PARADIGMATIC cases of compensatory justice involve someone being injured (the victim), a person committing the injury (the victimizer), and quantifiable damage that can be restored by the victimizer through the paying of compensation or the return of stolen goods. The principal parties are known and alive, the details of the injury are clear, and the solution is obvious. Many cases of injustice, however, do not fit neatly into this model. There are cases of injustice involving hundreds, even thousands of victims; there are cases of injustice where there are also large numbers of victimizers or the identity of the victimizers is unknown or the victimizer is deceased. There are also cases where the stolen goods have been sold or given away to innocent “bystanders” who know nothing of the goods’ tainted heritage and act on the basis of their presumably legitimate ownership. And there are some cases of injury that simply happened a long, long time ago.

In many of these “non-paradigmatic” examples of compensatory justice, some writers will claim that the situations are not compensable: the details are too fuzzy, the primary actors are deceased, too much time has elapsed since the injury. Jeremy Waldron, for example, argues in “Superseding Historic Injustice” that once an artifact (A) has been removed from a person, say primary victim (P), that P rearranges her life to accommodate the loss of A and continues with the projects constituting her life plan as much as possible. As time passes P, although initially devastated by the loss of A, continues to do without A, until the argument that P is due compensation because of the interruption of her projects caused by the loss of A looks more and more indefensible. Even less, according to Waldron, can the primary victim’s descendants (PN) make the case that the loss of A is affecting their life plans because they never had A or were not able to benefit from its use in any way. After a time, Waldron points out, the injury is successfully accommodated, bystanders may become involved, and there is decreasing motivation to go back and start rearranging circumstances. One should just leave well enough alone and move on.

I want to argue, however, that with the proper guidelines one can distinguish between defensible and non-defensible claims, even of the distant past, and point the way towards just resolution of compensatory conflict. Some injuries, like those involving stolen artifacts, may endure for generations. When an unjustly acquired artifact has been passed down from generation to generation in the wrongdoer’s family, or even sold to innocent bystanders, the situation becomes increasingly complicated. I maintain, however, contra Waldron, that ownership is too robust to somehow disappear if enough time passes. The victim does not just lose his rights to an artifact simply because the wrongdoer has tenaciously and unrepentantly held on to stolen property. If bystanders are involved it is unfortunate that the wrongdoer or her descendants embroiled them in the matter, thereby enlarging the cast of victims, but the artifact should still return to the original victim or his legatee, even if the wrongdoer must pay some additional compensation to the bystanders to reacquire the stolen property. The lack of movement towards a just solution of a palpably unjust situation, especially one that has dragged on for decades, even generations, calls even more, not less, for a resolution.

Toward this end, in the first section of this paper I will briefly discuss the goal(s) compensatory justice is trying to achieve. In the second section I will consider four variables which impact upon a just compensatory solution, and then argue that one compensatory rule, the Just Compensation Rule, maps a fair and moderate course among these variables and meets our considered intuitions of a just response to individual and group compensatory claims. In the third section of this paper I will apply the Just Compensation Rule to two scenarios: that of African Americans asking for compensation for enslavement and Jim Crow practices, and that of three Maine Native American tribes asking for compensation for loss of land. I will attempt to show that the Compromise Rule does clarify these claims and would be a useful guide when compensatory issues such as these arise.

I. GOALS OF COMPENSATORY JUSTICE

There is a rift in the moral fabric when someone injures someone else. The agent of harm needs to do something to repair the rift and make things right. There have been several suggestions put forward as to what actions would result in “making things right.”

A. RESTORATION OF EQUALITY

Some authors use as their starting point an Aristotelian model, with a compensatory goal of “equality.”

Aristotle in Book V, chapter four of his *Nicomachean Ethics*, represents “rectificatory justice” as a restoration of equality. Aristotle characterizes the law
in its role of governing rectificatory justice as treating the two participants as equals. This foreshadows Bernard Boxhill’s argument that compensatory (Boxhill terms it “reparatory”) justice not only repairs the physical damage caused by the injury, it underlines the fact that the victim is worthy of respect, is equal to the victimizer and other members of the society protected by the law.²

According to Aristotle, the judge or mediator restores equality by removing some of the “gain” from the victimizer to replace the “loss” of the victim; “it follows that what is just in the rectificatory sense will be the mean between loss and gain.”³ Aristotle’s arithmetical approach to compensation is echoed in contemporary tort law in which injury is quantified in terms of dollars and cents. Compensation for reparable physical injury and property damage can straightforwardly be added up in the loss column and billed to the victimizer. Even such abstract losses as “pain and suffering” and “mental distress” are being rendered in monetary terms paid by the injurer to make up for the injured’s loss. Still, although it is a common practice to convert into dollar amounts losses of sensory abilities, limbs, and even lives, the ever-spiraling price tags of the losses and the cynical search for “deep pockets” by the lawyers has made this type of application of compensatory justice controversial.

B. RESTORATION OF THE STATUS QUO ANTE

Although the practical application of tort law resembles Aristotle’s equalization schema, the stated theoretical goal of contemporary tort law is “restoration of the status quo ante.” Expounded upon by Justice Brewer in 1893, compensation’s goal is “to provide the ‘full and perfect equivalent’ of what was lost, and so to restore completely the status quo ante.”⁴

In many situations, “restoration of the status quo ante” suggests a clear goal—one is returning the situation to the way things were before the injury occurred. When that cannot be accomplished one shoots for second best by factoring in a counterfactual judgment: one is returning the situation to the way things would have been had the injury never occurred. In cases involving injury to property, the return to the status quo ante is straightforward: If one’s stereo system were destroyed by an acquaintance in a fit of rage, the return to the status quo ante would involve either repair of the system or replacement of the stereo system by a comparable one. On the other hand, a situation like several generations of enslavement would cause compensatory justice as it is here described to break down. To what previous situation would one return? If the ties of the enslaved people to their ancestral home have been cut—their home culture eradicated,

their language lost, family ties severed—to what are they being restored? In scenarios like this, where there really is no satisfactory status quo ante to reassert, a new goal of compensatory justice needs to be put forward. Cases of injury that last for long periods of time, even over generations, injuries in which one is not sure who the victims or victimizers are, all create problems for the goal of returning to the original situation.

