed into money. The two very different symbolic strategies for recovering from trauma are linked temporally and logically in the institution of the trial and the award of damages that follows. The law’s “double accounting” provides two ways out of trauma in ways that are mutually reinforcing. The psychic wounds can be healed through the completion of the incomplete story while the social wounds can be treated through the earmarking of money to symbolize the degree of loss, suffering and blame.

In most legal systems, however, an actual trial is increasingly a rarity. In the US, this has been come to be known as the problem of “the vanishing trial.”⁴⁴ Trials are now such an anomaly that one can

⁴⁴ Trials used to account for 11.2% of all federal civil actions in 1962; in 2002, they accounted for only 1.8% of civil actions. Federal civil lawsuits increased by 500% during that period, so one might imagine that the percentage of trials is declining because the denominator has steadily increased. But the absolute numbers of trials (the numerator) have decreased as well. Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. Empirical Legal Studies 459 (2004), particularly Table 1: Civil Trials in U.S. District Courts at Ten-Year Intervals, 1962-2002 at 462.

hardly count on their occurrence to establish any authoritative statements of fact. While the vanishing trial is perhaps better documented in the US than elsewhere, however, there is no reason to believe that the US is unique in this regard. Judges in Germany and Japan, both civil law countries, have long urged settlements on the parties before them, avoiding trials where possible in private-law contexts.⁴⁵ There is no good information on the rate of settlements in general private-law cases outside the commercial context in Russia, but it would be surprising, in light of international trends, for trials to be the norm in civil litigation there.⁴⁶

What happens, then, when a “settlement” produces an amount for money damages, but does not provide an authoritative account of the facts to which the damages are attached? Double accounting – providing an account in words before generating an account in money – disappears. The money is left without an authoritative interpretation of what it is actually awarded for. More puzzlingly, settlements often include authoritative statements that deny what the money seems to say. Settlements can refuse fault on all sides while turning over large amounts of money from one side to the other. What is that money for, if not to pay for blame? (Surely, this money is not a gift, a loan or a payment for services. But how would we know?) The payment of a settlement without the story to go with it un-earmarks the money so that it floats free of any agreed-upon rationale. Zelizer showed how crucial the process of earmarking money is for understanding its social meaning. Without it, money’s meaning becomes unstable. But legal institutions – the original earmarkers – have been moving toward making money precisely as abstract as Simmel thought it might be.

Abstract money – money that appears from a symbolic void – cannot bear the weight of healing trauma. It does not come marked with a clear purpose. Is it compensation for loss, punishment for the offender or an attempt to relieve suffering? Maybe the survivors were “bought off.” Perhaps the giver of the money was merely being generous in the face of need. Perhaps the survivors were paid unjustly. Perhaps the accused was really not responsible, but was paying off these “damages” on the advice of a lawyer to avoid further damage from the act of being sued. Alternative interpretations swirl around the settlement-without-authoritative-facts. This is why the mere payment of money damages in a settlement cannot really cope with trauma. The money is cut loose from any stable meaning. It will always be subject to competing accounts of what it was really for, because its meaning has not been fixed by the law’s double accounting.

The Nord-Ost Cases in Court

What did the *Nord-Ost* families who sued the Moscow City government hope to win with their lawsuits? According to their lawyer, the families *wanted explanations* for what had happened,

⁴⁵ Richard Marcus, Putting American Procedural Exceptionalism into a Globalized Context, 53 Am. J. Comp. L. 709 (2005).

⁴⁶ In the Soviet time in Russia, disputes submitted to *arbitrazh* (commercial) courts had to first go through a mandatory process of settlement negotiations (the process of “pre-arbitrazh,” *doarbitrazhnaya*) before a trial would be scheduled. T.E. Abova, *Arbitrazhnoe Protssess v SSSR* (Poniatie, Osnovnye Printsipy) [Arbitration Procedure in the USSR (Fundamental Concepts and Principles)] 54-55 (1985). Now, since litigation is usually the last resort after a long period of negotiation, settlements are relatively unusual in *arbitrazh* courts because if they could have been achieved, they would have been before a case is filed. That said, legal proceedings are incredibly brief and fast once lawsuits are filed, which means that establishing a detailed factual record could not be the primary goal. Kathryn Hendley, *Business Litigation in the Transition: A Portrait of Debt Collection in Russia*, 38 Law & Soc’y Rev. 305 (2004). These statements apply to business litigation, however; I have not been able to find good data on private-law settlements more generally.

particularly explanations of how the terrorists could have taken over a theater in Central Moscow without being stopped before doing so, why the theater had been stormed by Russian special forces the way it had been with so little preparation for the treatment of the hostages, and what the “sleeping gas” contained. The families also *wanted* their loved ones who died *to be recognized as individuals*, which could be accomplished by getting individuated awards with different monetary judgments in each case. All of these goals are consistent with the narrative approach to trauma in which the victims of trauma want the holes in their narratives filled with information that enables them to understand what happened.

The mechanically allocated amounts that the *Nord-Ost* families had been given right after the event were not only small, but they were all the same. The families found this sameness an insult, they wanted individualized treatment. The families also wanted recognition that they *deserved moral damages* for what had occurred to them because they had suffered and because the government was to blame.⁴⁷ They eschewed claiming material damages from the start, because they didn’t want the lives of their loved ones to be reduced to out-of-pocket costs. In fact, all of the lawsuits sought *only* moral damages when they were first filed against the Moscow City Government⁴⁸ in the Tverskoi District Court.⁴⁹ The families’ claims were consistent with the compensatory approach to trauma, in which the money only works to heal wounds if it is earmarked as being for compensation of monetized damages, an assessment of non-monetized damages and, particularly, carried with it an attribution of blame.

