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Benefiting from Injustice and Brute Luck^{*}

Abstract: Many political philosophers maintain that beneficiaries of injustice are under special obligations to assist victims of injustice. However, the examples favoured by those who endorse this view equally support an alternative luck egalitarian view, which holds that special obligations should be assigned to those with good brute luck. From this perspective the distinguishing features of the benefiting view are (1) its silence on the question of whether to allocate special obligations to assist the brute luck worse off to those who are well off as a matter of brute luck but not as a result of injustice, and (2) its silence on the question of whether to allocate assistance to those who are badly off as a matter of brute luck but not as a result of injustice. In this new light, the benefiting view is harder to justify.

Keywords: Beneficiaries, free-riding, luck egalitarianism, rectification, special obligations, unjust enrichment.

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Introduction

According to David Miller, to have a remedial responsibility is to ‘have a special obligation to put the bad situation right, in other words to be picked out, either individually or along with others, as having a responsibility towards the deprived or suffering party that is not shared equally among all agents’.¹ In his influential discussion, Miller suggests that such special obligations can be assigned on account of (causal or moral) responsibility for the suffering, capacity for resolving it, or communal ties.

Several theorists have developed the view that *benefiting from injustice* provides an additional ground on which special obligations might be assigned.² Views which similarly treat benefiting as creating obligations, or reducing entitlements, are increasingly popular in a wide range of practical contexts, global poverty and climate change being most notable among these.³

¹ David Miller, ‘Distributing Responsibilities’, *Journal of Political Philosophy* 9 (2001), 453-71, 454.

² Daniel Butt, ‘On Benefiting from Injustice’, *Canadian Journal of Philosophy* 37 (2007), 129-152; *Rectifying International Injustice: Principles of Compensation and Restitution Between Nations* (Oxford: Oxford University Press, 2009); Bashshar Haydar, ‘Special Responsibility and the Appeal to Cost’, *Journal of Political Philosophy* 17 (2009), 129-145; Norbert Anwander, ‘Contributing and Benefiting: Two Grounds for Duties to the Victims of Injustice’, *Ethics and International Affairs* 19 (2005), 39-45; ‘World Poverty and Moral Free-Riding: The Obligations of Those Who Profit from Global Injustice’, in Elke Mack et al (eds), *Absolute Poverty and Global Justice* (Farnham: Ashgate, 2009); Edward A. Page, ‘Give it Up for Climate Change: A Defence of the Beneficiary Pays Principle’, *International Theory* 4 (2012), 300-330. Robert E. Goodin and Christian Barry, ‘Benefiting from the Wrong-doing of Others’, *Journal of Applied Philosophy* (forthcoming).

³ Thomas W. Pogge, *World Poverty and Human Rights* (Cambridge: Polity, 2002), 23, 50, 197; Magnus Reitberger, ‘Poverty, Negative Duties, and the Global Institutional Order’, *Politics, Philosophy and*

This article explores the normative foundations of the view that benefiting from injustice gives rise to special obligations (*the benefiting view*). It is argued that the view's appealing and (seemingly) central feature of requiring injustice's beneficiaries to assist its victims is shared by a well-known alternative view, *luck egalitarianism*, which holds that it is unjust for some individuals to be worse off than others on account of differential brute luck (that is, as a result of risks that they did not deliberately take on). To arbitrate between the benefiting view and luck egalitarianism we must consider cases in which they differ in their prescriptions. In such cases luck egalitarianism may be more plausible.