Yet the situation need not be so complicated as enslavement of a population for there to be problems. What if a person is slandered? A public apology and recanting of the offensive speech may go some way toward making the injured party feel better, especially if a monetary exchange were made for the victim’s “pain and suffering,” but these procedures will not render the words unsaid or erase the lingering doubts in the minds of the hearers. Some injuries are not so easily undone, and a return to the original situation, to the unsullied past, is impossible. What then is the goal of compensation? Would it be enough to simply move in the direction of restoration of the status quo ante? How far? Would a gesture suffice? At what point along the continuum culminating in the unachievable status quo ante could one declare the job done?

Equality, too, is not so easily achieved. At what point does the slanderer even out his gains with the victim’s losses? How would one go about restoring “equality” in a situation such as this? Would the victim need to slander the injurer? Would it simply be a matter of paying the victim until she “felt better”? Would that point be the restoration of equality? While “restoration of the status quo ante” might sometimes give us an unattainable goal, it does at least give us a general direction in which to aim. It is not clear, however, what the attainment of equality in a case of slander would come to.

Even in the case of physical injury, the goal of “equality” can be rather opaque until the injury is converted into dollars and cents. As a metaphorical guide, the “restoration of equality” works most efficiently in situations of theft or destruction of property; when it comes to cases of physical injury, it is less clear what is called for. If A breaks B’s leg, can one restore equality without converting the injury to a monetary amount? If not, it would seem that a sense of compensation is not being captured. If A is a doctor and can reset B’s leg herself, has she restored equality? Repairing a broken leg does not seem to be a case of restoring equality. What is equal to what? The new leg is now equal to the old leg? Perhaps we could say that by repairing the leg the victimizer is now treating the victim as an equal, and in that sense equality has now been restored. Yet our metaphor seems a poor match for our situation. Injecting equality into this situation sounds more like an application of the adage, “an eye for an eye,” which could call for the breaking of A’s leg, an outcome which would punish the injurer but not really compensate the injured.

Our court system relies on the conversion of injury into dollar amounts. But the criteria by which one decides when compensation (equality?) has been achieved are unclear and ever-changing. We rely on the lawyer, judge, jury, and
victim (and sometimes victimizer, in out-of-court settlements) to come to an agreement as to how much compensation is enough. But as the court settlements jump higher and higher one wonders why the person whose settlement was a hundred thousand dollars this year had so much further to go to reach “equality” than did the victim of a similar injury who received ten thousand dollars five years before. What are the clear and objective standards for awarding compensation and what is their relationship to Aristotle’s “equality”? Or to the elusive status quo ante?

Jeffrie Murphy and Jules Coleman in “Philosophy and Private Law” describe “corrective or rectificatory justice” as evening out unjust gains and losses. They echo Aristotle in their description of compensating for losses suffered inequitably and eradicating gains garnered iniquitously. Rectificatory justice here smooths out unlawfully caused hills and valleys to result in a flat “equality” reasserted between victim and victimizer. Still, as mentioned before, there are situations to which this kind of compensatory description would not help a judge recommend a course of action.

C. “MAKING THE VICTIM WHOLE”

Loren Lomasky presents another version of the goal of compensatory justice—that it should make the “injured party whole.” He relates this “making whole” to being “at least as well off as before the transgression occurred.” In this case we are not trying to return to the exact same situation, but to a situation where one has the equivalent physical and emotional well-being as in the original situation.

Does this make the attainment of compensatory parity any easier? Consider the case of a woman who lost her job through sex discrimination. Strictly speaking, a return to the status quo ante would require her to have her old job back. Being “at least as well off as before” would mean an equivalent job, and hints at the possibility of an even better job. Although the two compensatory goals—return to the status quo ante and “making the victim at least as well off as before the transgression occurred”—are very close, the latter is slightly more flexible than the former. In the case previously cited of the enslaved population, it would certainly be easier to make the people “as well off” as they had been before enslavement than it would be to return them to a status quo ante in which they could no longer survive.

“Making the victim whole” would also offer more guidance than the “equality” standard. When it is difficult to see how one would go about re-

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5Ibid. p. 27.
establishing equality between victim and victimizer, as in the slander case, “making the victim as well off as she was before” would give one an immediate direction in which to go: one could repair the victim’s good name through putting up posters, making television ads, broadcasting apologies.

An interesting point that Lomasky makes is that there is a unique moral relationship between victim and victimizer because of the transgression, and therefore it is up to the victimizer to “make the injured party whole” by paying for the injury herself. It is not enough for a third party to pay the compensation. This bilateral relationship between victim and victimizer, writes Lomasky, differentiates compensatory justice from distributive justice. Compensatory justice is personal.

Murphy and Coleman disagree with Lomasky’s point. For them compensation falls in the category of repayment of debts, in which the debts must be repaid, although not necessarily by the debtor. In the same way, they suggest that compensation must be paid, but not necessarily by the wrongdoer. For them compensatory justice is impersonal.8

D. MATERIAL REPARATIONS PLUS APOLOGY

Whatever compensatory plan has been invoked, Boxhill maintains that justice has not been reinstated, even if material reparations have been paid, if the victimizer has not acknowledged that she was wrong or mistaken. Justice is not reinstated until the wronged party has received an admission of wrongdoing or fault. He argues that justice rests upon “equal consideration between equals,” which reaches further than equality of opportunity.9 “Equal consideration” means other people are openly acknowledged as being equals, and this means victims are owed the affirmation of equality which an admission of error brings.

I agree with Boxhill that apologies sincerely expressed would represent an affirmation of equality and mutual respect; however, I do not believe that such intent and inner transformation on the part of the wrongdoer can be legislated or forced. An apology given insincerely, insolently or spitefully does not demonstrate that the victimizer recognizes or regrets her error. Highlighting as it does the victimizer’s lack of regret, such an apology might even make the victim feel worse. In order for an apology to truly be an apology, it must be accompanied by some degree of good will and remorse. Although one might hope that in all cases of wrongdoing the transgressor would recognize her mistake and sincerely wish to make things right, that is not always true. To make a compensatory principle require an apology, which requires a certain attitude on the part of the victimizer, would make the principle difficult to apply.

8Murphy and Coleman “Philosophy and private law,” p. 187.
Just treatment, however delivered, can make a difference in the victim’s life. Reparations paid spitefully or insolently are still reparations paid, which can repair the harm done and reinstate the victim’s life plans. Whether the transgressor pays with a cheerful or a regretful attitude would be beyond the scope of the reparation requirement. Boxhill, however, insists upon the need for a public declaration of wrongdoing which reinstates the victim to his proper status in society.

