

Manuscript version: Author's Accepted Manuscript

The version presented in WRAP is the author's accepted manuscript and may differ from the published version or Version of Record.

Persistent WRAP URL:

<http://wrap.warwick.ac.uk/111779>

How to cite:

Please refer to published version for the most recent bibliographic citation information. If a published version is known of, the repository item page linked to above, will contain details on accessing it.

Copyright and reuse:

The Warwick Research Archive Portal (WRAP) makes this work by researchers of the University of Warwick available open access under the following conditions.

Copyright © and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable the material made available in WRAP has been checked for eligibility before being made available.

Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

Publisher's statement:

Please refer to the repository item page, publisher's statement section, for further information.

For more information, please contact the WRAP Team at: wrap@warwick.ac.uk.

The Moral Taintedness of Benefiting from Injustice

It is common to focus on the duties of the wrongdoer in cases of injustice.¹ Presumably, the wrongdoer owes her victim an apology for having wronged her and perhaps compensation for having harmed her. But, these are not the only duties that may arise. To see this, let's consider the following case:

Embezzlement: Wrongdoer embezzles funds from Victim's bank account in order to transfer them into Recipient's bank account. Unaware of the embezzlement, Recipient then purchases a circus ticket using these funds. Wrongdoer then disappears.

Given Wrongdoer's absence, it is especially pressing to turn our attention to Recipient's duties. Is Recipient permitted to retain the circus ticket?² If she has already attended the circus, must she relinquish funds equivalent to the cost of the ticket? If so, who becomes entitled to those funds?

In recent years, the *Connection Account* has emerged as an influential view that purports to explain cases such as *Embezzlement*. It holds that benefiting from injustice can give rise to a corrective duty – that is, a duty of compensation – owed specifically to the victim of the injustice from which the recipient benefits. This duty is grounded in the *connection* between the victim and the beneficiary of a given injustice.

This paper has two aims. First, I show that we must reject the Connection Account on the grounds that it risks failing correctly to identify those who become entitled to the fruits of injustice. Second, I develop and defend an alternative account: the *Moral Taintedness Account*. This account avoids the problem associated with the Connection Account, and yields intuitive conclusions in an important range of test cases. Though, for reasons of space, I am unable to provide a full defence of this position, I hope to establish it as a promising alternative that warrants further philosophical investigation.

¹ By 'a case that involves an injustice' I (stipulatively) mean 'a case that involves wrongdoing'. Throughout, I use these two terms interchangeably.

² Throughout, I use 'permitted' to refer to 'morally permitted' rather than, say, 'legally permitted' or 'prudentially permitted'. This clarification applies also to my use of 'entitled', 'ought', 'required', etc.

I begin, in section 1, by sketching the central features of the Connection Account. In section 2, I appeal to the *fairness objection* in order to show that the account risks failing correctly to identify those who become entitled to the fruits of injustice. In each of sections 3 and 4, I consider and reject a reply to the fairness objection. In sections 5 and 6, I develop the Moral Taintedness Account. By considering variations of *Embezzlement*, I also show how the Moral Taintedness Account is equipped also to respond to more complicated cases. In section 7, I conclude.

1 The Connection Account

The Connection Account is most forcefully defended by Daniel Butt (2007, 2014).³ Butt's analysis proceeds in two stages. First, he attempts to distil certain normative principles (that may explain our intuitions) from a range of cases in which an agent benefits from injustice. Second, he tests these normative principles by examining their possible philosophical justifications.

In cases similar to *Embezzlement*, Butt claims that it is intuitive that Recipient ought to compensate Victim for the harmful effects of the injustice that Victim suffers (2007, 143). If Recipient refuses to do this, she acts wrongly. According to the Connection Account, we can generalise this conviction in terms of the following moral principle: 'Agents can come to possess obligations to lessen or rectify the effects of wrongdoing perpetrated by other agents through benefiting, involuntarily, from the wrongdoing in question' (Butt, 2014, 338).

The Connection Account distinguishes between *primary* and *secondary* duty-bearers. With respect to corrective duties, the primary duty-bearer is the agent from whom the victim should first seek compensation. In *Embezzlement*, the primary corrective-duty-bearer is Wrongdoer. The secondary duty-bearer is the agent from whom the victim should seek compensation, if the primary duty-bearer fails to discharge her duty. According to the Connection Account, Recipient is the secondary corrective-duty-bearer in *Embezzlement*.