Before I begin in earnest, two clarifications regarding the central concept of injustice are in order. First, advocates of benefiting-type views do not always make benefiting from *injustice* a necessary condition for beneficiaries to bear special obligations. They might, for instance, require only that the beneficiary benefited from a

Economics 7 (2008), 379-402, 398-399; Christian Barry and Gerhard Øverland, 'Why Remittances To Poor Countries Should Not Be Taxed', *New York University Journal of International Law and Politics* 42 (2010), 1181-1207, 1198-1199; Todd Calder, 'Shared Responsibility, Global Structural Injustice, and Restitution', *Social Theory and Practice* 36 (2010), 263-290; Axel Gosseries, 'Historical Emissions and Free-Riding', *Ethical Perspectives* 11 (2004), 36-60; Simon Caney, 'Climate Change and the Duties of the Advantaged', *Critical Review of International Social and Political Philosophy* 13 (2010), 203-228, 217-218; Edward A. Page, 'Climatic Justice and the Fair Distribution of Atmospheric Burdens: A Conjunctive Account', *The Monist* 94 (2011), 412-432. The benefiting from injustice view is present in an early discussion of affirmative action; see Judith Jarvis Thomson, 'Preferential Hiring', *Philosophy and Public Affairs* 2 (1973), 364-84, 383-384. The more general idea of benefiting giving rise to obligations is also an important part of the debate about political obligations; see H. L. A. Hart, 'Are There Any Natural Rights?', in Jeremy Waldron (ed.), *Theories of Rights* (Oxford: Oxford University Press, 1984).

loss suffered by another.⁴ However, this broader version of the benefiting view will still assign obligations to the beneficiaries of injustice (at least on the assumption, which I will make, that the injustice inflicts a loss on someone). I will therefore focus specifically on cases of benefiting from injustice, as it is in these cases that all benefiting-type views assign special obligations to beneficiaries. Second, I will treat ‘injustice’ and its cognates in a technical sense, as necessarily resulting from a wrongful act. On some views, including luck egalitarianism, injustice might arise without any wrongdoing. As most advocates of the benefiting view would not assign obligations to those who benefit from such ‘cosmic injustice’, it is convenient for presentational purposes to use injustice in a more restricted, agential sense. Nothing substantive follows from this (indeed, I present reasons for favouring luck egalitarianism).

The Standard Case

Miller describes a case in which A steals a drug from P to save Q’s life, at some cost to P, who needs the drug but with less urgency. According to Miller, A ‘has a remedial responsibility to P to replace what he has taken’.⁵ The idea here is that those who are responsible for harming another acquire the special obligation to remedy the harm.

Bashshar Haydar argues that the ‘benefiting factor’ provides a further basis for allocating special obligations. Of the ‘Drug Case’, Haydar comments that ‘[i]t seems plausible to maintain that Q, being the beneficiary of P’s loss, has special responsibility

⁴ Haydar, ‘Special Responsibility and the Appeal to Cost’.

⁵ David Miller, ‘Distributing Responsibilities’, 459.

to compensate P'.⁶ He also describes a second case, the 'Gift Case', which involves Oliver stealing Daniella's car and consequently giving his old car to Heloise. Again, Haydar thinks '[i]t seems plausible to maintain that Heloise acquires some degree of special responsibility to compensate at least for part of Daniella's loss on the basis of being a beneficiary of that loss'.⁷

Daniel Butt suggests the following example to motivate the idea that benefiting from injustice gives rise to special obligations to remedy a bad situation. Four self-sufficient people each occupy a quarter of an island. Each year each individual must produce 200kg of the Polychrestos plant, the only thing that will grow on the island, to support herself. In the first year A is industrious and produces 700kg, while B, C, and D, more casual types, manage the bare minimum 200kg. The next year, D crafts a plan to reduce her workload: she will divert water from B's and C's land to hers, boosting her crop at their expense. However, D miscalculates, and the water is actually diverted from both her land and C's land to B's land, bumping B's crop up to 400kg, but leaving both C and D with nothing. D kills herself, leaving the question of what to do with C, who will die unless A and/or B assist her. Do A or B have a special responsibility to assist?

Neither A nor B are causally or morally responsible for C's plight, nor are there relevant communal ties. Thus, among Miller's grounds for special responsibility, only capacity remains, and so A, who has 700kg of crop to B's 400kg, appears to bear most of the special responsibility. Butt asks 'does not such a conclusion seem intuitively objectionable? ... In this case, D's actions conferred benefits upon B. Should we not hold

⁶ Haydar, 'Special Responsibility and the Appeal to Cost', 141.