E. IN SUMMARY

I shall adopt as a working definition Lomasky’s two-tiered explanation of the goal of compensation: (1) to render the situation as it was before the injury, or restoration of the status quo ante, or if that is not possible, (2) to make the “injured party whole” by rendering her “at least as well off as before the transgression occurred.”

I choose to begin with this version because although Aristotle’s conception of the reinstatement of equality echoes our intuitions that equality is an intrinsic part of justice, as a call to action the phrase seems hopelessly unclear; making things “equal” between two parties when no property is involved or when the circumstances are non-standard or non-paradigmatic does not serve as much of a guidepost. Initially one would determine if there were a viable “status quo ante” to which one could return. If that were the case, the goal of compensation and the characteristics indicating when it had been achieved would be relatively uncomplicated. Injuries lasting for years or even generations, however, would blur that index. Further, injuries of an abstract nature like “traducing one’s good name” would also present problems for returning to the original situation. In these cases one would have to abandon the “first-tier” and go to the secondary goal of compensation: rendering the victim “whole” by making her at least as well off as before the transgression occurred. Certainly the first part of this—“making the injured party whole”—seems as opaque as Aristotle’s “equality.” But as a metaphorical guide it gives a better idea of what is needed—repair of physical, psychological damage—than does the arithmetical standard of Aristotle. The phrase —“rendering her at least as well off as before the transgression occurred”—allows for repair that will not take one back to the original situation but removes the impediments to project pursuit caused by the injury. The victim may now be in a different place with different resources at her disposal, but she should be able to move forward once again.

Is there a need for an apology or an admission of guilt on the part of the wrongdoer to be a part of the compensatory process? Punishment represents the public’s acknowledgment that a wrong was done, and compensation, even reluctantly paid, represents further evidence that a wrong was done. This

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acknowledgment does not have to be any more pronounced or spontaneous than the compensatory act unless it is thought necessary by the victim. The central goal of compensation is to restore the victim to some baseline point, and an apology may or may not be thought central to that process. To the Japanese Americans who were wrongfully interned during World War II, an apology was felt to be a crucial part of the compensation. Other peoples, however, might not feel that an apology is as important. Each compensatory plan should be tailored to offset the damages suffered by each individual victim, to make that particular victim “whole,” but in general an apology need not be a mandatory part of each compensatory package.

II. A MORE NUANCED JUST COMPENSATION RULE

There are several variables which complicate a case of compensatory justice and heighten the adjudicatory difficulty of reaching a just solution. I will discuss those variables and argue that the Just Compensation Rule offers a way to decide what is and is not pertinent to the decision at hand and leads the way to a “whole” situation.

John Rawls suggests in *A Theory of Justice* that a way to evaluate any such foundational principle is to measure its ability “to accommodate our firmest convictions and to provide guidance where guidance is needed.” What are our firmest convictions? Naturally, we feel that people should not be unfairly injured by others, but if this does happen, immediate appropriate action should be taken, such as punishing the wrongdoer and/or compensating the victim. We feel that there must be a justification for the use of any rule and this use must be fair, consistent and fitting. When the rule is applied, it should be applied to all and only those possessing the relevant characteristics for which the rule was designed. After the rule has been applied, the situation for which it was selected should be ameliorated.

A. RELEVANT VARIABLES

There are four variables we particularly need to consider in this connection.

1. Variable One: Temporal Limitation

Should there be a temporal limitation on compensatory claims? If there were a “statute of limitations” many of the problems occurring in non-paradigmatic cases of compensatory justice would be eliminated: questions arising due to the death of the primary victim or victimizer, documentation of injury challenges caused by the passage of too much time.

If, for example, compensation only extended to the generation in which the injury occurred, one would find it easier to force the victimizer to return stolen goods, or extract payments out of her assets (if there are any). Once the primary victimizer is dead, one could argue that it is unfair to squeeze reparations from the victimizer’s descendants who did not gain materially by the injury and are therefore paying reparations, due to an unlucky and unsought-for genetic connection, out of their own pockets.

On the other hand, descendants of a victimizer could be substantially and materially much better off due to an old injury and the victim’s family concomitantly substantially poorer. Consider the example of a victim, now dead, who was bilked out of the ownership of a grocery store, by which he had supported his family. His family is now penniless. The victimizer (also deceased) also has a family which is now well supported by the income from the ill-gotten grocery store. It would certainly seem that the victimizer’s family has benefited and continues to undeservedly benefit from the injury, while the first family continues to be penalized.

But those are cases that are within a generation or two of the injury. What about after fifty years, or one hundred years? Surely enough time has passed for the injury to be forgotten or else, as Waldron argues, successfully accommodated. By now the victim’s descendants from the previous example would have either acquired another grocery store or come up with some other method for supporting themselves. There may not be anyone alive who even remembers the old injury. The Montagues and Capulets may now be firmest friends.

**ii. Variable Two: Heritability of Compensation**

A related question concerns whether or not compensation is heritable. Although it might seem clear that the victimizer’s descendants from the previous example did not *deserve* the grocery store illegally gained by the victimizer, it is not clear that the victim’s descendants deserve it, either. A grocery store which supplies family income is possibly a poor test scenario because it might seem like a family enterprise which was jointly owned, especially if the other members of the family worked in the store. Intuitively, one might lean, then, to the opinion that the family members themselves deserve compensation from the injury committed against their father. What about a second example, in which the cure for cancer, contained in a research diary, is stolen from the father, who dies. Does his family deserve compensation for the monetary rewards he would have garnered from the pharmaceutical companies? Do his descendants, three generations removed? If compensation is heritable, at what point, if ever, does it become undeserved to the victim’s descendants and/or an unfair burden on the descendants of the victimizer?

**iii. Variable Three: Type and Condition of Injury or Gain**

The type of injury or gain could have considerable impact upon the justifiability of compensatory claims. Whether the gain from an injury was a valuable idea or
a grocery store or the satisfaction of breaking someone’s nose could affect its longevity and heritability. Is the compensation from “pain and suffering” as robust as that from stealing a gold mine? Does it matter whether or not the victimizer conservatively placed the gain in the bank or spent it all in an orgy of ill-gotten excess?

iv. Variable Four: Groups vs. Individuals

Should only individual claims to compensation be honored? One of the most confounding variables in cases of non-paradigmatic compensatory justice is when large numbers of people are involved. Large groups of victims or victimizers (or both) severely complicate documentation of abuse and may render ordinary punishment and compensatory practices impractical, hopelessly time-consuming, and/or financially unfeasible. These are situations where one may argue that the seemingly “just” solution is not the best, and may gloss over details or institute some glitzy gesture in order to appease victims and move a messy situation into the past. But these unfortunate scenarios may be just the kind of situation that cannot be glossed over because of the depth of damage done, and a more time-consuming, expensive, “impractical” solution may be what is needed. A compensatory rule which could give guidance in these very difficult situations would be very useful. I would like to propose a principle, the Just Compensation Rule, which could chart a just route through difficult compensatory waters, and which adopts a middle course between those who would compensate all wrongs, no matter how old, and those who would limit compensation temporally because of potential difficulties.