The cases were brought by Igor Trunov, a visible Moscow lawyer whose practice before these cases had been almost entirely in criminal defense work. Once Trunov decided to take on the first *Nord-Ost* plaintiffs, he placed advertisements in major newspapers, indicating that he would take as many *Nord-Ost* clients as wanted to sue, and he would not charge for his services.⁵⁰ By the third anniversary of the theater siege, he had filed 81 lawsuits on behalf of 84 victims of the attack, 22 of them on behalf

⁴⁷ Interview with Igor Trunov at his office in Moscow, 12 July 2003.

⁴⁸ The case was brought against the Moscow City government rather than against the federal government whose troops had stormed the theater because the law under which Trunov filed these cases was the 1998 Law on the Struggle against Terrorism, 30-FZ (25 July 1998). Under this law, compensation for injuries suffered as the result of a terrorist attack should be paid by the regional government in the location where the terrorist attack occurred. The jurisdictional issue was settled regardless of where the blame might lie. So, in the *Nord-Ost* cases, one could argue that the blame lay with the federal government for the nature of the rescue plan, though the city apparently was responsible for the evacuation and medical treatment of the hostages.

⁴⁹ One might imagine that it would be hard to win a lawsuit against the government in Russia. But that is not true. In Russia generally, there has been an explosion of cases brought against the government by citizens for all manner of things. Taking all cases against the state together, complaints where individuals win in their suits against the state roughly 80% of the time. Peter Solomon, “Judicial Power in Russia: Through the Prism of Administrative Justice.” *Law and Society Review*, Special issue on Constitutional Ethnography. One might have imagined that this success rate would have encouraged even more lawsuits in the *Nord-Ost* case.

⁵⁰ I read some of these ads in newspapers like *Kommersant* while I was living in Moscow in spring 2003. Trunov was clearly a lawyer who had learned that publicity is good for business, something quite novel in Russian legal practice. Trunov organized his law practice around free services that would draw in more serious fee-paying clients later on. For example, he opens his law office on Saturdays to provide free legal advice for anyone who walked in the door, as I was able to see first-hand on a Saturday when he agreed to an interview. In the *Nord-Ost* cases, he put many of his legal documents up on a website (see <http://www.trunov.com/?no>) and generally spent much of his time talking to the press about his clients and their cases. From his many television appearances in conjunction with these cases, Trunov became very much identified with these cases.

of children who were orphaned at Dubrovka.⁵¹ All of the lawsuits were based on the same legal theory – that the *Nord-Ost* families could receive damages under the 1998 Law on the Struggle against Terrorism.⁵² This law provided a scheme for compensating victims of terrorist attacks, but had never before been used anywhere in Russia, as far as anyone could tell.

What did these suits seek?⁵³ The vast majority of victims, and even the vast majority of those who sued, have never made *public* statements of what they wanted from the government after the siege. There are perhaps only two dozen survivors who have told their stories in public; the rest have remained silent or appear only in schematic form in public court filings.⁵⁴ Who were these victims, and who are the survivors who sued?

Andrei Karpov was a well-known poet who rose to fame because he had written the Russian lyrics for the musical *Chicago*. Karpov had been in the theater on the night of the hostage-taking, and he was one of those who had died in the rescue effort. His mother, Tatiana Karpova, had become the victim-in-chief, appearing everywhere on Russian television, showing up at every hearing regardless of whether her son's case was concretely at issue or not. She gave interviews before and after each court date on the steps of the courthouse and had been the mover behind the formation of various groups dedicated to keep alive the claims of the theater-siege victims. She seems to have been a key player in the creation both of a *Nord-Ost* civic organization, with various spin-off groups (for example the *Nord-Ost* Justice group)⁵⁵ and of the *Zalozhniki* [hostages] website.⁵⁶

The Karpov family legal filings noted prominently that they first saw their son already unconscious in the theater because television footage showed special-forces troop stepping over his body as they moved among the dead hostage-takers. But, having seen their son unconscious on TV, they then did not learn from the city that their son had in fact died until two days after the rescue. This delay caused them much distress. In addition, their son's funeral, for which the Moscow city government had paid, was inadequate to represent their son's greatness. The funeral wreath was so tiny and the coffin was of bad quality.⁵⁷ But then there was a litany of questions that the Karpovs' wanted answered:

⁵¹ Dubrovka Hostage Tragedy Finished Two Years Ago, RIA Novosti, October 26, 2004.

⁵² 130-FZ (25 July 1998).

⁵³ To analyze these cases, I interviewed both the primary plaintiffs' lawyer and the lawyer for the musical, went to court hearings, read the legal papers that were filed, examined the judges' opinions in the cases, and followed the press coverage. But only in very few cases was it possible to get any detail about the specific plaintiffs, their injuries and their specific claims. Trunov did not let me see the case files that his clients had not agreed to make public. What I will quote below are from public sources, publicly granted interviews and the various websites that the *Nord-Ost* survivors set up to publicize the lawsuits.

⁵⁴ Despite their heroic efforts, Debra Javeline and Vanessa Baird's survey of Moscow theater victims could only get for interviews 26 individuals from the initial 61 suing families. Only 326 of the more than 800 people held in the theater (or their families) were interviewed in their study, the most common reason being because there was not enough information to identify appropriate respondents in any public source. Still, some 63 individuals of those who could be contacted refused to talk.

⁵⁵ See <http://www.nordostjustice.org/> or <http://www.nordostjustice.org/rus/index.html> .

⁵⁶ <http://www.zalozhniki.ru> .

⁵⁷ Tatiana Karpov's complaint said: "These coffins were made of a material looking like cardboard. These pseudoboards were fastened by a stapler. If one puts an adult man into the coffin, it would fall to pieces. The

Why were these people brought to the hospital like cattle? Why hadn't officials prepared 750 stretchers? Why hadn't they prepared 750 doses of the antidote?⁵⁸

The suit asked for \$1 million in moral damages.⁵⁹

Alla Alyakina lost her husband in the theater siege. She wanted answers, not money and only sought to find out who was responsible for her husband's death.

