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‘Benefiting From Injustice: Guest Editor’s Introduction:’

EDWARD PAGE & AVIA PASTERNAK

Millions of people around the world experience severe disadvantages that can be traced to the unjustified conduct of other agents. These injustices may have their origins in the present or in the past. Their adverse effects may well last into the future. It has been the long-standing task of ethical, political and legal theory to identify the agents who are responsible for remedying such injustice.

One common approach to this task is to focus on the duties of agents that are causally or morally responsible for the injustice arising in the first place. Another common approach is that responsibility to combat injustice lies with agents that possess superior capacity to prevent or alleviate the undeserved suffering of victims of injustice. The first approach is historical in the sense that it links duties to correct injustice to an account of how that injustice came about.¹ The second account is ahistorical in that it appeals to an agent’s current abilities and capacities when assigning duties to remedy injustice.² We might call these two approaches the ‘perpetrator-based’ and ‘capacity-based’ approaches to injustice. The two approaches have dominated normative debates as diverse as colonialism, slavery, affirmative action, and global climate change.³

However more recently, a third approach has been emerging. It suggests that our efforts to identify those who are responsible to remedy an injustice should include agents who find themselves in a position of advantage as a direct result of this injustice. Such ‘beneficiaries of injustice’ may have played no causal role in the creation of this injustice, and they may not have any special capacity to act to remedy the injustice or its effects. Instead, the idea is that they benefit, or have benefited, from an activity that is unjust and this means that they have special duties to remedy the disadvantage of those who have been injured by that activity.⁴ The normative intuition underlying this ‘beneficiary-pays’ approach to remedying injustice is simple and straightforward: benefits that owe their origins to past or present injustices are ‘morally tainted’ and therefore the behaviour of beneficiaries of injustice itself becomes morally tainted if they do not divert at least some of this benefit to remedy the injustice with which it has a common origin. Indeed, some argue that even where worthy recipients can no longer be identified, the holders of unjust gains should disgorge much or all of the unjust benefit they currently control, as a matter of corrective justice, to be used for the public good.⁵

The beneficiary-pays approach to injustice has been applied to various debates concerning the appropriate normative response to past and present injustices. Colonialism, racism, and the subordination of women have been three prominent targets of recent applications of the beneficiary pays approach.⁶ The beneficiary-pays approach is also an integral element of common law in a number of states that is concerned with agents that profit, either intentionally or unintentionally, from injustices inflicted on other legal persons.⁷ Finally, the notion of benefiting from injustice is being increasingly invoked to deal with problems encountered by perpetrator-based and capacity-based treatments of contemporary environmental problems, such as climate change, that will predictably harm vulnerable individuals and populations while also being traceable to activities that generated huge benefits for other individuals and populations.⁸

By focusing on benefit, rather than historical responsibility or responsive capacity, the burgeoning ‘benefiting from injustice’ literature has already generated new ways of thinking about a range of important social problems. At the same time, the beneficiary pays approach has been subject to significant critique. Some are not persuaded by the moral intuition that underlies it, claiming that the involuntary receipt of benefits cannot, on its own, trigger any special duties of justice on the part of beneficiaries to remedy the injustices with which these benefits might be linked.⁹ Others point to

the serious difficulties involved in tracing ‘unjust benefits’, or highlight the unreasonable burdens that the principle imposes on agents who have become dependent on benefits which, unbeknownst to them, are tainted by injustice.

This collection of papers brings together some of the leading authors on the topic of benefiting from injustice. Addressing the duties of beneficiaries from past and present injustice at both the conceptual and applied levels of normative analysis, these papers offer new perspectives on the moral intuitions that ground the beneficiary pays account of injustice, the relevance of the account in various applied settings, and the conceptual and application limits of the account. As a first collection of papers on the beneficiary-pays approach, this Special Issue aims to further and mature the debate, and to explore some of the key objections that have been laid against the beneficiary-pays principle.

The first four papers seek to clarify the claim that a beneficiary of a given injustice should surrender some or all of this benefit as a way of responding appropriately to the associated injustice. Each paper provides a sympathetic critique of the approach, but focuses on different areas of philosophical weakness and practical application.