B. The Just Compensation Rule

The Just Compensation Rule would include the following stipulations:

a. First Generation Extant. As long as the first generation participants are alive (those taking part in the original injury—the primary victim and the primary victimizer), both injuries_{PR} (those involving loss or damage to real or personal property and assets) and injuries to the person—\text{injuries}_{P} (those involving psychological or physical harm, including murder)—are compensable. The primary victimizer owes compensation even if she has squandered the bounty from the injury. (Any earnings or holdings accessed as a result of an injury will be hereafter referred to as the “gain” from the injury.) Note that after the first generation, only injuries to property (injuries_{PR}) are compensable, if gain persists.

b. Primary Victim Dead, Primary Victimizer Extant. Once the primary victim is dead, injuries_{P} are no longer compensable. As long as the primary victimizer is alive, injuries_{PR} are compensable, even if the gain from the injury no longer exists.

c. Primary Victim and Primary Victimizer Dead; Gain Extant. As long as there is some heir or legatee of the primary victim living, compensation is due when the
gain from the injury is controlled by the victimizer’s family or the victimizer’s legatee. (The compensation would be due only from those members of the family or other legatees controlling the gain.)

d. Primary Victim and Primary Victimizer Dead; No Gain. There is no compensation if both the primary victims and victimizers are dead and there is no longer any gain from the injury.

e. “Cultural entity groups.” When harm is suffered to a group classified as a “cultural entity” and the harm is to the “cultural entity,” then the group is considered as an individual when reckoning claims of compensatory justice. Will Kymlicka argues in Liberalism, Community and Culture that there are differentiations among minority groups and they can not all be treated in the same way. There are some minority groups whose group status was imposed from without and who were lumped together as a category for the convenience of their oppressors. The second type of minority group is described by Kymlicka as “a stable and geographically distinct historical community with a separate language and culture rendered a minority by conquest or immigration or the redrawing of political boundaries.”

This second type of minority is a cultural entity with an identity of its own characterized by its unique language, history, traditions and mores, and this cultural entity can itself be a victim. Kymlicka contends that there is here a whole which needs protection and stands as a primary good to its constituent parts. In this situation the group entity, which is here more than the sum of its parts, can be advantaged and harmed in a more meaningful way than just that its members have been advantaged and harmed. This group whole has its own identity and history, and has evolved to the point where it has attained certain moral rights. If the cultural entity representing this second type of minority were harmed, then the whole would have sustained a group harm and compensation would be owed to the group entity and would be paid to that entity, that whole, and not to the individual members.

f. Bystander Protection Clause. A corollary to the Just Compensation Rule would need to be a Bystander Protection Clause. An injury could drag on for decades or even centuries and involve a new set of people. In this case, there is a difference between those not causing the original injury who nevertheless knew about it when they became involved after-the-fact, and those who got involved through buying some artifact or piece of property without knowing that it had been unjustly acquired by the seller. Those who were innocently ensnared in the wrongdoer’s activities constitute a class of secondary victims who would also deserve redress from the victimizer. In the case of the theft of the Black Hills from the Sioux Nation, for example, if mining companies were sold mining licenses by the US government and allowed to mine, they would constitute bystanders to the original injury who would be affected if compensation called for the return of the original property. And even though they gained through their association with

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the injurers, they would still be owed redress for the unused portion of their licensing fees, for example. The Bystander Protection Clause states that bystanders who unknowingly, through seemingly legal and moral means, gained possession of items and/or money unjustly taken from victims, should also be compensated by the victimizer or his estate when the lineage is proven and the items need to be returned.

C. DISCUSSION

The Just Compensation Rule restores justice because it provides direction to a fair and equitable response to an unjust situation. It protects victims in that it ensures, as much as possible, that those deserving of compensation receive it so that they are made “whole” by being set once again on the track of their life plans. But it also protects the descendants of victimizers in that it does not require those who did not harm anyone and did not gain anything to take on extra jobs to rectify an injury with which they were only nominally related. The first three variables overlap in their impact on the Just Compensation Rule.

The Just Compensation Rule begins by separating types of injuries into those which affect the person through physical or psychological trauma, and those which affect property. Those which affect the person would be compensable only as long as that victim is alive. If a person is raped, then she deserves compensation for medical attention, if necessary, and psychological counseling. Unfortunately, she can not be returned to the status quo ante; therefore, the goal is to make her whole and enable her to once again move forward.

If she is deceased, however, there is no one to receive the medical and psychological help. One might argue that her children should receive the money that would have paid for the medical and psychological assistance. Why? They were not raped; their life plans were not affected; they do not deserve this compensation. A further argument, however, might be that because their mother was traumatized, she could not be a good mother to them and therefore their lives need to be made whole. I find a general, automatic claim to compensation on the part of children who have had parents who suffered some kind of trauma to be uncompelling. Compensation must be tied to clear injury; it is not a method of distributive justice, nor a method (in terms of purpose) of punishment. There must be more evidence of injury than that someone was in a potentially injurious situation. If, as a result of rape, the mother now hates all men, including her own son, and beats him daily because of it, then I would also consider him a victim of the rape and would feel that he deserves some compensation (in the form of whatever services would enable him to be made “whole.”). The burden of proof, however, would be upon him to show that his need was caused by the injury to his mother. In all cases, the injury is like a hole which the compensation strives to fill; if there is no hole, which is the case when the victim of injuries $$p$$ dies, then the
compensation is no longer due. The victimizer still deserves to be punished, but the injured can no longer be made whole.