Alexander Khramtsov's father had been a trombone player in the *Nord-Ost* orchestra. The father had died in the attack. The son said his father had called him from the theater on his cell phone during the siege to say that the terrorists were demanding that the relatives outside the theater organize a demonstration in Red Square against the Chechen war. He believed his father's fate was sealed when the city could not let them organize it. Khramtsov wanted to present to the court his father's last letter to him, written in the theater before he died:

It is very much to have three days of hell. It is a pity I cannot talk to you; the terrorists are preparing their detonators already. I am happy that I have good children. I have understood here that apartments and cars are not the most important things in our lives. Don't spend too much time earning money; spend more time outdoors.⁶⁰

Other *Nord-Ost* survivors documented the heroic qualities of those who died. Christina Kurbatova's sister documented her story. Kurbatova had been one of the child stars of the cast. She died in the rescue – but not before she had saved others:

Her friends told us later that when the gas attack started, Christina tore her skirt to pieces and passed them to other children so that they could save themselves. She could not do otherwise, my beloved sister. . . . It is too hard for me to think that the state did not do anything to save her. She was denied the main thing – her right to life. Why, what for, whose evil will was it?⁶¹

The mother of Yaroslav Fadeev, herself a survivor who had been in the theater, documented her now-dead son's selflessness while they were hostages:

Description starts from the end . . . Most precious are his last words. Being imprisoned in the theater, Yaroslav remembered his loved ones. His concerns were not about himself, but of those outside, and not a word about his discomfort, stuffy air, thirst and simple fear. "Mama, are you afraid?" . . . And here again, your last move, my son, was more precious than your first step in childhood. You simply hugged your sister, who was older, but weaker, took my hand and

official who gave us this coffin said that we could take two coffins to change them for a good one in another place." <http://www.zalozhniki.ru/trial/21041.html>

⁵⁸ Statement of Tatiana Karpov, available at <http://www.zalozhniki.ru/trial/21041.html>.

⁵⁹ Complaint filed 9 December 2002, available through www.trunov.com. Statement of Tatiana Karpova in evidence, available at <http://www.zalozhniki.ru/trial/21041.html>.

⁶⁰ Statement of Alexander Khramtsov, 17 January 2003, available at <http://www.zalozhniki.ru/trial/21046.html>

⁶¹ Letter at www.nordostjustice.org/christina.html

. . . with all your courage protected us from everything scary and ugly. . . . I write this letter to let people know about one of the many murdered innocent children whose fate was decided on October 26th, 2002. . . . He almost grew up.⁶²

And then there were those who focused on their changed lives after the death of their loved ones. Nikolai Volkov, whose 22-year-old daughter Lena had died in the rescue, said that his wife's health had become worse and his younger daughter had started to stammer after Lena's death. Olga Milinova lost her 14-year-old daughter in the rescue. Her two-year-old son wouldn't stop crying and her 12-year-old daughter missed school for a long time afterwards because she didn't want to have to talk about it.⁶³ Larissa Frolova lost her 34-year-old son Zhenya in the theater. She said in her complaint: "We have brought up three sons, who defend their country. We have been working all our lives. And what have we got? Sorrow, pain and tears."⁶⁴

Most of the legal filings said more about the particularity of those who died and the sorrows of those who lived than they said about blame, causation or other facts that might be relevant to either documenting who was at fault or what had been lost.⁶⁵ On the second year of the anniversary, when many of the relatives gathered at the memorial that had been placed at the theater, correspondents reported that the relatives emphasized that they did not want money from the lawsuit. They wanted instead for the lawsuit to remind officials of their responsibilities: "The lawsuits were a tool to keep the memory of this tragedy alive, to state that the pain is still there."⁶⁶

The cases filed by Trunov sought only moral damages; they did not originally seek the much more common form of compensation – material damages. But surely the *Nord-Ost* victims suffered both sorts of harm: surviving but sick hostages lost wages, they paid medical costs and they suffered other tangible losses, while those who died often left behind family members who were dependents without their previous source of support. These losses should have been compensable through an award for material damages. In addition, both surviving hostages and relatives of those who had been killed suffered from trauma and severe emotional dislocation over what had occurred, making these claims perfectly sensible under an action for moral damages.

When asked why he sought only moral damages and not material compensation, Trunov at first gave a pragmatic answer: because people could get a lot more for moral damage than they could for material damage.⁶⁷ As their lawyer, he *was* focused on the money. His approach might seem counter-intuitive, though; a lifetime of lost wages for someone who died young and had dependents should surely be a lot. Intangible and un-monetized harm, one might guess, would have a much less certain monetary payout. But in Russia, actual out-of-pocket losses were very hard to calculate and even harder to document. What is taken for granted in American law – that one will know the lifetime

⁶² Letter of Irina Fadeeva, www.nordostjustice.org/fadeev.html

⁶³ <http://www.zalozhniki.ru/trial/21038.html>.

⁶⁴ <http://www.zalozhniki.ru/trial/21042.html>.

⁶⁵ Though a number of the statements I have quoted are labeled "evidence" or "court statements," it is unclear whether any judge ever saw them.

⁶⁶ Former Moscow theatre hostages, relatives hurt by state's attitude, NTV Mir, Moscow, in Russian 0900 gmt 26 Oct 04, translated in BBC Worldwide Monitoring, October 26, 2004.

⁶⁷ Interview with Trunov, 12 July 2003.

earnings curve for someone who is a bond trader or a secretary at age 30 making a particular salary at that time – has no counterpart in Russia.⁶⁸ A capitalist economy had existed, insofar as it exists at all, for only a decade and a half when these events occurred; such life trajectories of earnings or even the likely careers of young people at this point in Russian history are simply not known. Moreover, what is the economic value of the loss of a child? Of a young person still in university who has not yet begun a career? Of the brilliant writer who was nearly done with the novel that would have shaken the world? Of a pensioner? All may have little or no present income, and so it would be hard to establish already-monetized values. And then there was the specifically post-Soviet problem: What, for that matter, is the economic value of *anyone* in a culture that has until recently not attached income to status?