⁷ Haydar, 'Special Responsibility and the Appeal to Cost', 142.

that B's improved position, which has come about as a direct result of C's worsened position, constitutes just the sort of "morally relevant relation" between parties which might be considered when we ask who should bear remedial responsibilities'.⁸ Butt, like Haydar, suggests that Miller's grounds for special obligations be complemented by a further ground, that of benefiting from injustice.

The basic structure of the Haydar and Butt examples is this: one person (Wrongdoer) treats another (Victim) unjustly, making her disadvantaged, in such a way that a third party (Beneficiary) benefits.⁹ This *Standard Case* seems to be one in which benefiting from injustice gives rise to special responsibilities, at least assuming, as we are, that Wrongdoer is out of the picture.¹⁰ The main attraction of the benefiting view is that it makes the *Standard Claim* that Beneficiary should assist Victim. I will now argue that an alternative view, which assigns no fundamental moral importance to benefiting from injustice, also makes the Standard Claim.

I agree with Butt that the fact that 'B's improved position ... has come about as a direct result of C's worsened position' seems morally relevant. But we should distinguish between two reasons we might have for thinking this. Butt's proposal to treat benefiting

⁸ Butt, 'On Benefiting from Injustice', 133.

⁹ Strictly speaking, Haydar does not require that there is a wrongdoer present as he thinks that benefiting from another's not unjust loss might sometimes give rise to special obligations. However, for the reasons mentioned in the introduction, I consider cases in which the loss is wrongfully and unjustly inflicted.

¹⁰ For interesting criticism of attempts to combine the benefiting view with the common view that, where Wrongdoer is present, she bears special responsibility, see Simon Caney, 'Environmental Degradation, Reparations, and the Moral Significance of History', *Journal of Social Philosophy* 37 (2006), 464-482, 472-473.

from injustice as a ground for special responsibility suggest that the relevant reason is that B's position has been reached, in part, at C's expense. He does not consider another reason one might have for thinking it important that 'B's improved position ... has come about as a direct result of C's worsened position'. This is the fact that B has benefited, and C lost out, without having brought about the events that caused the respective benefit and loss. After all, the benefit and the loss resulted from D's actions, which neither B nor C were aware of and for which they are certainly not responsible. In Ronald Dworkin's well-known terms, B has good brute luck, and C has bad brute luck, as they have been subject to the upshot of risk which they did not deliberately take on.¹¹ As subsequent 'luck egalitarian' writers such as Richard Arneson and G. A. Cohen suggest, the effects of brute luck should be undone in the name of securing equal opportunity for welfare or access to advantage.¹² There is thus a second, luck egalitarian ground for establishing that B has a special obligation to assist C. This ground is that B is better off than C as a matter of brute luck. To put the point another way, those with good brute luck relative to others should be assigned special obligations.

I likewise agree with Haydar that '[i]t seems plausible to maintain that Q ... has special responsibility to compensate P', and that 'Heloise acquires some degree of special

¹¹ Ronald Dworkin, 'What is Equality? Part Two: Equality of Resources', *Philosophy and Public Affairs* 10 (1981), 283-345, 293.

¹² Richard J. Arneson, 'Equality and Equal Opportunity for Welfare', *Philosophical Studies* 56 (1989), 77-93; G. A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics* 99 (1989), 906-44; Carl Knight, *Luck Egalitarianism: Equality, Responsibility, and Justice* (Edinburgh: Edinburgh University Press, 2009); Carl Knight and Zofia Stemplowska (eds), *Responsibility and Distributive Justice* (Oxford: Oxford University Press, 2011).

responsibility to compensate at least for part of Daniella's loss'.¹³ But the stated beneficiary-orientated rationale (Q and Heloise being the beneficiaries of P's and Daniella's losses) is not the only one available. We might think that what matters is that Q and Heloise had good brute luck, and P and Danielle had bad brute luck.¹⁴ On reflection, it becomes apparent that the luck egalitarian can accommodate the relevant intuitions just as well as the benefiting view.¹⁵

What follows from this? An initial point is that those already attracted to luck egalitarianism have no need to append the benefiting view to their position in order to accommodate its appealing treatment of the Standard Case. Perhaps surprisingly, luck egalitarians themselves have not made much of this feature of their position, usually

¹³ Haydar, 'Special Responsibility and the Appeal to Cost', 143, 142.