What of the case of murder? Is the primary victim only the murder victim, or would the immediate family also be considered a primary victim and therefore eligible for compensation? Although I would consider the immediate family to be victims, along with the deceased, this is a case for punishment, not compensation. There is no one whose life can be made whole: the murder victim cannot be brought back, and no amount of compensation can replace the life of a loved one—there is certainly no returning to a *status quo ante*. One could argue that the compensation could replace the wages lost to the family because the murder victim would no longer be working. But compensation is to take you back to a place in the past and somehow reinstate the pre-injury situation. Here one would be projecting into the future and speculating on future earnings. How long would the family be owed compensation? Until the murder victim would have reached the age of 65? This is taking compensation into a new arena. Murder, although an egregious crime, is an injury to the person that is beyond the reach of a compensatory plan; it is an unfillable hole.

I would argue, then, that there is a temporal limitation upon compensation and it is connected to, among other things, the type of injury. Injuries (injuries to the person) disappear when the person disappears, along with the compensation. We are misled when we think of compensation as simply a sum of money transferred to a person who has been injured, for then it seems as if the money, which we clearly think to be heritable in this society, should pass from one generation to another. But compensation is the method by which injuries are made better, and if the injury is no longer extant then the compensation is no longer needed. The temporal limitation, therefore, is that injuries are not compensable once the injured person dies.

This relates, of course, to heritability. There is nothing to inherit if the primary victim of an injury has died without receiving compensation. The hole has disappeared.

On the other hand, consider injuries, or injuries to property. Let us return to the owner of the grocery store who immorally and illegally lost his store to another and then died. Clearly, if he had been alive he would have been owed return to the *status quo ante*, either the return of his grocery store or, if some

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13Michael Ridge (personal correspondence 2000) has suggested to me that when the victim of injuries to the person dies, there could still be a “hole.” He argues that the dead can be benefited and harmed and therefore compensation could be appropriate in some cases. I would currently disagree with his contention and say that it is the descendants, friends and/or foes of the deceased who might gain or benefit from clearing or slandering someone’s name, not the one who is dead. There is an intuitive difference between someone publicly slandering Pythagoras’ name and someone slandering the name of Martin Luther King, Jr. The difference is caused by the fact that Pythagoras has no family currently extant (that I know of) that would be hurt by the defamation of their father’s name, while Martin Luther King, Jr. does. At the least their feelings and at the most their life plans could be affected by what was publicly said about their father. Yet if today I defamed Pythagoras and tomorrow I praised him, there would be no benefit or harm to the man, who is long since dead.
mishap had befallen it, the monetary equivalent of the store. If the primary victim
dies before he receives his store back, does the compensation end there, or do his
descendants inherit this compensatory debt? Returning for a moment to Rawls's
“considered intuitions,” a business run by the father would be something which
would be, in consonance with our social and legal traditions, inherited by the
father’s beneficiaries. Real and personal property is transferred uncontroversially
(in theory) from deceased to legatee and is regularly (and sometimes prematurely)
included in the life plans and planned project pursuits of presumed beneficiaries.
It would not be unusual or presumptuous, therefore, in a normal family situation,
for a spouse and children to assume that they would inherit property from a
deceased spouse.

I am not sure that I would call this “desert.” It is problematic from the
standpoint of distributive justice when descendants inherit several billions of
dollars from a legator (Would Bill Gates’s hypothetical daughter deserve her
fortune?); however, that takes us afield, and I table the issue for another paper. I
would argue, however, for a weaker entitlement notion based more on social
realities, mores, and pragmatic considerations than on the moral concept of
“desert.” On this weaker concept of entitlement, then, the family of the grocery
store owner is owed the store, which is an integral part of their life plans, and this
entitlement survives the death of the primary victim. And what is
uncontroversially clear is that the victimizer does not deserve to keep the store
since it was gained by immoral and illegal means. The victimizer’s legatees, even
though now incorporating proceeds of the grocery store into their life plans, are
basing these plans on gains from an immoral act and therefore they, too, do not
deserve to keep the store. Real and personal property, therefore, would be
heritable as compensation and obviously would bypass the one generation
limitation of injuries to the person.

But what if the primary victimizer has died? Is there compensation still due if
the primary victimizer is no longer available to pay the compensation? If there is
a binary relationship between victim and victimizer, if one or both of them have
died, does not this relationship simply evaporate?

That depends on the type of injury and the type of gain. If, as mentioned
earlier, the injury is to the person, then when the person is gone, the injury is
gone. If the injury is to property, then as long as the primary victimizer is alive,
the return of the property or its equivalent is owed even if the gain has been
squandered. If the grocery store has been resold or mismanaged so that it goes
into bankruptcy, then the victimizer owes the amount the grocery store would be
worth and has the obligation to pay that amount even if her wages are garnished
for the rest of her life. This is not the case for her descendants, however. If they
inherited none of the gain from her crime, then they are not obligated to pay the
victim or his family. Even if the descendants of the victimizer are wealthy and
could easily pay, although it would be a kind gesture for them to do so, they are
not obligated to pay the compensation. If they did not cause the injury nor benefit
from the injury, then they are not entangled in the moral relationship caused by
the injury. On the other hand, if there is existing gain from the injury, only the
descendants who did benefit from that gain are obliged to pay; those who either
inherited nothing or else (as best as can be surmised) inherited from a different
source, would not have to compensate the victim’s family. In conclusion, heritability depends on whether the gain is such that it persists after the demise of
the victim and victimizer.

D. IN SUMMARY

The Just Compensation Rule, with the addition of the Bystander Protection
Clause, represents the most efficient route to the goal after an injury:
ameliorating the problem so that the victim and even the victimizer (after
paying the compensation and suffering the appropriate punishment) can both
look forward to the possibilities of the future rather than backward to the
shadows of the past. The Just Compensation Rule would be a useful component
of a just compensatory system.

III. TWO APPLICATIONS

Rawls writes that “we can check an interpretation of the initial position, then, by
the capacity of its principles . . . to provide guidance where guidance is needed.”14
In this section we will be examining the Just Compensation Rule to see if, indeed,
it will provide “guidance where guidance is needed.”