There were more practical problems, too. In Moscow, particularly among the salaried workers and professionals one might expect in the audience for a show like *Nord-Ost*, it has been very common since the move to capitalism for one's official wage to appear in one's employment contract as something substantially less than one's actual wage. For example, someone whose official wage was \$500/month may actually have another \$1000/month added under the table as part of the deal. Such informal arrangements were so common as to be unremarkable in Moscow at the time of the *Nord-Ost* siege. If an employee with this sort of agreement went to a court with her legal papers trying to document her salary for the purposes of compensation, however, she could only recover \$500/month because the other \$1000 was deliberately hidden from the tax authorities and therefore also hidden from the court. Such an employee would simply have no way to prove that her real salary was several times the amount of the apparent salary.

The problem was compounded when one considers medical costs. In theory, out-of-pocket medical expenses do not exist because medical care is free in Russia. But in practice, everyone pays "gifts" or "tips" to doctors in order to get good (or, for that matter, any) medical treatment. (The classic problem: the operation is free but the anesthesia is optional and must be paid for out-of-pocket.) These "voluntary payments" can add up to substantial amounts. But given that the doctor is not supposed to be taking this money, he is unlikely to provide a receipt one can show to a judge to have the costs reimbursed.

Trunov had quickly figured out that documenting actual compensable material damages would mean very little for his clients. So he asked for moral damages, usually in the amount of \$1 million per case. In general, the *Nord-Ost* victims seemed not particularly interested in money, though; most were preoccupied with recognition of loved ones, answers to questions about the siege and some help with the health consequences that resulted from the losses.

Where did Trunov get the \$1 million figure for his moral damages claim?⁶⁹ Trunov used a benchmark. He noted that in the very court where his cases would be brought, a libel judgment in the

⁶⁸ At one point during my discussions with Trunov, I acted as an intermediary between him and the staff of the Victim Compensation Fund for the September 11 victims in New York. Trunov wanted to know how they calculated what each victim's family would get, but it soon became clear that the sophisticated methods that they used were simply not available in Russia because the underlying data on the basis of which American compensation calculations are made simply did not exist for Russia.

⁶⁹ I'm using dollar figures in this section because Trunov was talking in dollar figures. The ruble had been unstable for so much of the 1990s that people got used to denominating transactions in more stable dollars instead. But then a federal law was passed making transactions in dollars illegal. So, ingeniously, figures and prices were often listed in "currency units" instead, and it just so happens that currency units were equivalent to dollars.

preceding year had awarded \$1 million for moral damages.⁷⁰ And, as he said both in an interview with me and in the press whenever asked, surely the suffering his clients experienced was worth at least as much as the injury from “only words” that had gotten this previous plaintiff \$1 million. He would therefore ask for \$1 million, he said, but surely his clients really deserved more. Their suffering was worse than that of the person who had gotten the \$1 million. Given that the *Nord-Ost* families did not want to calculate what their loved ones had been worth, the \$1 million figure also had the virtue of turning quantitative measures in qualitative ones, in a manner Simmel would have recognized.

But there was a problem with the moral damages argument. In Russian law, moral damages are available in a particular legal action only when the Civil Code or relevant law says so explicitly. And the terrorism law did not say anything about moral damages. To argue that moral damages should be available, Trunov referred to a general section of the Civil Code that indicated moral damages were allowed where “harm was caused to the life or health of a citizen by a source of increased danger.”⁷¹ He argued that the theater siege was exactly the sort of “increased danger” that the Civil Code contemplated. But winning on the moral damages claim meant finding a judge willing to be creative in interpreting the general provision of the Civil Code in a circumstance where the statute being applied was silent on the question of whether moral damages could be awarded. That, as it turned out, was not going to happen.

Trunov’s cases eventually went to court. Russian courtrooms, even with extensive renovations that have been going on in recent years, are depressing places. The Tverskoi District Court, where the *Nord-Ost* cases were heard, is squeezed in at the very back of a courtyard on the very edges of what might be still called Central Moscow, just one entrance of a larger building that contains other offices and apartments. Even though the courthouse had gone through a renovation, it was still the aesthetic disaster characteristic of many Russian public buildings – cheap wood-paneled walls, harsh fluorescent lights (half of which weren’t working), linoleum floors that curled up at the edges. This was not a place that one would want to spend much time.

And the victims don’t. At one of the hearings I attended,⁷² twelve cases were being presented and representatives came from only five of the families. It was just as well. The courtroom was so tiny that only about ten people apart from the lawyers had anywhere to sit. Victims had to squeeze into the narrow benches along with the press and a visiting American researcher, since in Russian court architecture, victims are simply part of the audience. If all of the victims had come, there would not be room for them, even at this one hearing of only a subset of the cases.

The *Nord-Ost* cases had, by the time I observed them, settled into a familiar pattern. Judge Marina Gorbacheva heard all of the cases because judges are assigned to cases based on the street address of the defendant, and Judge Gorbacheva got all of the cases that had the street address of the city hall. Before the July 2003 hearing I attended, however, Judge Gorbacheva had thrown out all of

⁷⁰ Such large amounts are actually quite common in libel trials, though they are often not in fact ever recovered by the person who allegedly won. For more detail, see Maria Popova [paper given at Law and Society, June 2003, Pittsburgh].

⁷¹ Russian Civil Code, Article 1100: Bases for Compensation for Moral Harm. This section explicitly includes libel, the basis for Trunov’s comparison cases.

⁷² I attended one of the trial court hearings on 21 July 2003 and one of the appeals court hearings on 28 July 2003. From the documents Trunov gave me and from the accounts of other hearings in the press, as well as from the bored responses of the judges involved in hearing these cases, it seems like all of the hearings had worked from a common script. The newspaper reporters whom I talked to during the long breaks in the action had covered many of these hearings and confirmed this as well.

the previous *Nord-Ost* cases. And in none of the hearings, according to both Trunov and the press accounts, were the details of the victims' cases ever presented. The hearings were always cut short before it came to that. In her written opinions, repeated over in each case, Judge Gorbacheva had said that under the terrorism law, moral damages were not available because the law did not say explicitly that suffering could be compensated. She did the same on the day I was in her courtroom.