Let me emphasise two features of the Connection Account. First, it states that Recipient is liable to bear costs up to, but no greater than, the value of the benefit she receives. If the value of the circus ticket to Recipient is X, as a beneficiary of injustice Recipient can be liable to bear costs of up to X only. This remains so even if X were

³ Other defences of this view are available. For example, see Anwander (2005), Goodin and Barry (2014), and Haydar (2009).

insufficient to compensate Victim adequately. Second, the Connection Account states that Recipient is liable to bear costs up to, but no greater than, what is necessary to compensate Victim adequately. If adequate compensation for Victim were Y, Recipient would be liable to bear costs of up to Y only, even if the value of the circus ticket to Recipient were greater than Y. This would be the case in the variation of *Embezzlement* in which Wrongdoer (partially) compensates Victim, thus (partially) discharging her primary corrective duty.

Together, these clarifications reveal that Recipient is liable either to compensate Victim adequately *or* to compensate Victim by an amount equal in value to the benefit received, whichever is the smaller. To clarify further, it may be helpful to distinguish between the duty to mitigate the harmful effects of injustice and the duty to avoid benefiting from injustice. These duties diverge when the value of the benefit to Recipient is greater than the value of compensation that Victim can justly demand. The Connection Account purports to impose on Recipient a duty to mitigate the harmful effects of the injustice, not a duty to avoid benefiting from the injustice (Butt, 2014, 338).

There are *exhaustive* and *non-exhaustive* versions of the Connection Account. The exhaustive version states that, as a beneficiary of injustice, Recipient's duties are exhausted by her secondary duty to mitigate the harmful effects of the injustice. This has the implication that Recipient may be permitted to retain any additional fruits of injustice that remain after having adequately compensated Victim for the harm that she suffers. Butt hints at this view when he states that, once the harmful effects of the injustice have been corrected for, there can be 'no work for the beneficiary to do' (2007, 142). The non-exhaustive version denies this. It states that Recipient's duties are not exhausted by the secondary duty to mitigate the harmful effects of the injustice. Thus it is consistent with this view that Recipient may not be entitled to the additional fruits of injustice that remain after having adequately compensated Victim. Precisely who *is* entitled to these goods and for what reasons are left as open questions. Since our reasons for rejecting the Connection Account apply to both versions, I shall continue to refer generally to the Connection Account rather than to either specific version.

The second task is to investigate the foundations of the principle that supports the Connection Account. Here, Butt invokes a *connection theory*, whereby particular types of relationship 'may establish a sufficiently strong link between parties to allocate remedial responsibility' (2007, 142).⁴ According to this view, being connected to an injustice in certain

⁴ The theory Butt draws upon is defended in Miller (2001, 469).

ways can ground additional duties to correct for the harmful effects of that injustice. The most plausible connection theory is pluralist, in the sense that different kinds of connection to an injustice are sufficient to generate additional corrective duties. In the case of benefiting from injustice, one argument supporting this conviction is as follows:

...taking our nature as moral agents seriously requires not only that we be willing not to commit acts of injustice ourselves, but that we hold a genuine aversion to injustice and its lasting effects. We make a conceptual error if we condemn a given action as unjust, but are not willing to reverse or mitigate its effects on the grounds that it has benefited us. The refusal undermines the condemnation (Butt, 2007, 143).

It is here important to note that the most appealing version of the Connection Account states that we make an error if we are not willing to correct for the *harmful* effects of the injustice. This version of the Connection Account avoids the implausible consequence that a beneficiary of an injustice may be required to correct for any beneficial effects of the injustice upon the victim, say, by taking these benefits from her.⁵

The previous quotation suggests a conceptual argument in support of the Connection Account. On this view, a willingness to correct for the effects of an injustice is entailed, *as a matter of conceptual necessity*, by condemnation of that injustice. Presumably, though, there may also be a moral argument that appeals to similar considerations. On this view, a willingness to correct for the effects of an injustice is entailed, *as a matter of moral necessity*, by condemnation of that injustice. The moral argument is distinct from and superior to the conceptual argument. To see this, let me note that, if we were to learn that it is not conceptually incoherent to condemn an injustice while refusing to correct for its harmful effects – that is, if the conceptual argument were to fail – this would not in itself undermine the moral conviction that a beneficiary of an injustice may have a duty to mitigate the harmful effects of that injustice. The moral argument is, therefore, more relevant to our purposes and, thus, it is the argument with which we shall be concerned.

Before we move on, let me issue two final clarifications. First, it is consistent with accepting the Connection Account to maintain also that there is also a duty to correct for the

⁵ For a discussion of the relationship between injustice and harm and, in particular, cases of harmless injustice, see Feinberg (1988), and Slavny and Parr (forthcoming).

harmful effects of an injustice that falls on everyone.⁶ This duty is *tertiary*, in the sense that it is triggered only when neither the primary nor secondary duty-bearer discharges her corrective duty. This duty is typically thought to be less *stringent*, such that lesser costs are needed to vitiate the duty. Second, the account's scope is deliberately left unspecified. The Connection Account asserts that agents *can* come to possess secondary corrective duties by virtue of benefiting from injustice, not that they *always* do. As Robert Goodin explains, 'It is not the case that everything that comes causally downstream of a wrongdoing necessarily needs to be relinquished' (2013, 486). An implication of this is that a complete articulation of the Connection Account must involve 'some kind of an account of when such [corrective duties] are in fact generated' (Butt, 2014, 338).