We will be considering unjust situations involving two groups of people:
African Americans and three Native American groups in Maine. The questions
which need to be answered are: (1) What unjust acts took place in the past? (2)
Does the Just Compensation Rule apply to this case? (3) If it does, how would it
apply and what would it recommend?15

A. INJUSTICES COMMITTED AGAINST AFRICAN AMERICANS

In 1860 there were almost four million Africans enslaved in the United States.
This monumental injustice ran the gamut of cruel and dehumanizing behavior,
including kidnapping, rape, murder, torture, forced labor, and the development
and dissemination of a debilitating myth which bestialized its victims. When the
Civil War was over, many of the newly freed slaves expected to receive the means
for restarting their lives, just as it had been the custom for indentured servants to

14Rawls, Theory of Justice, p. 20.
15The discussions of both the African American and Native American compensatory situations are
necessarily quick treatments of complicated cases. The discussions are meant simply to determine the
usefulness (or uselessness) of the Just Compensation Rule in making compensatory decisions, and to
point the way to how the rule might be applied.
receive goods and/or land at the end of their period of servitude. Newly released indentured servants would commonly receive a “headright” consisting of fifty acres of land, or a new suit of clothes and some agricultural equipment. The newly freed slaves, however, received no land, nor agricultural equipment, nor wages, nor a mule; they were simply set adrift. Thomas O’Connor writes, in *The Disunited States: The Era of Civil War and Reconstruction*, that at the end of the war “Hundreds of thousands of black men, most of them without land, without food, without money, and without skills and trades of any kind, were at a loss to know where to go or what to do.” Even though the victims were not citizens of the country in which they were victimized, it was recognized even by contemporary figures that this egregious crime demanded compensation. Senator Charles Sumner recommended that the newly freed slaves be given forty acres and a hut.

However, in recent calls for compensating today’s African Americans, the injustice cited is not just that of enslavement (according to Boris Bittker, that would be “quixotic”), but also the “government sanctioned segregation up to the recent past and the continuing injustice and racism of today.” Vincene Verdun, writing in the *Tulane Law Review*, asserts that “The uncompensated wrong takes two forms: (1) failure to pay for slave labor and the contributions of slaves to the building of this country; and (2) the presumption of inferiority, devaluation of self-esteem, and other emotional injuries, pain, and suffering, that resulted from the institution of slavery.” In answer to these and other calls for compensation, Representative John Conyers of Detroit sponsored a bill in the House of Representatives, H.R. 40, which calls for the establishment of a Commission to Study Reparation Proposals for African Americans as an initial move in achieving redress for black Americans. (A commission is called for because the case would be made stronger by the production of a well-documented study written by respected officials that culminated in a call for reparations, and because the formation of a commission was the first step in the Japanese–Americans’ successful drive for reparations for their World War II internment.)

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18Ibid., p. 204.
19Had segregation not been enforced by law, the residue of slavery might be hard to identify today. If this were so, it would be quixotic to try to remedy the injustices of slavery by compensating today’s blacks for the value of slave labor extracted from their ancestors more than a century ago, though compensation in 1865 for blacks’ forced labor would certainly have been appropriate.” Boris Bittker, quoted in Tyron J. Sheppard and Richard Nevins, “Constitutional equality—reparations at last,” *University of West Los Angeles Law Review*, 22 (1991), 102–25 at p. 124.
20Ibid.
H.R. 40 begins by stating its mission: “To acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the thirteen American colonies between 1619 and 1865 and to establish a commission to examine the institution of slavery, subsequent de jure and de facto racial and economic discrimination against African Americans, and the impact of these forces on living African Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.”

i. Kymlicka’s Test

One initial issue which must be resolved is whether the Just Compensation Rule would apply to the African Americans as a group or as individuals. Kymlicka argues in Liberalism, Community and Culture that there are differentiations among minority groups and they cannot all be treated in the same way. There are some minority groups whose group status was imposed from without and who were lumped together as a category for the convenience of their oppressors. African Americans, whose ancestors (some of them, at any rate) came from different ethnic groups in Africa, would be an example of this type of minority group. The second type of minority group is described by Kymlicka as a cultural community with a “distinct legal and political status” in which individuals are incorporated into the state “consociationally,” or through their membership in their cultural community. Kymlicka argues that this second type of minority, whose distinct legal status also includes a distinct language, religion and history, represents a group which needs to be treated as one cultural entity. This cultural group, which has its own governing agencies, embedded as it is within a larger and more powerful cultural group and subject to that group’s government, is a whole which needs protection. When this group entity is harmed as a whole, we would compensate the group entity as a whole. Injuries to the Creek Nation, therefore, such as theft of land or imposition of culture-destroying legislation, would need to be rectified by dealings with the same group entity, the Creek Nation. Kymlicka writes that it is a mistake to use the model of African Americans as the only paradigm for minority peoples: where the immoral act for African Americans was segregating them out of the majority culture, the immoral act for native peoples was integrating them into the majority culture. I agree with Kymlicka that when the group description contains characteristics like common language, religion, traditions, mores, and especially geographical area, then the group becomes more than a collection of individuals with one or a few shared characteristics who are suffering from an injury. The group itself becomes an individual entity which would be owed compensation as a unit. Members of victimized communities who do not meet this standard (or members of the

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23Kymlicka, Liberalism, Community and Culture, p. 137.
ii. Applying the Just Compensation Rule

African Americans do not meet Kymlicka’s criterion. They do not have a separate language of their own, nor are they a geographically distinct historical community. In fact, this collection of people was forced into a group by outsiders; they did not voluntarily cluster together because of any shared characteristic other than a need to survive.

But what does it matter, someone might argue, if a particular minority does not meet Kymlicka’s criterion for a cultural community? Why would a given minority not still be eligible for group compensation? Because only a cohesive group with characteristics like joint ownership of property can be harmed as a group; the group constitutes a cultural, social and political entity that can have its land stolen, its language eradicated, its political status degraded. African–Americans are scattered across the country with varying degrees of similitude; they do not make up one political nor linguistic nor geographically-based entity. Most crucially, however, black Americans did not all suffer the same injury to the same degree. While it might be argued that the psychological effects of being black in a country where being black is commonly viewed as being inferior, ugly, stupid and/or lazy would be equally debilitating to all, even that would not necessarily be the case, for persons of differing sensibility would react differently to the psychological assault. The physical trauma would vary even more widely, with some of those enslaved being beaten, some killed, many handled like animals, and a few being treated by the “enslaver” as he would a spouse. The injuries were uniquely individual, and if one applied the “making whole” rule, some victims would need much more repair work to be done before they could qualify as “whole” persons ready to enact their life plans. African Americans, then, would need to be evaluated singly for their compensation.

Would the Just Compensation Rule apply to the act of enslavement of African Americans in this country? Because there is clearly evidence of injustice committed by both governments and individuals against other individuals, it would apply. What guidance would it give? The injuries that the enslaved....