Daniel Butt was one of the earliest theorists to develop an account of benefitting from injustice and corresponding duties. His paper addresses objections that have been raised against his original treatment of the principle.¹⁰ His refined version of the principle suggests that agents can be morally blameworthy for failing to surrender in compensation benefits they involuntarily received as result of an injustice done to other agents. Importantly, his new principle generates only non-enforceable obligations on the part of beneficiaries to surrender transfer unjust benefits. Failure to surrender unjust benefits, on this view, is an instance of a serious moral failure that contributes to the perpetration of an injustice

Øverland and Bashshar, like Butt, defend an account of benefitting from injustice based on the imperative to compensate victims of wrongdoing if the perpetrators cannot compensate because of their death or inability. Like Butt, they too seek to defend the principle from the common objection that involuntarily received benefits cannot generate any obligations on their recipients. But rather than weakening the strength of the duty to surrender unjust benefits by suggesting it is unenforceable, they respond to the involuntary benefit receipt objection by identifying three ‘boosting conditions’ that must be present in order for remedial duties to be activated for beneficiaries of injustice: (1) the injustice in question must have disrupted a ‘structured competitive procedure’, (2) the conduct triggering the injustice must have been motivated by the desire to benefit the beneficiary, and (3) there must have been a transfer of assets from the victim of the injustice to the beneficiary.

Goodin and Barry defend what could be called the ‘unjust enrichment’ approach to benefiting from injustice. This approach contrasts with Butt, Øverland and Bashshar in that the presence of a victim is not necessary for a beneficiary to be bound by a duty to surrender benefits generated by some prior unjust prior activity that taints all subsequent benefits related to original activity thereby transforming them into ‘ill-gotten gains.’ An important contribution of their paper to the debate is the way it addresses various practical and theoretical challenges to the beneficiary-pays approach, such as (1) how to distribute duties to beneficiaries of injustice whether there exists multiple beneficiaries and victims or beneficiaries and victims whose identities are unclear, (2) how to deal with uncertainty in the process of isolating tainted from untainted benefits, and (3) what happens when the disgorgement of tainted benefits does not remedy the full disadvantage traceable to the original disadvantage.

In the last of four conceptual papers in the special issue, Pasternak offers a conceptual framework for understanding the distinctions drawn in the literature, sometimes unreflectively, between various types of beneficiaries from injustice: (1) voluntary beneficiaries, who voluntarily take the benefit, despite knowing that it is sourced in injustice (2) involuntary beneficiaries, who do not seek nor desire the benefit, and yet are unable to refuse it and (3) 'welcoming beneficiaries', who are unable to refuse the benefit, and at the same time desire it despite being aware of its tainted nature. While the existing literature focuses almost exclusively on the duties of involuntary beneficiaries, Pasternak highlights the remedial duties that fall on 'voluntary' and 'welcoming' beneficiaries towards the victims of the injustice, suggesting that they are likely to be stronger than those of involuntary beneficiaries.

The last three papers move from matters of conceptual clarification and justification to issues of application and consistency with other normative principles and values. Lawford-Smith broadens the question of the duties of beneficiaries beyond straightforward injustice in order to cover cases involving 'moral ills.' Moral ills are cases where the world has not gone as it morally should have, with the result of some agents having benefited and some agents having been disadvantaged and yet without any agent being culpable for that situation. Using the case of global climate change as a running example, Lawford-Smith suggests that the presence of a moral ill is sufficient in itself to generate duties on the part of beneficiaries of that moral ill, to surrender those holdings they would not have had, if the world had gone as it should have gone. Lawford-Smith recognizes that the case of climate change, as it actually evolved in our world, is not straightforwardly a case of 'moral ill', since at least some of the harms caused by the warming of the planet can be traced back to culpable agents. Nevertheless, her approach offers an important alternative to the influential 'perpetrator-pays' approach to the effects of climate change since it finesses the difficulties in pinning-down and holding responsible blameworthy agents associated with that approach.