2 The Fairness Objection

The Connection Account reaches the conclusion that, since Wrongdoer fails to discharge her primary corrective duty, and since Recipient benefits from the injustice suffered by Victim, Recipient is under a duty to compensate Victim for the harm generated by the injustice. Despite its initial appeal, this is an unattractive conclusion. Indeed, in this section I show that it is sufficiently unattractive to sanction the rejection of the Connection Account. Let's begin by considering the following variation of *Embezzlement*:

Double Embezzlement: Wrongdoer embezzles equal funds from the bank accounts of Victim 1 and Victim 2 in order to transfer half of the combined embezzled funds into Recipient's bank account. Unaware of the embezzlement, Recipient then purchases a ticket to the circus using these funds. Wrongdoer then disappears, after having spent the other half of the embezzled funds on fine wine that she consumes.

⁶ The duty to correct for the harmful effects of an injustice is a close cousin of the duty of rescue, which states that an individual may be duty-bound to prevent something bad from happening (such as to prevent a child from drowning in a pond) when she can do so by bearing a cost that is significantly smaller than the magnitude of the benefit in question. The duty to correct for the harmful effects of an injustice is distinct from the duty of rescue, since it may require an individual to provide a benefit to another who is not badly off (though they are worse off than otherwise as a result of injustice) and who is no longer facing a threat.

The Connection Account states that, as a beneficiary of the injustice, Recipient is under a duty to compensate Victim 1 and Victim 2. Since only half of the combined embezzled funds were gifted to Recipient, Recipient must either give each victim a fair chance to receive adequate compensation (e.g. flip a coin) or she must transfer an equal, but less than adequate, amount to each. It would be impermissible for Recipient to prioritise either victim's claim to compensation. However, let's now suppose that further information becomes available: it is revealed that the funds transferred to Recipient are taken from Victim 1's bank account only. The funds embezzled from Victim 2 were those that Wrongdoer spent on fine wine. A consequence of this is that Recipient benefits specifically from the injustice suffered by *Victim 1*, but not from the injustice suffered by *Victim 2*.⁷ How should this affect Recipient's treatment of Victim 1's and Victim 2's claims for compensation?

Legal systems typically require that stolen goods be returned specifically to those with the initial legal title to them.⁸ The Connection Account concurs: Recipient ought to grant lexical priority to Victim 1's claim for compensation over Victim 2's claim for compensation. This conclusion reflects a commitment lexically to prioritise the claim for compensation of the victim of the injustice from which one benefits, over others' claims for compensation. After all, whereas Recipient and Victim 1 now share a connection, Recipient and Victim 2 do not. However, this result is unfair to Victim 2. It is unfair for Victim 2 to receive fewer entitlements than Victim 1 simply on the grounds that Victim 2 had the misfortune of being involved in a causal chain from which Recipient did not profit. This unfairness grounds a complaint against the Connection Account, which we can call the *fairness objection*.

The force of the fairness objection is brought into sharper relief when we drop the assumption that equal funds are embezzled from the two bank accounts, and instead assume that a larger sum is embezzled from Victim 2's bank account. The fact that Victim 2 suffers a greater degree of harm exacerbates her fairness-based complaint against any account that sanctions the prioritisation of Victim 1's claim for compensation. This case further strengthens the force of the fairness objection.

⁷ There is a version of this case in which Wrongdoer acts only on the condition that she is able to embezzle funds from both accounts. Under these conditions, there is a sense in which Recipient benefits from both injustices, since each is necessary for her to receive the embezzled funds. The complications that this raises are important, but they are beyond the scope of my inquiry. For this reason, I want to put them aside and to focus on when this is not the case.

⁸ Of course, there are further complications. See Swadling (2008).

3 Justifying Unfairness?

In this and the following section, I consider two kinds of reply to the fairness objection. The first kind of reply is to concede that the Connection Account licenses unfairness, but deny that this is sufficient to sanction its rejection. In other words, the reply states that the unfairness that the Connection Account generates may be acceptable providing that there are *other* reasons that justify Recipient granting lexical priority to Victim 1's claim for compensation. I shall consider two versions of this reply: the *restitution reply* and the *causal reply*.