As a result, the trial court never heard any evidence of the suffering that the victims experienced and there was never any response from the government about why the siege occurred, why the rescue was conducted the way it was and what was in the sleeping gas. This because the judge made a decision that the cases had been incorrectly filed to begin with. There was no remedy available of the sort that Trunov requested, and as a result, there could be no claim. While some of the victims did attend the earlier trials, none of them had ever been allowed to present evidence.

The cases, nonetheless, generated both domestic and international press coverage, and the government obviously wished the cases would go away. By mid-summer 2003, Trunov was getting signals through back channels that he might be able to get something for his clients if he asked for material damages instead of moral damages. So he amended the cases going through initial screening at that point to ask for material damages as well. On the day I attended the trial court proceedings, the hearing was supposed to deal for the first time with material damages. Before the issue could be squarely joined, however, that hearing, too, was adjourned. There was no one present from the city finance office, and such a person needed to be there, in Judge Gorbacheva's view, to talk about any financial commitment that the city could make. It was clear that from Judge Gorbacheva's perspective, material damages claims were reasonable and allowable, but she needed to know not only how much the victims had been injured but also how much the city could afford to pay before she calculated the numbers.⁷³ The Moscow city lawyer who attended was reminded that someone from the finance office should be there before they could work out material damages. Hearing adjourned.

On that day, as on virtually every other day that the *Nord-Ost* cases had been brought to court, the victims had not had a chance to speak.⁷⁴ Nor had any of their concrete experiences, losses or injuries even been mentioned in court. Even in Trunov's legal filings, very few of the details were mentioned about any concrete plaintiff so Judge Gorbacheva probably did not know in any detail what had happened to those whose cases she had heard in her court. The victims were very nearly erased from the proceedings.⁷⁵

On appeal of the moral damages claims, the situation was not much better. I attended one such appeal proceeding in the Court of Cassation (a court only slightly less depressing than the earlier one, and with not much more room for an audience). Though 24 *Nord-Ost* cases were heard that day, only a handful of the victims came to hear their cases being argued. After a brief legal presentation by

⁷³ The Civil Code says nothing about the ability of the agent at fault to pay, when material damages are being calculated, but it was clearly part of Judge Gorbacheva's framework for resolving the case.

⁷⁴ In civil-law systems, oral testimony is less common, particularly in private-law cases, than it is in common-law countries. The judge probably would have seen the witness statements in writing rather than having them presented orally in court. Even so, from the statements I have seen in some of these cases, there was not much detail presented, and much of it was irrelevant to any strict construction of the legal claim. See <http://trunov.com/content.php?act=showcat&id=11> for some of the filings on behalf of particular plaintiffs.

⁷⁵ I do not mean to imply here that this is a particular failing of Russian courts. Any legal system would have to sort out these procedural matters before evidence could be presented about concrete claims. To the press, however, Trunov presented the matter as if the judge were refusing to deal with the victims. Actually, Judge Gorbacheva could not do anything with the concrete detail until she had before her a case that made a cognizable legal claim in Russian law.

Trunov's legal partner, his wife Lyudmila Trunova, in which Judge Gorbacheva's rulings were challenged for incorrectly finding that moral damages were not available, the chair of the three-judge panel asked if there were any comments from the audience. One young man rose to say that his son had been killed in the theater siege and that his family had suffered enormously. The judges' faces registered almost nothing as the young man came to the end of his short speech. Without reaction, the judges then retired to chambers while the audience (about 15 people were able to fit) waited in the courtroom. Within 15 minutes, the judges returned and announced that they would uphold Judge Gorbacheva's dismissal of all of the claims.

At some level, the lawsuits started as acts of public mourning, visible primarily in the way that the claims were framed: survivors and families of victims asked for *moral* compensation rather than – and even to the exclusion of – *material* compensation. Those who went public with their claims wanted answers to questions, recognition of their loved ones, an acknowledgement of fault by the government. But as the proceedings went on, the state showed increasing willingness to get rid of these cases by offering to pay only for material damages – already monetized lost value. Moral damages had been repeatedly denied by all of the judges who heard the cases and by all of the city lawyers who defended the cases.⁷⁶ And the statement of loss and grief encapsulated in the claim for moral damages was never accorded legal recognition.

In the end, material compensation was all that the *Nord-Ost* families got. There were no trials where the *Nord-Ost* families confronted the government, got their questions answered, learned how their loved ones had died, and got recognition of the distinct individuality of each case. The government accepted no blame; there was no official certification of how anyone had died and who might have done anything to save them. Instead, under Judge Gorbacheva, the calculation of damages proceeded without the certification of any story about the siege and rescue.

Instead, the legal judgment came down to very different questions. How much did your loved one make in salary?, Judge Gorbacheva would ask. And how many people were dependent on that salary? Efficiently, the number of people (including the now dead loved one) would be divided into the amount of money s/he earned. If the now-dead person made \$400/month and had three dependents, the three survivors would get \$100/month each. The now-dead breadwinner got the remaining \$100 -- which is to say that no one got it after his death. Some families got lump-sum payments to cover what should have been paid monthly in salary reimbursement since the day that the breadwinner died. For example:

- The Kavrishkini couple lost their daughter, and were left to care for their orphaned granddaughter. The granddaughter was awarded 1158 rubles/month (\$42)⁷⁷ until she was 23 years old and each of the Kavrishkinis received 17,000 rubles (\$630) in a lump-sum payment.