24 Although the second type of minority community, following the delineation laid out by Kymlicka, could be harmed as a group and would be owed compensation as a group, that would not mean that all injuries to anyone in that community would entail group compensation. If members of the community suffer individual harms, such as rape or assault, then the victims are compensated individually to the extent that they were harmed. This would also hold if all of the members of the community were raped or assaulted. These wrongs, acted upon individual members, would still call for individual evaluation in order to see how much each victim was injured and what she would need in order to reinstate her life plans. Only large-scale murder would qualify as an individual wrong which could rise to the level of harming the collective. If members were killed to the extent that the continuation of either the collective or the way of life of the collective were put in jeopardy, then the status of the entire group has been changed by the wrong. In this case, the group as a whole might deserve compensation. If the entire community is murdered, however, there is no one to compensate, and punishment would be the only option.
Africans suffered—kidnapping, murder, psychological assault, etc.—would be classed as injuries \( P \). This type of injury, although egregious and maximally dehumanizing, still is only compensable for those directly affected. Newly freed slaves should have been compensated handsomely for the devastating effect the years of enslavement had upon their bodies, self-esteem and life plans, but 130 years after the end of the Civil War, descendants have little legitimate claim to compensation for acts for which there is no living memory (unless a descendant can meet the burden of proof condition described earlier in the rape-victim case wherein the descendant can show that she has an injury directly and solely caused by the injury to her ancestor. This would be a very challenging condition to meet, given the fact that it is very difficult to project how one’s life would be going now if things had been changed over one hundred years ago. Would the fact that one’s particular family were struggling be due to enslavement of one’s ancestors? Segregation, Jim Crow and decreased opportunities in the next generation? Those same conditions in the generation after that? One’s family not making the most of what opportunities that were available? A mixture of all of the above?). According to the Just Compensation Rule, in the present day there would be no compensation for descendants of enslaved Africans. It is too late.

But what about the Jim Crow and segregationist practices from the end of the Civil War to the present? Would they be compensable under the Just Compensation Rule? These would also be injuries \( P \), but this time that categorization does not remove them from consideration, for many original victims are still living. A woman or man who had been closed out of some activity because of Jim Crow laws could certainly be alive, but it would only be those cases which could be considered for compensation, and not the case of someone in 1890 who was made to get off a train (unless that person is still alive).

For those living during the Jim Crow era and still alive today, an act of discrimination perpetrated by the state would be a compensable injury. Individual citizens who performed discriminatory acts would be protected because the acts, although immoral, were then legal. (Although some immoral acts, such as rape, torture and murder, are so egregious that even though considered legal at the time they have been considered worthy and deserving of prosecution after the fact, other acts sanctioned by law such as those upholding discrimination, denying minority education, or supporting other dehumanizing practices, would not render their perpetrators liable to prosecution. While in a perfect world one might assume that everyone would stand up against unjust laws and refuse to obey them, in this world those refusing to segregate or discriminate were more often hounded out of town or subject to cross-burnings, rendering their actions supererogatory rather than expected.) The state and federal governments who passed and enforced immoral laws upon their citizenry, however, would be liable. Forced to attend segregated schools, forced to ride certain trains, forced to sit in certain parts of the theater, excluded from colleges,
professions, neighborhoods, etc., the Americans who endured these injuries would be owed compensation as a gesture rebuking past behavior and repudiating the view that blacks are less than persons.

Much documentation of abuse would be lost or destroyed by now. Yet school records alone, showing large numbers of African Americans who were forced to attend all-black underfunded and poorly equipped schools, would result in a huge number of people deserving compensation. But when we talk about “making the victim whole,” it is evident that reparations here can only be symbolic: no amount of money will reinstate the life plan of an older black person who wanted desperately to attend his local college but could not because it was segregated, and gave up on the idea of college because the closest black college was too far and too expensive.

Who would pay this compensation? For the segregated schools, it was the state government, with the backing of the federal government through Supreme Court rulings, which instituted the school policies. It would therefore be the state governments, perhaps with some help from the federal government, who would be liable for the harm.

Again, however, documenting that abuse did occur against the general black population would not be sufficient. Each individual would have to show that she herself had been injured. Yet the documentation would not have to be detailed; that the Jim Crow practices existed is non-controversial. School records from segregated schools would be sufficient to establish initial injury, as would evidence of travel on Jim Crow cars.

**iii. In Summary**

1. African Americans are not eligible to be compensated as a group because they have no centralized, localized socio-political structure or geographical base.
2. Since enslavement is an injury \( P \) and there are no longer any who were enslaved and are still living, there is no longer compensation for slavery.
3. Even though Jim Crow practices have resulted in injuries \( P \), there are still primary victims living, so they would be due compensation for their injuries. 25

This does not mean that there is nothing owed to the descendants of the enslaved Africans, however. They are still owed a debt for the labor of their ancestors for which there has not yet been payment. If person A borrowed money from the grandfather of person B and never paid the money back, the money would still be owed to the descendants of person B’s grandfather. The wages would constitute a heritable debt which would be passed on to the next generation’s legatees. In the same way, wages for labor performed by the enslaved Africans are still owed to their legatees. Because the labor was forced, pain and suffering were involved, but the people who suffered the pain and

25 Of course, discrimination is still occurring today. Contemporary cases of discrimination which meet the necessary conditions would naturally be compensable.
suffering are long dead; their injuries would not be compensable. The wages, however, would not be classified as compensation; they would be classified as payment of a debt and constitute an outstanding obligation to this day. How this obligation would be handled, fairly and justly to both descendants of slaves and slaveholders, many of whom are descended from both (although not acknowledged by both), would be difficult to determine; however that would be a subject for another paper.

B. INJURIES COMMITTED AGAINST THE MAINE INDIANS

Three Native American tribes in Maine, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, made agreements with the United States government which were broken. After the start of the Revolutionary War, General George Washington asked these three tribes to help the colonists. To that end Col. John Allan, director of the Federal Government’s Eastern Indian Department, worked out a treaty with the three tribes. The Native Americans were to aid the colonists in the war, and in return their lands would be protected by the United States and they would receive supplies when times got hard. Although the treaty was never ratified by the United States, the Indians held to their side of the bargain by playing a pivotal role in the Revolutionary War. After the war the Maine tribes appealed for help to the Federal Government, but they received no protection. Between 1794 and 1833 these three Native American tribes lost huge amounts of land to the State of Maine. The Indians contend that the Federal Government did not hold up its end of the treaty and they subsequently lost much of their “aboriginal territory.” The land in question comprises almost two-thirds of the state of Maine, with more than 350,000 bystanders embroiled in the disagreement because they own or live on disputed land.

i. The Kymlicka Test

Again, the “group” issue arises immediately. Do the three Indian tribes qualify for group compensation, or must individual Native Americans make their cases?