The restitution reply posits a *duty of restitution* – that is, a duty to return a good to its initial rightful owner (Goodin, 2013, 481; Goodin and Barry, 2014, 364). Since Victim 1 is the initial rightful owner of the embezzled funds, Recipient is alleged to be under a duty of restitution to return these funds to Victim 1, even if doing so produces unfairness. Thus, whilst Victim 2 also has a claim for compensation, since Recipient has not come into possession of *her* funds, Recipient may justifiably grant lexical priority to Victim 1's claim. This reply relies upon the fact that it is *Victim 1's funds* that Recipient came to possess. To illustrate the force of this reply, let's consider the following variation of *Double Embezzlement*:

Art Theft: Wrongdoer steals two pieces of art, a Picasso from Victim 1 and a Miró from Victim 2. Wrongdoer then gits the Picasso to Recipient. Wrongdoer then disappears, after having destroyed the Miró.

Here, it is intuitive to conclude that Recipient owes a duty of restitution to Victim 1, and that this duty justifies the resulting unfairness that results from Victim 2 having fewer entitlements than Victim 1.

But, we must be careful here. This is for two reasons. First, the duty of restitution does not support the Connection Account, when this is understood as offering an account of the duties of beneficiaries of *injustice*. The duty of restitution that Recipient owes to Victim 1 obtains independently of whether or not Recipient is a beneficiary of injustice: she would have the same duty of restitution had her possession of the Picasso not resulted from injustice, but instead from an accident, say a freak gust of wind. This is damaging to the restitution reply only if we think that benefiting from injustice is in some sense distinctive,

and that therefore our analysis of these cases ought not to derive wholly from reasons that do not refer to this fact. I believe that this is the case, and I defend this conviction more fully in section 5, when I analyse certain features of the Moral Taintedness Account. In doing so, I cast doubt on the restitution reply as a defence of the Connection Account.

Second, the restitution reply posits a duty to return a good to its initial rightful owner. Whilst there are cases, such as *Art Theft*, where the demands of this duty are clear and intuitive, there are other cases where this is not the case. As an illustration, let's consider the following case:

Harvard: Wrongdoer bribes a Harvard official to secure Recipient's admission to study there. As a consequence, Victim is denied admission to Harvard and subsequently leads a less good life.⁹

The restitution reply seems to suggest that Recipient has a duty to 'return' her Harvard education to Victim, who is the 'initial rightful owner'. It is difficult to make sense of this idea (Goodin and Barry, 2014, 365). The duty of restitution is not well suited to cases of this kind. If we want to explain Recipient's duties in this case, it is better to do so by appealing to other ideas. This is not to say that we must reject the duty in all cases. Rather, the task is to determine the limits of the duty of restitution. The problem is that this has the consequence that the restitution reply cannot support the Connection Account, which seeks to explain all cases of benefiting from injustice and not only a certain class of cases that involve benefits whose redistribution can be justified by appeal to the duty of restitution. In reply, a proponent of the Connect Account may accept these limitations to her view, and scale back her ambitions accordingly. This salvages the Connection Account by rendering it trivial. After all, if we understood it in this way, it can provide no further analysis than that offered by the duty of restitution.

There is a second way in which to attempt to justify the unfairness generated by the Connection Account. This is the causal reply. This reply appeals to the *causal chain* that links Recipient to Victim 1. The principal strength of this move is that it distinguishes Victim 1's case from Victim 2's case in *Double Embezzlement*, and so may be thought a promising candidate by which to justify granting lexical priority to Victim 1's claim for compensation. However, the causal reply is unconvincing. The fundamental problem is that it is unclear that

⁹ I take this example from Goodin and Barry (2014), where it is discussed at length.

mere causation possesses the kind of normative significance necessary for the success of the causal reply. On the contrary, it seems arbitrary to allow a victim's entitlements to depend upon properties of the causal chain that she happens to be part of. Indeed, Robert Huseby similarly concludes that mere causation seems to provide only 'a quite superficial reason' (2015, 219), certainly not the kind of reason that is capable of justifying the unfairness licensed by the Connection Account. Of course, claims about the normative significance of mere causation are highly controversial. It is beyond the remit of this paper to provide a full defence of my scepticism.¹⁰ Perhaps the most that I can establish is the conditional conclusion, whereby, *if* one is sceptical about the normative significance of mere causation, as many are, then the fairness objection to the Connection Account must stand.

4 Eliminating Unfairness?

A second way in which to respond to the fairness objection is to distinguish two issues. First, there is a question about whether it is unfair for Victim 2 to end up worse off than Victim 1, as a result of injustice. Second, there is a question about whether Recipient treats Victim 2 unfairly by prioritising Victim 1's claim to compensation. These issues are distinct such that we may accept that it is unfair for Victim 2 to end up worse off than Victim 1, but deny that Recipient treats Victim 2 unfairly by prioritising Victim 1's claim to compensation.