¹⁴ A referee notes a complication here: 'Suppose that Heloise has been courting Oliver (whom she dislikes) for the sole purpose of receiving gifts from him in cases such as the one at hand. Then her benefit is a matter of option luck, not brute luck'. In reply, I maintain that any plausible luck egalitarian view will (1) deny that Oliver acquires any entitlement to Daniella's car by stealing it, and therefore (2) deny that it is a matter of good option luck for Daniella that she receives the car. Regarding (1), it is obvious that luck egalitarianism will need to rule out individuals benefiting themselves through theft or fraud, either by building this into the principles themselves (for instance, by assessing the moral, social, or desert value of choices) or by combining their principles with others that provide these prohibitions. In respect of (2), if Oliver has never acquired an entitlement to the car, it is clear that Daniella can not become entitled to it merely because Oliver passes it to her. We might say that Daniella has had (non-compensable) bad option luck. Daniella's courting of Oliver has not paid off as he has not acquired any entitlement that he can transfer to her.

¹⁵ See Lukas H. Meyer and Dominic Roser, 'Climate Justice and Historical Emissions', *Critical Review of International Social and Political Philosophy*, 13 (2010), 229-253, 242-243.

focusing on cases of natural brute bad luck rather than brute bad luck that is unjustly inflicted by other agents.

What of those attracted to the benefiting view? Most writers on the topic present examples relevantly similar to the Standard Case in support of the view.¹⁶ But as we have seen, the Standard Case offers no reason for accepting the benefiting view rather than luck egalitarianism, a view these writers do not mention. This gives those who are attracted to the benefiting view on the basis that it gives injustice's beneficiaries obligations to assist its victims reason to consider luck egalitarianism. From what we have seen so far, there is nothing to choose between the two views. To really test them, I now turn to two cases in which they return different answers.¹⁷

¹⁶ Anwander, 'Contributing and Benefiting', 45; Thomson, 'Preferential Hiring', 383-384; Reitberger, 'Poverty, Negative Duties, and the Global Institutional Order', 389-399; Barry and Øverland, 'Why Remittances To Poor Countries Should Not Be Taxed', 1198; Calder, 'Shared Responsibility, Global Structural Injustice, and Restitution', 271; Caney, 'Climate Change and the Duties of the Advantaged', 217.

¹⁷ Robert Fullinwider suggests that there is a weaker case for special obligations grounded in benefiting from injustice where the benefit was received involuntary ('Preferential Hiring and Compensation', *Social Theory and Practice* 3 (1975), 307-320, 317). Haydar proposes that the case is weaker where it would have been permissible to accept the benefit were one aware of the full facts, and where the injustice was not motivated by the benefit to a third party ('Special Responsibility and the Appeal to Cost', 143). However, both of my examples can be revised such that (1) the beneficiary voluntarily receives the benefit, (2) it would have been impermissible for the beneficiary to accept the benefit were she aware of the full facts (which she is not), and (3) the wrongdoer did not intend to benefit the beneficiary. For instance, the beneficiary may have taken up an unjustly-sacked person's job, or moved into an apartment when the previous occupant had to move after losing money in a swindle (see Reitberger, 'Poverty, Negative Duties, and the Global Institutional Order', 398). The plausibility of the benefiting from injustice ground for special obligations in my examples is thus not affected by the factors Fullinwider and Haydar mention.