In contrast to the situation of African Americans, who were made into a group because of external forces, these tribes predated their injury and have continued to exist as political, cultural and social entities during the two hundred years since the original injury. Further, although much of their “geography” is in dispute, each tribe has been occupying much the same land since the history of this country, and can claim a language and culture separate from both the United States as a whole and from each other as well. They even meet Kymlicka’s final criterion, that they were rendered minorities by conquest.

Most crucially, however, the injury was not to an individual Passamaquoddy or Penobscot, but to the cultural communities themselves. Even granting that these three tribes qualify for consideration for group rather than individual compensation, the injury still has to be such that it merits a group remedy. If a group of Penobscot Indians were assaulted by some non-Indians from a neighboring town, each Indian would be entitled to compensation only to the extent of her individual injury: No group remedy would be applicable. But if the communities themselves were injured, such as in the case of these three tribes who communally owned land, then Kymlicka’s categorization becomes useful. With the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, group remedies are appropriate because it is the group entities which were attacked.

ii. Applying the Just Compensation Rule

This case has interesting features due to the number of bystanders involved, the number of years which have elapsed since the injury occurred, the amount of land under dispute, and the possible social upheaval which could result from simply handing over two-thirds of the state of Maine to the Native Americans. Would the Just Compensation Rule be applicable here, and if so, what would its guidelines suggest?

The Just Compensation Rule would apply, again, because there is evidence of injustice committed by a government against a group. This case would be an example of an injury with gain that still existed in some identifiable form two hundred years after the injury. Further, the primary victim (the three Native American tribes) and primary victimizer(s) (the Federal Government and possibly the State of Maine) still exist two hundred years after the injury, so all the original players are in the picture. According to the Just Compensation Rule, therefore, the three tribes are due compensation. What that compensation would be (receiving their land back, receiving a monetary compensation for their land) would have to be worked out, but the injured parties would be entitled to redress.

Because of the Bystander Protection Clause, innocent bystanders could not be unceremoniously dumped from land which they bought in good faith and may even have had in the family for generations. If it were determined that the land was to be returned to the tribes, then the bystanders would have to be compensated for their “secondary injury.” The Federal Government, as the injurer who permitted the Indians’ land to be taken by the state of Maine, also allowed the land to be resold to others even though the Indians repeatedly pressed their claims to the land. (In the resolution of the actual case, the Federal government did appropriate money (1) to be used to buy back the disputed territory to give back to the Indians, thereby fairly compensating bystanders, and (2) to buy land outside the area in question to trade bystanders for disputed land so that the land could be returned to the Indians.)
It is certainly true that a long period of time passed between the initial treaty with the government and the present day. Some theorists (Jeremy Waldron, George Sher) feel that after an expanse of time “wrongs” become less pressing and the possible entanglement of large numbers of innocent people becomes an overriding moral concern. Further, it is no doubt the case that Maine has now a larger population than George Washington or anyone of that era ever envisioned, so the increased needs of people would have put demands on those “aboriginal lands” anyway. Could the Indian tribes, sparsely populating the Maine woods, lay claim to huge tracts of land while masses of people cluster at the borders without a place to live? Would that be a just solution to the dispute?

According to the Just Compensation Rule, when it comes to injuries PR, if the gain from the injury still exists and there is a legatee of the victim alive to receive the compensation, the compensation should still go through. Even two hundred years after the injury, unjustly acquired property remains “unjustly acquired property.” The wrong does not lose its potency as long as the gain from the wrong still exists and a victim (or her legatee) is available to receive reparations.

Certainly it is true that there are vastly different population needs now than there were in the late 1700s. That does not change the fact that an injury was committed, however. When the compensatory package is developed, the realities of the present situation will limit options for redress, but the central point, that an injury was committed and reparations are deserved, remains pertinent.27

iii. Summary

(1) The three Indian tribes are eligible for group compensation because they each constitute a cohesive, historically continuous community with a distinct language, socio-political structure, and culture.

(2) Each tribe, as a primary victim, should receive compensation from the Federal Government, the primary victimizer, because the Federal Government abrogated the terms of the treaty. They may also be due compensation from the State of Maine, depending on how they acquired the land.

(3) Innocent bystanders should also be compensated if they have to lose land which they acquired in good faith.

The Just Compensation Rule (in conjunction with the Bystander Protection Clause) was helpful in determining who should be eligible for compensation. It sorted out the cases of injuries P and injuries PR, and protected bystanders in the process. The elements of the compensatory package would have to be worked out

27The actual circumstances of the case of the Maine Indian tribes are a little different from those cited above. The “aboriginal territory” was lost largely through a series of “agreements” with the State of Maine. Compensation was awarded to the tribes because of a technicality: the Federal Government prohibited transfer of any Indian lands without the approval of the Federal Government. Congress then established $13,500,000 in trust funds for the Passamaquoddy Tribe and Penobscot Nation each, and appropriated 54 million dollars to be used to purchase the three tribes’ disputed land from bystanders. Source: The Maine Indian Claims Settlement Act of 1980, P.L. 96–420.
with input from the victims—28—a “reasonable person standard” acting as a constraint on extravagant compensatory requests, and the economic realities of the victimizer’s (or her legatee’s) situation also limiting resources which could be tapped for redress. Although these last points are not determined by the Just Compensation Rule, the crucial first steps in the compensatory process are clarified.

28During World War II, 1,000 Aleutian Native Americans were moved from their homes in the Aleutian and Pribilof Islands due to danger of Japanese attack. Although moving them from their homes was justifiable for military and security reasons, the location and condition of the camps into which they were moved were not justifiable for any reasons. Food, water, housing and medical facilities were woefully inadequate; many of the Aleuts became sick or died. See Leslie Hatamiya, Righting a Wrong: Japanese Americans and the Passage of the Civil Liberties Act of 1988 (Stanford, Calif.: Stanford University Press, 1993), p. 122. When the Aleuts were finally awarded compensation, the Commission studying the situation suggested as one of its recommendations to Congress that funds be appropriated to rebuild, in Aleutian villages, Russian Orthodox churches that had been damaged or destroyed during the war. Because the Commission had an Aleutian internee among its members and asked Aleutians to testify before it, it knew the importance of the Russian Orthodox faith in Aleutian culture. The compensation, therefore, was peculiarly designed to help the few hundred Aleutian ex-internees still alive to reinstate their life plans and to regain what they valued most.