⁷⁶ The claim about moral damages eventually went up to the Russian Constitutional Court which ruled in December 2005 that moral damages were not available under the terrorism law, and that the petitioners' constitutional rights had been vindicated by the initial compensation that they received right after the attack. No more was necessary. *On the Complaint of Citizens Elena Burban, Oleg Zhiron, Dmitri Milavidov, Olga Milavidova and Tamara Starkova on the Violation of their Constitutional Rights through Article 17 of the Federal Law on the Struggle Against Terrorism*. Constitutional Court of the Russian Federation, Opređenje 5230, 27 December 2005.

⁷⁷ When the attack occurred, the ruble was fetching about 30 to the dollar, but by the time that the awards were paid out in late 2005, the ruble had increased in value so that the exchange rate was about 27 to the dollar. I have tried to fix dollar amounts throughout the paper according to what the value of the ruble was at the time of the payments.

- Mrs. Medvedeva lost her husband at Nord-Ost and was left with two children. They received a 24,000 ruble (\$890) lump sum and 3,300 (\$122) rubles each month to split among three of them.

That was all.

In general, compensation involved only the parceling out of lost wages (and official wages at that). For *Nord-Ost* survivors who lost children, no material damages were available because the children had no income. For those who lost a family member on whom they were not financially dependent, no material damages were available because they had not actually lost anything from this salary. The only survivors that received anything were those who had lost the financial support of someone who died in the theater. Everyone else had no material claims to make.

As an editorial in the English-language Moscow Times noted, in the end:

The families of those killed in the Dubrovka hostage crisis . . . received a maximum lump sum of 200,000 rubles (\$7,400) and a monthly pension of 8,000 rubles (\$300). Some of those injured at Dubrovka tried to sue for \$1 million; 600,000 rubles (\$22,500) was the largest award.⁷⁸

Most of the awards were much, much smaller and many of those who survived and sued got nothing at all.

Law's Promises; Law's Failures

Being in the Dubrovka theater for those three harrowing days was a trauma; having one's loved ones die there intensified trauma into tragedy. For those who turned to law, what did law give them?

The *Nord-Ost* cases, like many cases that settle out of court, detached law's promise of healing trauma through narrative explanation from law's promise of making someone whole again through money. If the *Nord-Ost* families got anything, it was only the fractional amounts that they would have gotten from their loved one's official salaries. They received neither the benefit of learning what had happened nor the money that would have enabled them to qualitatively readjust their lives. All of the loss, all of the mourning, and all of the trauma had been reduced to a cramped version of out-of-pocket expenses, and only the narrowest version of officially certifiable ones at that.

The most famous trials produce evidentiary records that certify what happened and provide a public spectacle in which everyone can see for herself what happened. (For example, Shoshana Feldman writes about the Eichmann trial and the OJ Simpson trial.) But the *Nord-Ost* cases ended with no new facts on the table, no one held accountable and no moment when the horrible event was relived in public to act out the trauma with an ending in which the victims would be made whole. The cases ended with the same mystery that motivated families to bring suit in the first place: how had this happened? Only the most bureaucratic of accounting processes marked the official response to the tragedy. Russians who lost loved ones and sued received, at most, the fraction of the salary that had once come into their household from the person who was now gone, and nothing more. Symbolically, these material damages came with no admission of fault, and no explanation. No earmarking.

Cases like *Nord-Ost* are probably more common in the world than are the big and famous trials that provide the basis of public knowledge and academic theorizing. Most cases settle out of court, and those who bring them get nothing by way of truth and only part of what they might have asked in terms of money. Instead of providing a way to link the resolution of trauma through narrative to the valuation of loss in money, all that is left in settlements like these is the small residue of money, given

⁷⁸ Value of Life Remains but a Vague Concept, translated from Vedomosti and reprinted in *The Moscow Times*, June 29, 2006.

for no purpose that is publicly connected to the underlying trauma. The money may not be earmarked at all and so it cannot have meaning that would allow those who got it to feel vindicated, understood, healed.

Postscript

Law's Alternatives

The *Nord-Ost* lawsuits were unusual. No other victims of a mass casualty event had sought compensation in such numbers through the courts in Russia (or in the Soviet Union) before. The tradition has been, from the Soviet time, for the state to pay victims of mass casualty events either through lump-sum cash payments, through monthly disability payments akin to pensions or through in-kind payments at the time that the injury occurred. The state response to Chernobyl was typical.

When the nuclear reactor exploded in Chernobyl, Ukraine in 1986, the victims were relocated; given in-kind payments of food, medical care and housing; and compensated through a longer-term state program in which different levels of "invalidity" were valued with different amounts of money, paid out in monthly sums. The Ukrainian law (after independence in 1991) dealt with those still suffering the effects by establishing categories of disability, and then people had to argue into which category they should be classified based on their radiation exposure.⁷⁹ Once classified, they would receive a certain amount each month in a cash payment until such time as they were eligible to move into a different category or out of the system altogether.

In Russia, the 1992 law (following the Soviet collapse) created categories of Chernobyl victims based on the percentage of working ability that they had lost through the catastrophe. Someone who lost 80% of their capacity to work, for example, would be compensated with a state payment of 80% of their salary at the time of injury.⁸⁰ In 2001, the Russian law was changed to become more like the Ukrainian law, in which three categories of "invalids" would receive fixed payments of differing amounts. Invalids of category 1 (those who were completely or severely disabled) would get 5,000 rubles/month (\$166); invalids of category 2 (with high exposure to radiation) would get 2,500 rubles/month (\$83) and invalids of category 3 (with moderate exposure) would get 1,000 rubles/month (\$33).⁸¹

In these bureaucratic procedures where compensation is assessed and paid, victims struggle to get themselves classified on the basis of their own injury – not on the basis of the other party's fault or

⁷⁹ For a detailed account of this process in Ukraine after the break-up of the Soviet Union, see Adriana Petryna, *Life Exposed: Biological Citizens after Chernobyl* (Princeton University Press, 2002). As Petryna explains, the 1992 law passed in Ukraine to compensate Chernobyl victims differentiated those who were completely unable to work as a result of their injuries or who contracted acute radiation sickness, those who had been involved in the clean up as "liquidators," those who lived in the mandatory evacuation zone, and those who lived or worked in the "zone" after the immediate aftermath of the explosion. Those completely disabled were paid more than other categories; mere "sufferers" had to go through a gradation of classifications before they could be elevated to this highest category. (Petryna at pp. 84-85.)

