

Compensation & Restitution

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Topic Description

The purpose of this course is to investigate 1) what compensatory and restitutionary duties are, 2) how they fit within the constellation of other moral duties, 3) what determines whether and how much we owe by way of compensation and restitution, 4) how stringently they apply, and 5) whether such duties yield obligations to the global poor and to victims of historic injustice. In investigating 1 through 4, we'll focus especially on whether non-voluntary beneficiaries of an injustice have compensatory/restitutionary duties toward the victims of that injustice in circumstances where those responsible for committing the harm in question are unwilling or unable to fully compensate the victims. This will, in turn, inform our investigation of 5 -- whether benefitting from injustice can serve as a moral basis for redistributing benefits to the global poor and to victims of historical injustice.

The view that innocent beneficiaries of injustice bear special duties to victims of injustice has been criticized on the following grounds. Some have argued that luck egalitarianism can explain the apparent duties that innocent beneficiaries have, in that these duties are wholly reducible to general duties to compensate people for bad brute luck. We will consider this argument as well as responses to it.

The appeal to unjust enrichment can help conceptualize the duties we have to the global poor and to victims of historical injustice, in that those benefitting from injustice might have a moral basis for redistributing such benefits. The libertarian argues that we have enforceable duties to benefit others only if (the Lockean proviso notwithstanding) we have agreed by contract to do so or if we have violated a negative constraint against committing a wrongful harm. On this view, duties of beneficence (as they are typically construed) are non-enforceable; accordingly, many think that libertarianism does not demand enough of us. At the other extreme, the utilitarian argues that we have enforceable duties of beneficence to maximize global welfare impartially construed. Many think that this is too demanding. The argument from compensation/restitution for unjust enrichment provides a principled way for carving out a middle path: the duties to assist the global poor and grounded partly in the fact that their victimization enabled our enrichment. A similar argument might be made in favor of duties to compensate/restitute for historical injustice: though the perpetrators of those injustices are dead and gone, we as beneficiaries of those injustice might have duties to redistribute the benefits we have non-voluntarily derived from those injustices to the individuals whose lives were made worse off by those injustices.

Some related topics we will *not* be discussing for lack of time include compensatory and restitutionary duties to avert or absorb the costs of climate change, and the legal theory of compensation, restitution, and unjust enrichment.

Grading and the Structure of the Class

The grading for this course will be based either on a single term paper due during finals week, or three short papers on topics of your choosing due on weeks three, six, and nine. You can choose either mode of grading. In addition, each student will be required to present a detailed synopsis and commentary of at least two assigned readings over the course of the quarter. The synopsis should cover the entirety of the reading, though your commentary can be on the reading as a whole or just on a particular part of it. You should expect your presentation to last about 30 minutes. It will be followed by class discussion.

Tentative Schedule of Readings

(articles are hyperlinked)

ON COMPENSATION ITSELF

April 4

- [O'Neill, Onora - 'Rights to Compensation' \(1987\) \[skip section 3\]](#)
- [Miller, David - 'Distributing Responsibilities' \(2001\)](#)
- [Roberts, Rodney C. - 'The Counterfactual Conception of Compensation' \(2006\)](#)

ON BENEFITTING FROM INJUSTICE

April 11

- [Thomson, Judith Jarvis - 'Preferential Hiring' \[*selections*\] \(1973\)](#)
- [Fullinwider, Robert - 'Preferential Hiring and Compensation' \(1975\)](#)

April 18

- [Butt, Daniel - 'On Benefiting from Injustice' \(2007\)](#)
- [Goodin, Robert & Barry, Christian - 'Benefiting from the Wrongdoing of Others' \(2014\)](#)

April 25

- [Pasternak, Avia - 'Voluntary Benefits from Wrongdoing' \(2014\)](#)
- [Huseby, Robert - 'Should the Beneficiaries Pay' \(2013\)](#)

May 2

- [Haydar, Bashshar & Øverland, Gerhard - 'The Normative Implications of Benefiting from Injustice' \(2014\)](#)
- [Parr, Tom - 'The Moral Taintedness of Benefiting from Injustice' \(2016\)](#)

May 9

- [Knight, Carl - 'Benefiting from Injustice and Brute Luck' \(2013\)](#)
- [Butt, Daniel - 'A Doctrine Quite New and Altogether Untenable...' \(2014\)](#)

May 16

- [Barry, Christian & Wiens, David - 'Benefiting from Wrongdoing and Sustaining Wrongful Harm' \(2016\)](#)
- [Duus-Otterström, Göran - 'Benefiting from Injustice and the Common-Source Problem' \(2017\)](#)

May 23

- [Lindauer, Matthew & Barry, Christian - 'Moral Judgment and the Duties of Innocent Beneficiaries of Injustice' \(2017\)](#)
- [Barry, Christian & Kirby, Robert - 'Scepticism about Beneficiary Pays- A Critique' \(2017\)](#)
- [Couto, Alexandra - 'The Beneficiary Pays Principle and Strict Liability' \(2018\)](#)

ON HISTORICAL COMPENSATION

May 30

- [Amdur, Robert - 'Compensatory Justice: The Question of Costs' \(1979\)](#)
- [Sher, George - 'Ancient Wrongs and Modern Rights' \(1981\)](#)

June 6

- [Butt, Daniel - 'Repairing Historical Wrongs and the End of Empire' \(2012\)](#)
- [Goodin, Robert - 'Disgorging the Fruits of Historical Wrongdoing' \(2013\)](#)