This response attempts to salvage the Connect Account from the fairness objection by noting that it is put forward as an account of the duties of beneficiaries of injustice in particular, and that it is therefore silent with respect to other agents' duties. Thus, the Connection Account need not say that Victim 2 should not be compensated, but instead it says merely that Victim 2 should not be compensated by Recipient (as the beneficiary of the injustice) in particular.

With this in mind, it is open to proponents of the Connection Account then to maintain that there are additional duties to compensate Victim 2 for the harm she suffers that fall on all agents, including, perhaps, Recipient and Victim 1. These duties are justified on other grounds – that is, not by virtue of the duty-bearers having benefited from the injustice. That is, perhaps Victim 2 can request compensation from Recipient, Victim 1, and others on other grounds. Victim 2's request for compensation is most plausibly supported by the

¹⁰ Discussions of the normative significance of mere causation can be found in McMahan (1994), Otsuka (1994), and Tadros (2011, ch. 11).

tertiary duty to correct for the harmful effects of an injustice that falls on everyone. Let's call this the *additional duties reply*.

A defender of the additional duties reply may maintain that Recipient, Victim 1, and others are together duty-bound to provide Victim 2 with adequate compensation. This duty eliminates any unfairness licenced by the Connection Account, since it eliminates any inequality in entitlements between victims.¹¹ By appealing to this possibility, the additional duties reply fully circumvents the fairness objection. Moreover, the duty that the additional duties reply appeals to may be an enforceable duty. For instance, in *Double Embezzlement*, it may be permissible for Recipient to enforce the duty to mitigate the harmful effects of injustice that Victim 1 owes to Victim 2.¹² Recipient could achieve this by directly transferring some of the embezzled funds to Victim 2. This result further reduces the force of the fairness objection as it ensures that the absence of unfairness between victims is not contingent upon one victim's (Victim 1's) willingness to comply with her duty to compensate other victims of injustice (Victim 2).¹³

The problem with this reply is that it effectively trivialises the contribution of the Connection Account. This is because, when a defender of the Connection Account offers the additional duties reply, and thereby acknowledges that Victim 2 ought not to have fewer entitlements than Victim 1, she concedes that the Connection Account should play no role in determining the victims' final entitlements.¹⁴ If we accept the additional duties reply, the Connection Account will not affect the final distribution of entitlements. This places the

¹¹ The same kind of reply is sometimes offered to those who point to the unfairness generated by associative duties. See Kolodny (2002).

¹² I say 'may' since there is a separate question, which I do not attempt to answer, about whether or not Recipient has the appropriate *standing* to enforce this duty.

¹³ Goodin puts pressure on the idea that Recipient may permissibly deny transferring all of the funds to Victim 1, as I have suggested. He claims: 'When a car has been stolen from someone who is undeservedly rich, we think that the police should nonetheless return the car to its rightful owner rather giving it to someone else who needs it more' (2013, 479). It is not clear to me, though, that this is always the correct conclusion. Indeed, if the original owner of the car is 'undeservedly rich', she may not be its 'rightful owner' at all. When this is the case, she may have an enforceable duty to use the car to serve other ends (say, by selling it and donating the revenue). Here, it may be permissible for the police to enforce this duty rather than to return the care to its original owner.

¹⁴ Perhaps the additional duties reply does not completely trivialise the Connection Account, since there may remain a weak *expressive* reason to keep the two duties apart, as the Connection Account does. See Kolodny (2002, 253-4).

Connection Account on the horns of a dilemma: the account is either implausible or, if rendered plausible, trivial. For this reason, we must instead focus our attention elsewhere.

Moreover, it does not help to emphasise that the Connection Account may be put forward as an account of the duties of beneficiaries of injustice in particular. This is because it is not plausible to determine these duties in a way that is insensitive to other duties that agents have and discharge. Indeed, the Connection Account is especially implausible if it is offered as an account of the duties of beneficiaries of injustice in particular that is intended to be forceful in a range of cases, including a case in which there is non-compliance with the tertiary duty to compensate Victim 2. The more general point is that we must determine what Recipient owes to Victim 1 in a way that is sensitive to Victim 2's situation and, in particular, whether Victim 2 would become worse off than Victim 1. The Connection Account does not operate in this way and, for this reason, it generates implausible results.

5 The Moral Taintedness Account: The Recipient

The aim of this and the next section is to motivate an alternative analysis of cases of benefiting from injustice. This is the *Moral Taintedness Account*. The aim is to show that this account is a promising alternative to the Connection Account that warrants further philosophical development and consideration.