⁸⁰ Cite to 1992 law.

⁸¹ cite to law discussed in CC opinion of 2002. The Constitutional Court in decision 11P of 19 June 2002 ruled that this system of fixed payments for fixed categories was constitutional, as long as those who had gotten their original payments under the previous percentage-of-salary system were not made worse off and as long as they had a choice about whether to enter this fixed-rate system. Those who were newcomers to the compensation scheme could be shoehorned into the new fixed-rate framework without being given a choice. The new framework was obviously intended to save the Russian government money.

even on the basis of any certifiable account of how they received this injury. A successful victim arguing in this bureaucratic process would have to establish only that she was 80% disabled in order to receive 80% of her salary or would have only to present the evidence to classify her as an invalid of Category 1 in order to receive the highest level of payment. Regardless of whether the plant operators, the Soviet government, the engineers who designed the plant or an “act of God” had caused the accident, the process of claiming compensation was the same. In this bureaucratic system, those who might be blamed never had to be called to account, to have evidence presented against them, or to explain their actions.

Given the way that trauma works, however, it is unlikely that this bureaucratic method of payment could possibly heal the psychic injuries that resulted from the Chernobyl disaster. The event causing the trauma was not publicly revisited; incomplete knowledge about what caused the trauma was not filled in; there was no official account to resolve the fundamental narrative incompleteness of the traumatized victim. There was just money in the space where an explanation needed to be. And the money was given to mark the present invalidity of the victim, not to recognize what had happened to cause the trauma. The money was earmarked only to indicate present invalidity, not to the trauma through which the victim was injured or the reasons for it.

Nonetheless, as Adriana Petryna showed for Ukraine, people who received the compensation money for Chernobyl knew that “The laws confirmed the understanding that ‘I suffered.’ . . . The people remember that the state never hands out money for free. . . . they are reading between the lines.”⁸² Compensation was not nothing. But it was not everything they might want.

The families who sued the government in the *Nord-Ost* cases thought that Russia might be ready for another way to compensate losses, one that would provide answers and would link money to loss and blame. That is the sort of double accounting that law promises. But, in the end, they got something very much like what they would have gotten in the Chernobyl system: monthly payments that made up for wages lost through the changed circumstances that damaged them. There was no blame for anyone and the money they received was not earmarked as compensation for injury that should never have occurred. Their outcomes would not encourage others to follow.

And no one has. In fact, the new system of compensation after *Nord-Ost* has combined elements of the Soviet system of standardized payment with the Wild East of new capitalism. But what it has not done is link the explanation of events to the earmarking of money, as law – at its best – can do.

When the band of terrorists took over the school in Beslan on 1 September 2004, more than 1,200 people – predominantly children, their parents and their teachers – were held hostage in the school gym by heavily armed fighters. The terrorists broke the windows so that no “sleeping gas” could be used against them, and they strung up explosives around the gym into which the hostages had been crowded. The gym was unbearably hot; water and food were unavailable. Some of the hostages were shot dead before the eyes of the others – including one man who had translated the terrorists’ instructions for those who didn’t understand, thereby violating the terrorists’ injunctions not to speak. Those who survived said that they believed that death could have occurred to any of them at any moment.

The siege ended in conflagration. Some say that one of the bombs strung up with tape from the gym’s ceiling had come loose, falling into a crowd of children and exploding, sending shrapnel flying. Others say that the special forces ringing the building fired first. Still others say that parents and relatives outside the building, many armed with shotguns, impatiently started the rescue. Whatever the origin, the first explosion caused all sides to detonate what they had. Amid the bombs and bullets,

⁸² Petryna, quoting Ukrainian biophysicist Ivan Los.

weakened children, parents and teachers dodged for safety. But 331 hostages died, 172 of them children.

At first, the Russian government provided monetary compensation for the funerals – 18,000 rubles (\$600 at the time) from the federal budget and 25,000 (\$833) from the local budget.⁸³ Then the federal government provided lump-sum payments of 100,000 rubles (\$3,300) to compensate the families of someone who died; between 25-50,000 rubles (\$833-1500) for those who were injured (depending on the degree of injury) and 15,000 rubles (\$500) for each hostage who had not been physically hurt.⁸⁴ So far, this seemed like Chernobyl, and like the early stages of *Nord-Ost*.

In-kind payments multiplied in those early days. More than 200 Beslan children and their parents were sent for spa treatments.⁸⁵ More than 300 survivors of the school siege were given medical care in Moscow hospitals. The Russian government promised that two new schools and a new hospital would be built in Beslan. Humanitarian aid and relief supplies poured in. When the holidays came, 80 Beslan children went to Moscow for the Kremlin Palace's famous New Year's Party.⁸⁶ Many survivors of the school siege were given paid vacations to clear their minds.

But a new element was added to the compensation package in Beslan. Charitable donations, never a notable feature of Russian emergency aid before, were raised quickly. The Russian Red Cross collected 68.6 million rubles in the first weeks after the attack.⁸⁷ The Russian Olympic Committee gave 1 million rubles to the Beslan fund; another campaign raised money for toys, books and clothes for the surviving children. By December, 1 billion rubles (\$35.7 million) had been collected in donations from around Russia. The amount available for the grieving survivors of Beslan was so large that each family that lost a loved one in the school received 1 million rubles (\$33,000). Hostages who were severely injured were awarded 700,000 rubles and those who sustained lighter injuries got 500,000 rubles from this fund.⁸⁸

By the following August (2005), the money in this fund had gone from 1 billion in rubles to \$1 billion in dollars, much of later amounts collected in the United States through a campaign organized by Georgy Vasilyev, the writer and producer of *Nord-Ost*.⁸⁹ This fund gave most of the money collected through 2005 to the 107 orphans and to the more than 100 children who lost one parent. They also paid for extensive medical care for seriously injured children.