Non-Standard Cases

First consider a case which introduces Bystander, who is as well off as Beneficiary, but not as the result of anybody's unjust actions or anybody's loss. Bystander has, however, benefited from brute luck to the same extent as Beneficiary. Perhaps she has special natural talents of exactly the same value as the injustice-generated benefits received by Beneficiary. In short, Beneficiary and Bystander are identical, except that Beneficiary's advantages came about through a process which unjustly harmed another while Bystander's did not. Call the non-standard case involving Victim, Beneficiary, and Bystander the *Bystander Case*.

As Bystander has not benefited from injustice, if benefiting from injustice gives rise to special obligations, Bystander will not have the special obligations that Beneficiary has. By contrast, if good brute luck gives rise to special obligations, Bystander and Beneficiary will have identical special obligations, as they have benefited equally from brute luck. Bystander has had the good brute luck of high native talent, while Beneficiary has had the good brute luck of benefiting from injustice. Thus, the first respect in which the benefiting view differs from luck egalitarianism is that it *is silent on the question of whether special obligations to assist the brute luck worse off should be allocated to those who are well off as a matter of brute luck but not as a result of injustice*.

It is time now to introduce my second new character, Unfortunate. Unfortunate has a position just as bad as that of Victim – she too is severely disadvantaged. But unlike Victim, Unfortunate has not been treated unjustly by anybody. She has been subject to

some other kind of bad brute luck. She may, for instance, have inherited a grave lack of natural talent, and so is unable to support herself. Apart from the genesis of her disadvantage she is identical to Victim. Call the case involving Victim, Beneficiary and Unfortunate the *Unfortunate Case*.

It seems to be agreed that, if Beneficiary has special obligations on the basis that he has benefited from injustice, they are special obligations to assist Victim *in particular*. They are what I will call *interpersonal* obligations – obligations that fall on one individual, to assist another specific individual. I have already quoted Butt’s suggestion that there is a ‘morally relevant relation’ between B (the beneficiary) and C (the victim), as well as Haydar’s remarks that ‘Q, being the beneficiary of P’s loss, has special responsibility to compensate P’ and ‘that Heloise acquires some degree of special responsibility to compensate at least for part of Daniella’s loss on the basis of being a beneficiary of that loss’. Other adherents of the view that benefiting from injustice may give rise to special obligations likewise explicitly claim that such obligations are interpersonal.¹⁸ None seem to countenance the notion that the special obligation people in the position of Beneficiary acquire is to assist the worse off more generally.

This has interesting results where we introduce Unfortunate. According to the benefiting view, Beneficiary is under a special obligation to assist Victim, as the former has benefited from the injustice inflicted on the latter. But Beneficiary has no such special obligation towards Unfortunate, as Beneficiary’s benefit does not have the same source as Unfortunate’s dire straits. Victim will get this special treatment even though she

¹⁸ Anwander, ‘Contributing and Benefiting’, 45; Barry and Øverland, ‘Why Remittances To Poor Countries Should Not Be Taxed’, 1199. See also Calder’s views in the unjust enrichment subsection below.

is, to start with, no worse off than Unfortunate. By contrast, luck egalitarianism identifies Victim and Unfortunate as victims of bad brute luck to an equal extent, and so treats assisting each of them as of equal importance. The benefiting view can, then, be distinguished by luck egalitarianism on a second ground, which is that it *is silent on the question of whether those who are badly off as a matter of brute luck but not as a result of injustice should be assisted*.

Justifications of the Benefiting View

The benefiting view is distinguished from luck egalitarianism by its silence in the Bystander and Unfortunate Cases. Yet most benefiting theorists do not seem to think that their stance in these cases needs defence, presumably because they think that their treatment of the Standard Case is justification enough for the benefiting view. Haydar is one of the minority of these writers to even mention the Bystander Case.¹⁹ None, to my knowledge, explicitly acknowledge the Unfortunate Case. A number of justifications for the benefiting view as a whole might nevertheless be adapted to serve as justifications for the view's silence in the Bystander and Unfortunate Cases.

