

Compensation & Restitution

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285 / Winter, 2015

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 appeal to unjust enrichment might help conceptualize the duties we have to the distant in the following way. 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 injustices 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 in part on a single term paper which will be due during finals week. At some point, I will meet with each of you individually to discuss the progress of your paper. 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 45 minutes. It will be followed by class discussion.

Schedule of Readings (tentative)

ON COMPENSATION ITSELF

Jan. 7

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

ON BENEFITTING FROM INJUSTICE

Jan. 14

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

Jan. 21

- [Amdur, Robert - 'Compensatory Justice: The Question of Costs' \(1979\)](#)
- [Butt, Daniel - 'On Benefiting from Injustice' \(2007\)](#)

Jan. 28

- [Goodin, Robert & Barry, Christian - 'Benefiting from the Wrongdoing of Others' \(2014\)](#)
- [Pasternak, Avia - 'Voluntary Benefits from Wrongdoing' \(2014\)](#)

Feb. 04

- [Huseby, Robert - 'Should the Beneficiaries Pay' \(2013\)](#)
- [Haydar, Bashshar & Øverland, Gerhard - 'The Normative Implications of Benefiting from Injustice' \(2014\)](#)

Feb. 11

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

GLOBAL AND HISTORICAL INJUSTICE

Feb. 18

- [Pogge, Thomas – Précis for Symposium on 'World Poverty and Human Rights' \(2005\)](#)
- [Anwander, Norbert - On Pogge's 'World Poverty and Human Rights' \(2005\)](#)
- [Pogge, Thomas - response to Anwander \(2005\)](#)
- [Anwander, Norbert - 'World Poverty and Moral Free-Riding' \(2009\)](#)

Feb. 25

- [Reitberger, Magnus - 'Poverty, Negative Duties, and the Global Institutional Order' \(2008\)](#)
- [Sher, George - 'Ancient Wrongs and Modern Rights' \(1981\)](#)

Mar. 03 [no class]

Mar. 10

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