In *Embezzlement*, the Moral Taintedness Account makes two claims. First, it states that Recipient is under a duty to avoid benefiting from the injustice.¹⁵ A corollary of this is that she is duty-bound to relinquish the fruits of injustice that fall into her possession. Unlike with the Connection Account, this duty is not grounded in a corrective duty owed to victim of injustice. Instead, the justification for this duty makes reference to the fact that the fruits of injustice are *morally tainted*.¹⁶ Second, the Moral Taintedness Account states that those who are entitled to the fruits of injustice are not necessarily the victims of the injustice that gave

¹⁵ Strictly speaking, the Moral Taintedness Account posits a *conditional* duty to avoid benefiting from an injustice. In particular, an agent is under a duty to avoid benefiting from an injustice only if doing so it not wasteful. This qualification is important as it enables the Moral Taintedness Account to avoid a version of the levelling-down objection. In a case in which an agent can avoid benefiting from injustice only by burning the fruits of injustice (say, because the goods cannot be transferred), she is not under a duty to avoid benefiting from injustice.

¹⁶ I take this term from Goodin (2013, 487).

rise to the fruits in question. This feature of the Moral Taintedness Account renders it incompatible with the Connection Account, and invulnerable to the fairness objection.

In order to motivate the first component of the Moral Taintedness Account, let's begin by considering a case of benefiting from injustice in which the victim is adequately compensated, such that she can be owed no further corrective duties, but fruits of injustice remain leftover. If it can be established that the recipient is under a duty to avoid benefiting from the injustice in this case, it must be for reasons independent of the purported fact that she owes corrective duties to the victim of the injustice from which she benefited. *Embezzlement* can be varied in several different ways to generate this result. In order to keep things simple, let's focus on the following case:

Repentance: Same as *Embezzlement*, except Wrongdoer subsequently adequately compensates Victim by transferring additional funds into Victim's bank account.

Promising analysis of *Repentance* is provided by the same considerations that underpin luck egalitarianism. As Butt notes, we can view the fruits of injustice 'as one instance of the workings of brute luck, which could then be redistributed, along with other benefits which did not originate from the deliberate gambles of appropriately responsible agents' (2014, 337). This position references the fact that Recipient can make no good faith argument demonstrating why *she*, as opposed to anyone else, is entitled to the benefits that fall into her hands (Caney, 2006, 478). Recipient is in no way responsible for the benefit: the benefits that accrue to her result from brute, rather than option, luck. In an important sense, they are to be treated as akin to 'manna from heaven'.

However, even if correct, this analysis fails to explain fully our intuitions in *Repentance*. This is because the same considerations that motivate the duty to avoid benefiting from injustice will also motivate a duty to avoid benefiting from all forms of brute luck. The analysis therefore problematically suggests that there is nothing morally distinctive about *Repentance*, as compared with other cases of benefiting from brute luck. In order to illuminate this point further, let's consider the following pair of cases:

Genetic Luck: A is born with two eyes and B is born with none. We can cheaply and painlessly gift one of A's eyes to B, thereby ensuring equality of sight.

Eye Theft: C has two eyes and D is born with none. C was born with one eye, and her parents stole a second eye from an unknown victim. We can cheaply and painlessly gift one of C's eyes to D, thereby ensuring equality of sight.

Our reason to perform the eye transfer is weightier in *Eye Theft* than in *Genetic Luck*. If we had enough resources to perform only one operation, we should transfer the eye from C to D.

The explanation for our asymmetrical reactions to this pair of cases cannot turn on facts about B's and D's situations, since the two are identical. It must therefore turn on the differences between A and C. Here, two considerations are relevant. First, we have weighty reasons to deter would-be thieves from acting wrongly. One way in which to achieve this is by pursuing measures that reduce the likelihood that wrongdoing will be profitable (McMahan, 2010, 60). However, this deterrence-based reason fails to provide a complete explanation of our reactions, since, if it were to, it would implausibly suggest that we would have no reason at all to treat these cases differently if it turned out that this form of deterrence were ineffective. The second, and more fundamental, consideration relates to our concern for *moral taintedness*. A good is morally tainted when the recipient's possession of it is *the intended result of injustice*.¹⁷ The fact that a good is morally tainted generates an extra reason for the recipient to relinquish the good or the benefit it yields. This is true for both wrongdoers and other beneficiaries.

We can explain the normative significance of moral taintedness by reference to the idea that, in refusing to relinquish the good or the benefit it yields, the recipient allows the wrongdoer to complete her immoral plans (McMahan, 2010, 60).¹⁸ By contrast, when the recipient relinquishes the fruits of injustice, she frustrates the immoral plans of the wrongdoer. It is bad for a wrongdoer to complete her immoral plans for two reasons. First, it is bad *for the wrongdoer* since, in completing her immoral plans, she morally defiles her. Second, completing immoral plans is impersonally bad. These ideas explain both why our reasons to perform the eye transfer are weightier in *Eye Theft* than in *Genetic Luck*, as well as

¹⁷ I remain deliberately ambiguous about what counts as the intended result of injustice. For example, let's consider a variation of *Embezzlement* in which Wrongdoer intends to benefit Accomplice but accidentally benefits Recipient. Are these fruits of injustice morally tainted in the relevant sense? I do not attempt to answer this question.