Unjust enrichment. Writers such as Todd Calder have sought to ground the benefiting view in an analogy with the law of restitution, and in particular its principle of unjust enrichment.²⁰ This principle holds that '[a] person who has been unjustly enriched at the

¹⁹ Haydar, 'Special Responsibility and the Appeal to Cost', 144; Anwander, 'World Poverty and Moral Free-Riding', 183; Barry and Øverland 'Why Remittances To Poor Countries Should Not Be Taxed', 1198.

²⁰ Calder, 'Shared Responsibility, Global Structural Injustice, and Restitution', 270-277; Butt, 'On Benefiting from Injustice', 134-137; Page, 'Give it up for Climate Change', 314 n. 15.

expense of another is required to make restitution to the other'.²¹ An unjust enrichment is 'a benefit that results from another person's labor or property that one is not entitled to receive'.²² The law of restitution may seem to provide support for the benefiting view's treatment of the Bystander and Unfortunate Cases, as there are no equivalents of the principle of unjust enrichment to cover Bystander's situation of benefiting as a matter of natural brute luck, and Unfortunate's situation of being disadvantaged as a matter of natural brute luck. But the actual position of the law obviously does not offer much of a *moral* argument. So what support for the benefiting view can be drawn from the principle of unjust enrichment?

Calder claims that the principle 'is a moral principle as well as a legal principle'.²³ To demonstrate this, he suggests that 'if a child accidentally gives his toy to his friend thinking that it is his friend's toy rather than his own, his friend is morally required to return the toy even if the case is too insignificant to be regulated by law'.²⁴ As Calder states the case, it is just a form of the Standard Case. So we need to extend it such that, in one variant, there is a Bystander child with a toy as a matter of good brute luck (it fell out of the sky), and in another, an Unfortunate child, missing her toy but as a result of

²¹ American Law Institute, *Restatement of the Law of Restitution and Unjust Enrichment* (St. Paul: American Law Institute Publishers, 1936), s. 1, 17, cited in Calder, 'Shared Responsibility, Global Structural Injustice, and Restitution', 271.

²² Calder, 'Shared Responsibility, Global Structural Injustice, and Restitution', 290.

²³ Calder, 'Shared Responsibility, Global Structural Injustice, and Restitution', 271.

²⁴ Calder, 'Shared Responsibility, Global Structural Injustice, and Restitution', 271.

natural bad brute luck (it was struck by lightning) not involving unjust enrichment.²⁵

Does the benefiting view follow?

I would need a good reason for depriving the friend (Beneficiary) of her toy, when I could split the cost between her and Bystander (for instance, make them share a toy). Presumably, Calder would maintain that this is justified on the basis that Beneficiary alone is unjustly enriched, which is to say, not entitled to the toy in her possession. That simply asserts what needs to be shown. Of course, if there is an asymmetry in the entitlements of Bystander and Beneficiary, an asymmetry in their obligations is justifiable. But the crucial point is whether the entitlement asymmetry is justified. Calder's description of his toy case as one of unjust enrichment suggests that he thinks it analogous to one in which 'A pays B \$100, thinking she owes B the \$100 when in fact she does not'. In such a case, the legal principle of unjust enrichment requires that B repays the \$100 'even though B is innocent of any wrongdoing. It is sufficient that B acquired wealth to which she is not entitled'.²⁶ But the notion of entitlement in play here, which is the one (implicitly) appealed to in the supposedly moralized version of the principle of unjust enrichment, is simply that actually manifested in the law. We have been given no reason to suppose that the present system of property rights is a just one. The same points follow, *mutatis mutandis*, regarding the Unfortunate Case: again, we have no reason to accept an asymmetry in entitlements between Victim and Unfortunate,

²⁵ It might be objected that there can be no unjust enrichment even in Calder's original case because the stakes are too low to give rise to any questions of justice. But I am willing to allow that, even if this is so, the case may involve moral considerations that, under different circumstances (where the stakes are higher, say), give rise to questions of justice.