Clare Heyward's contribution also targets climate change as a problem of benefiting from injustice. Her paper focuses, in particular, on the sharing of the benefits and burdens associated with the controversial technology of geo-engineering. As significant interventions in the Earth's climate system, geo-engineering technologies may also lead to complex patterns of future benefit and cost given the uncertainties inherent in them. Heyward defends the idea that geoengineering research and deployment should ultimately be funded by requiring beneficiaries of such schemes to surrender benefits that can be traced to the successful mitigation of climate change – as well as other 'co-benefits' – generated by these schemes. Heyward criticizes established applications of beneficiary pays reasoning to environmental problems which urge the surrender of benefits by beneficiaries of activities that degrade the natural environment rather than beneficiaries of policies that seek to mitigate such degradations. She suggests that a notion of benefiting from injustice can ground duties for redress even in cases where culpability or wrongdoing is not immediately obvious given lack of foreseeability that many agents face with regard to the consequences of new technologies and policies designed to mitigate climate change.

The final paper in this volume, by Avery Kolers, offers a more critical examination of the beneficiary pays account. Kolers questions the applicability and coherence of the benefiting from injustice literature in the context of 'structural injustices', such as global poverty or the persisting effects of colonialism. For Kolers, the beneficiary pays account is highly problematic because it mischaracterizes the duties that fall on the beneficiaries of such unjust structures. One problem, for example, is that the account recommends the surrender of benefits even in cases where this is likely to be practically impossible as in contexts where agents benefit unavoidably and continuously from past injustices over an extended time-frame. A solution to historical injustice, Kolers argues, must be consistent with a structural account of that historical injustice as well as the importance of other values that constrain the application of justice. Instead of duties of surrender, so the argument goes,

structural injustices impose on us a duty to act in solidarity with the victims, and engage in political reforms.

Edward A. Page, Department of Politics and International Studies, Warwick University, Coventry, CV4 7AL, United Kingdom. e.a.page@wawick.ac.uk

Avia Pasternak, Department of Political Science, University College London, Gower Street, London, WC1 6BT, United Kingdom, avia.pasternak@ucl.ac.uk

NOTES

¹ See, for example, Janna Thompson (2002) *Taking Responsibility for the Past: Reparation and Historical Injustice*. London: Polity.

² See, for example, Peter Singer (1971) 'Famine, Affluence and Morality' *Philosophy and Public Affairs* 1: 229-243.

³ Although superficially incompatible, it is worth noting that the two approaches can be reconciled in a pluralist account giving weight to both historical origins and current wealth in the distribution of duties to remedy persisting injustice. See, for example, Thomas Pogge (2002) *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press).

⁴ The argument can be traced to Daniel Butt (2007) 'On benefiting from injustice', *Canadian Journal of Philosophy*, 37 (1): 129-52.

⁵ On this point, see Robert Goodin (2013) 'Disgorging the Fruits of Historical Wrongdoing', *American Political Science Review*, 107 (2013), 478-491.

⁶ Daniel Butt (2009) *Rectifying International Injustice: Principles of Compensation and Restitution Between Nations* (Oxford: Oxford University Press).

⁷ See, for example, Dennis Klimchuk, D. (2007) 'The Scope and Structure of Unjust Enrichment', *University of Toronto Law Journal* 57(4): 795-817.

⁸ See Axel Gosseries (2004) 'Historical Emissions and Free-Riding', *Ethical Perspectives* 11(1): 36-60 and Edward Page (2012) 'Give it up for climate change: A defence of the beneficiary pays principle', *International Theory* 4(2): 300-330.

⁹ Robert Fullinwader (1975) 'Preferential Hiring and Compensation', *Social Theory and Practice* 3 (3): 307-20; Robert Huseby (2013) 'Should the beneficiaries pay?', *Philosophy, Politics and Economics*, doi: 10.1177/1470594X13506366

¹⁰ Daniel Butt (2007) 'On benefiting from injustice', *Canadian Journal of Philosophy*, 37 (1): 129-52.