¹⁸ I leave open the question of what counts as an immoral plan, as well as whether we should treat differently different kinds of immoral plans. For simplicity, I focus on paradigmatic cases that involve wrongfully using someone as a mere means.

what is morally distinctive about *Repentance*, in which Wrongdoer embezzles funds from Victim in order to gift them into Recipient's bank account.¹⁹

The present analysis reveals that there is nothing morally distinctive about benefiting from injustice as such. Sometimes, the recipient's possession of the fruits of injustice is not the intended result of the wrongdoer's actions, and thus the fruits of injustice may not be morally tainted, in the sense that I have in mind. This is the case when the wrongdoer is motivated exclusively to penalise or punish the victim, for example. An implication of this is that we should treat these kinds of cases of benefiting from injustice as identical to standard cases of benefiting from other forms of brute luck. In other words, we can say that it is only a subset of cases of benefiting from injustice that involve moral taintedness. These are the cases on which we shall focus.

6 The Moral Taintedness Account: The Duty Bearer

If we focus only on the first component, the Moral Taintedness Account need not rival the non-exhaustive version of the Connection Account. It is consistent with the non-exhaustive version of this account that moral taintedness can play some role in explaining Recipient's duties in *Embezzlement*. On this view, its role is limited to those circumstances in which Victim's claim for compensation has been met.²⁰ This is what distinguishes *Repentance*, which was analysed in the previous section, from *Embezzlement*, which was discussed when the Connection Account was introduced. For this reason it is necessary to turn our attention to the second component of the Moral Taintedness Account, which specifies who becomes entitled to the funds that the beneficiary of injustice must relinquish.

The Moral Taintedness Account states that those who are entitled to the fruits of injustice are not necessarily the victims of the injustice that gave rise to the fruits in question. More specifically, it states that, when redistributing the fruits of an injustice, we should prioritise the claims for compensation of victims of injustice more generally as well as those who have suffered the greatest harm. Unlike the Connection Account, therefore, the Moral Taintedness Account denies that we have a reason to prioritise the claim for compensation of the victim of the injustice that gave rise to the fruits in question. In other words, we ought not

¹⁹ For a related, though distinct, view, see Haydar and Øverland (2014, 356-8).

²⁰ This, I think, is the kind of view endorsed in Goodin (2013, esp. 479).

to discriminate between the claims for compensation of victims of injustice according to whether or not the victim is the victim of the injustice that gave rise to the fruits in question.

It should be clear that, unlike the Connection Account, the Moral Taintedness Account is invulnerable to the fairness objection. The Moral Taintedness Account avoids the conclusion that, in *Double Embezzlement*, Recipient ought to prioritise Victim 1's claim for compensation over Victim 2's claim for compensation. Rather, it states that, absent any other claims for compensation, Recipient should treat Victim 1's and Victim 2's claims for compensation as equally weighty. Recipient must either give each victim a fair chance to receive adequate compensation (e.g. flip a coin) or she must transfer an equal, but less than adequate, amount to each victim. This result follows from the Moral Taintedness Account's rejection of the conclusion that we have a reason to prioritise the claim for compensation of the victim of the injustice that gave rise to the fruits in question.

The Moral Taintedness Account states more than this, though. It states that two factors are relevant when determining to whom to redistribute the fruits of an injustice. First, we have a reason to prioritise the claims for compensation of victims of injustice above other victims of bad brute luck. This follows from my earlier analysis of *Genetic Luck* and *Eye Theft*: if our reason to prevent harms that result from injustice is weightier than our reason to prevent other harmful events – i.e. harms that do not originate in wrongdoing – then similarly our reason to compensate for harms that result from injustice will be weightier than our reason to compensate for other harmful events.²¹ Second, the degree of harm is also relevant, such that we have a reason to prioritise the claims for compensation of those who have suffered greater levels of harm, irrespective of whether the harm results from injustice. This enables us to make sense of the fact that we ought not to prevent a murderer from killing one innocent civilian if this means failing to prevent a tornado from killing ten innocent civilians.

