

# Compensation & Restitution

*Richard Arneson & Saba Bazargan-Forward*

*267 / Spring 2022*

## *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**

March 31

- [O'Neill, Onora - 'Rights to Compensation' \(1987\) \[skip section 3\]](#)
- [Goodin, Robert - 'Theories of Compensation' \(1989\)](#)

April 7

- [Nozick, Robert, - \*Anarchy, State and Utopia\*. Chapter 7, Section 1 \(1974\)](#)
- [Nozick, Robert, - \*Anarchy, State and Utopia\*. pp. 54-59, 63-65, 71-73, 78-87 \(1974\)](#)
- [Roberts, Rodney C. - 'The Counterfactual Conception of Compensation' \(2006\)](#)

### **ON HISTORICAL INJUSTICE**

April 14

- [Lyons, David - 'The New Indian Claims and Original Rights to Land' \(1977\)](#)
- [Lyons, David - 'Reparations and Equal Opportunity' \(2003\)](#)
- [Lyons, David - 'Reparations for Slavery and Jim Crow' \(2017\)](#)

April 21

- [Amdur, Robert - 'Compensatory Justice: The Question of Costs' \(1979\)](#)
- [Sher, George - 'Ancient Wrongs and Modern Rights' \(1981\)](#)
- [Waldron, Jeremy - 'Superceding Historical Injustice' \(1992\)](#)

April 28

- [Kukathas, Chandran - 'Responsibility for Past Injustice- How to Shift the Burden' \(2003\)](#)
- [Butt, Daniel - 'Repairing Historical Wrongs and the End of Empire' \(2012\)](#)
- [Goodin, Robert - 'Disgorging the Fruits of Historical Wrongdoing' \(2013\)](#)

May 5

- [Thomson, Judith Jarvis - 'Preferential Hiring' \[\*selections\*\] \(1973\)](#)
- [Fullinwider, Robert - 'Preferential Hiring and Compensation' \(1975\)](#)
- [Amdur, Robert - 'Compensatory Justice- The Question of Costs' \(1979\)](#)

### **ON BENEFITING FROM INJUSTICE**

May 12

- [Butt, Daniel - 'On Benefiting from Injustice' \(2007\)](#)
- [Goodin, Robert & Barry, Christian - 'Benefiting from the Wrongdoing of Others' \(2014\)](#)
- [Huseby, Robert - 'Should the Beneficiaries Pay' \(2013\)](#)

May 19

- [Knight, Carl - 'Benefiting from Injustice and Brute Luck' \(2013\)](#)
- [Parr, Tom - 'The Moral Taintedness of Benefiting from Injustice' \(2016\)](#)
- [Duus-Otterström, Göran - 'Benefiting from Injustice and the Common-Source Problem' \(2017\)](#)

May 26

- Couto, Alexandra - 'The Beneficiary Pays Principle and Strict Liability' (2018)
- Barry, Christian & Wiens, David- 'Benefiting from Wrongdoing and Sustaining Wrongful Harm' (2016)
- Bazargan-Forward, Saba - 'Grounding the Beneficiary-Pays Principle' (2021)

June 2

- TBD
- TBD
- TBD