In September 2005, the Russian government allocated an additional 11.6 million rubles (\$400,000) to pay the victims and the power monopoly Unified Energy Systems agreed to kick in another \$1000 per family. With all of these sources of compensation, Beslan was awash in money – or at least parts of it were.

⁸³ First Funerals of School Siege Victims Held in Beslan, BBC Monitoring, 5 September 2004.

⁸⁴ Government Names Sums of Compensation for Beslan Victims. ITAR-TASS, 9 September 2004.

⁸⁵ Id. This isn't quite the vacation it sounds like in English. Extended medical protocols in Russia often occur in "spas" which allow the patients to concentrate solely on their courses of treatment.

⁸⁶ Yana Voitova, Sorrowful Beslan Will Skip New Year's. Moscow Times, 30 December 2004.

⁸⁷ Aid to Beslan Victims of Terrorism. ITAR-TASS, 10 September 2004.

⁸⁸ Yana Voitova, Sorrowful Beslan Will Skip New Year's. Moscow Times, 30 December 2004.

⁸⁹ Press Conference with Georgy Vasilyev and Dr. Leonid Roshal, RIA Novosti, 29 August 2005, Official Kremlin News Broadcast. Vasilyev had been held in the theater at Dubrovka but never wanted compensation for himself for that event.

Some of the survivors refused to take money, or to spend it. One woman who lost her husband and two sons received 1.5 million rubles but she said, "I'm not interested in money . . . How can you value people's lives in money? Nothing can bring them back."⁹⁰ She refused to touch the bank account, filled with this money that was meant as compensation. A man who lost his wife and grandson said, "We have lost our relatives, and people envy us [for having all of this money]. I'd rather give back all the money I got to see my wife and my grandson alive. Yes, we have money now, but what's the use if you cannot share it with loved ones?"⁹¹

Among those who had lost no one in the school and had therefore no compensation at all, there was resentment. As a volunteer for the Red Cross noted in September 2005, "There are men in Beslan who are unemployed, who have no money for food and who are jealous of those who received money."⁹² (The average monthly salary in Beslan, among those who did not get compensation, was \$74/month.⁹³) Some of those who did not get money looked with envy at the new cars bought by some of the Beslan residents who did, and labeled the cars "terrorist-attack cars."⁹⁴ With the influx of money, property prices soared in Beslan, making it even harder for those who had received nothing when the compensation was being given out to sustain themselves.

The compensation funds divided Beslan into the people who had money but lost relatives, and those who had their families intact but little money. One man who had lost his 12-year-old daughter and who had gotten compensation said that neighbors were accusing him of being bought off by the government. He and his wife later adopted a child from an orphanage and spent their compensation money on her.⁹⁵ An indignant Beslan resident reported that she had been told by an official, "Stop complaining: You've gotten so much that this will atone for everything that you may have suffered."⁹⁶ But the official clearly thought she had gotten too much.

Though much money flowed into Beslan, none of the residents had much by way of explanation for why the school siege had occurred in the first place, or why it ended the way it did. The psychologists had pulled out of Beslan after two months. The last one to leave reported, "There is no point in staying on . . . These people are afraid to bring closure because then – at least so it seems to them – they will never get at the truth and see justice prevail."⁹⁷ A year later, the people of Beslan, particularly those who had been in the school, were still traumatized. They still wanted an account of the event, and a sense of who should be blamed, but they knew not much more than they had immediately thereafter about why the siege had happened or how the terrorists were able to seize the school. Quite a few of the survivors had been abroad on paid holidays about which they were eager to

⁹⁰ Andrew Osborn, *Backlash in Beslan*, 31 January 2005.

⁹¹ Francesca Mereu, "Fear is the King of this Town." *Moscow Times*, 2 September 2005.

⁹² Conor Humphries, *State Increases Aid for Beslan Families*. *Moscow Times*, 1 September 2005.

⁹³ Yuras Karamau, *Gifts Fail to Dull the Beslan Pain*, *The Advertiser (Australia)*, May 27, 2006.

⁹⁴ Francesca Mereu, "Fear is the King of this Town." *Moscow Times*, 2 September 2005.

⁹⁵ Yuras Karamau, *Gifts Fail to Dull the Beslan Pain*, *The Advertiser (Australia)*, May 27, 2006.

⁹⁶ Butunova, *id.*

⁹⁷ Ludmila Butunova, *Beslan: Three Months After the Tragedy*. *The Moscow News*, 1 December 2004.

speak, but when they had to talk about what had happened in Beslan, they fell silent.⁹⁸ Many were obsessed with water because of those long thirsty days in the school.⁹⁹

But some residents of Beslan imputed a meaning to the fact that money flowed so freely into town:

"The authorities understand they are guilty so money and aid are just raining down on Beslan," said [Elvira] Tuayeva, 44, who was held captive in the school with her 12-year-old daughter and 11-year-old son.

"It's painful for me to see what's showing up in Beslan because I think it has all been bought with my children's blood," she said, still wearing mourning black 20 months after the tragedy.¹⁰⁰

The new system of victim compensation in Russia is completely removed from the world of law, which promises, in theory at least, a connection between explanation and compensation so that the trauma that gave rise to the claim can be healed. Of course, the law didn't provide much for the *Nord-Ost* families; the families of Beslan got much more money. But, as we see with both the *Nord-Ost* and Beslan families, the money didn't mean much once it was detached from an explanation, a narrative that made sense of what happened, and someone to blame.

⁹⁸ Andrew Osborn, How Beslan is Coping One Year On. *Financial Times*, 1 September 2005.

⁹⁹ Francesca Mereu, 'Fear is the King of this Town.' *Moscow Times*, 2 September 2005.

¹⁰⁰ Yuras Karamau, Gifts Fail to Dull the Beslan Pain, *The Advertiser* (Australia), May 27, 2006