The purpose of this and the previous section has been to support two convictions about the liabilities of recipients of fruits of injustice and about the distributive claims of victims, which together constitute the Moral Taintedness Account. The first conviction is that a beneficiary of a certain kind of injustice has particularly weighty reasons to relinquish the fruits of injustice, reasons that go beyond what can be explained by luck egalitarian considerations. This conclusion is supported by the idea of moral taintedness, which plays an important role in *Genetic Luck* and *Eye Theft*. The second conviction is that, when identifying

²¹ In this respect, my view departs from both Huseby (2015) and Tadros (2011, 106). For a defence of this conclusion, albeit within a different context, see Stemplowska (2009, 477).

who is entitled to the fruits of injustice, the cause and the degree of the harm suffered by a victim are both relevant considerations, though it does not matter whether the victim is the victim of the injustice that gave rise to the fruits in question. This latter feature of the Moral Taintedness Account further distinguishes it from the Connection Account.

7 Conclusion

This paper has established two conclusions that relate to the normative consequences of benefiting from injustice. The first is that a particularly prominent view, the Connection Account, fails satisfactorily to take into account the importance of *fairness* and, subsequently, misidentifies who is entitled to the fruits of injustice. The second is that a more promising diagnosis of cases of benefiting from injustice is offered by the Moral Taintedness Account. The task to which we must now turn is to investigate the implications of the Moral Taintedness Account in less paradigmatic cases in an attempt to shed greater light on the liabilities and entitlements that arise in more complicated cases of benefiting from injustice.

Acknowledgements

Earlier versions of the paper were presented at the 11th Graduate Pavia Conference in Political Philosophy and at a seminar hosted by the Centre for Ethics, Law, and Public Affairs at the University of Warwick. I am grateful to those audiences for their feedback. For helpful written comments, I also thank David Axelsteak, Paul Bou-Habib, Clare Burgum, Matthew Clayton, Dimple Patel, Adam Slavny, Adam Swift, and Andrew Williams, as well as two anonymous referees for this journal.

References

- Norbert Anwander, 'Contributing and Benefiting: Two Grounds for Duties to the Victims of Injustice', *Ethics and International Affairs*, 19 (2005), 39-45.
- Daniel Butt, 'On Benefiting from Injustice', *Canadian Journal of Philosophy*, 37 (2007), 129-52.
- Daniel Butt, '"A Doctrine Quite New and Altogether Untenable": Defending the Beneficiary Pays Principle', *Journal of Applied Philosophy*, 31 (2014), 336-48.

Simon Caney, 'Environmental Degradation, Reparations, and the Moral Significance of History', *Journal of Social Philosophy*, 37 (2006), 464-82.

Joel Feinberg, *The Moral Limits of the Criminal Law: Volume 4, Harmless Wrongdoing* (Oxford: Oxford University Press, 1988).

Robert E. Goodin, 'Disgorging the Fruits of Historical Wrongdoing', *American Political Science Review*, 107 (2013), 478-491.

Robert E. Goodin and Christian Barry, 'Benefiting from the Wrongdoing of Others', *Journal of Applied Philosophy*, 31 (2014), 363-76.

Bashshar Haydar, 'Special Responsibility and the Appeal to Cost', *Journal of Political Philosophy*, 17 (2009), 129-145.

Basher Haydar and Gerhard Øverland, 'The Normative Implications of Benefiting from Injustice', *Journal of Applied Philosophy*, 31 (2014), 349-62.

Robert Huseby, 'Should the Beneficiaries Pay?', *Politics, Philosophy & Economics*, 14 (2015), 209-26.

Niko Kolodny, 'Do Associative Duties Matter?', *Journal of Political Philosophy*, 10 (2002), 250-66.

Jeff McMahan, 'Self-Defense and the Problem of the Innocent Attacker', *Ethics*, 104 (1994), 252-90.

Jeff McMahan, 'Humanitarian Intervention, Consent, and Proportionality' in N. Ann Davis, Richard Keshen, and Jeff McMahan (eds.) *Ethics and Humanity: Themes from the Philosophy of Jonathan Glover* (Oxford: Oxford University Press, 2010), 44-71.

David Miller, 'Distributing Responsibilities', *Journal of Political Philosophy*, 9 (2001), 453-71.

Michael Otsuka, 'Killing the Innocent in Self-Defense', *Philosophy and Public Affairs*, 23 (1994), 74-94.

Adam Slavny and Tom Parr, 'Harmless Discrimination', *Legal Theory*, (forthcoming).

Zofia Stemplowska, 'On the Real World Duties Imposed on Us by Human Rights', *Journal of Social Philosophy*, 40 (2009), 466-87.

Williams Swadling, 'Ignorance and Unjust Enrichment: The Problem of Title', *Oxford Journal of Legal Studies*, 28 (2008), 627-58.

Victor Tadros, *The Ends of Harm: The Moral Foundations of Criminal Law* (Oxford: Oxford University Press, 2011).