²⁶ Calder, 'Shared Responsibility, Global Structural Injustice, and Restitution', 271.

just because in an analogous case the present law says there is one. The unjust enrichment justification as developed by Calder is too bound to legal convention to provide a plausible basis for the moral claims made by the benefiting view.²⁷

Rectification. A further attempt at justifying the benefiting view's treatment of the Bystander and Unfortunate Cases appeals to moral ideas that underlie the legal notion of unjust enrichment. In particular, it focuses on the claim that Victim has an entitlement that was breached by Wrongdoer, which calls for redress. The political theory most associated with this kind of reasoning is libertarianism. Robert Nozick, for instance, writes that '[t]he subject of justice in holdings consists of three major topics': 'the original acquisition of holdings, the appropriation of unheld things'; 'the transfer of holdings from one person to another'; and 'the rectification of injustice in holdings'.²⁸ Individuals are entitled to any holdings acquired in accordance with the principles of justice in acquisition and transfer; holdings not acquired in these ways are subject to rectification. The benefiting view could be defended as (part of) a libertarian account of

²⁷ Ed Page suggests that the 'unjust factor' in prior activities can be defined on the basis of the harm caused, the development constrained, or the common property trespassed upon ('Give it up for Climate Change', 314-316). This approach is more promising in that it acknowledges that entitlements must be established on an overtly moral basis if the unjust enrichment justification is to have traction. But Page explicitly does not defend any one of the three definitions of the unjust factor, so it is hard to assess whether his view, in any of its versions (see also 'Climatic Justice and the Fair Distribution of Atmospheric Burdens: A Conjunctive Account', 420-424), might uphold the benefiting view. I do, however, consider a close relative of the 'common property' approach in the next sub-section.

²⁸ Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974), 150, 152.

rectification. The idea is presumably that Beneficiary is distinguished from Bystander on the basis that Beneficiary, but not Bystander, is obliged to rectify the breach of Victim's (original acquisition- and/or transfer-derived) entitlements. Similarly, Victim is to be distinguished from Unfortunate on the basis that Victim, but not Bystander, has had her libertarian rights breached.

There are two major problems with this attempt to justify the benefiting view, one external, the other internal. The external problem is simply that Nozickian or 'right' libertarianism is widely rejected in the literature, for reasons too numerous to document here.²⁹ Were this the only way in which the benefiting view could be defended, most political philosophers would take that as a *reductio* of the view. Perhaps for that reason, benefiting theorists have themselves shown no interest in wedding their view to right libertarianism. The internal problem is simply that the benefiting view violates two of the three core principles of libertarianism – those of original acquisition and transfer. The benefiting view does not make Beneficiary compensate Victim only where Beneficiary lacks a libertarian entitlement to her holdings. The benefiting view will require Beneficiary to compensate Victim even if all of Beneficiary's holdings were acquired in accordance with the principles of justice in acquisition and transfer. Thus, the benefiting view's attempt at 'rectification' in fact generates further injustice from a libertarian perspective.

²⁹ But see Jeffrey Paul (ed.), *Reading Nozick* (Oxford: Blackwell, 1982); Ralf M. Bader and John Meadowcroft (eds), *The Cambridge Companion to Nozick's Anarchy, State, and Utopia* (Cambridge: Cambridge University Press, 2011).

Butt suggests a different libertarian defence of the benefiting view, which involves combining that view with what he calls ‘international libertarianism’. International libertarians such as John Rawls, Thomas Nagel, and David Miller often advocate strongly redistributive principles domestically. But internationally they focus on the libertarian principles of non-intervention and compliance with agreements, while allowing for some non-libertarian international principles, including a ‘duty to intervene ... to alleviate suffering or assist with development’.³⁰

Though the first, external problem with using the benefiting view as (part of) a libertarian account of rectification is reduced where international libertarianism is used in place of full-blown right libertarianism, there is still the difficulty that such an approach ties the benefiting view to rather specific additional normative premises that benefiting theorists would rather do without. Moreover, the second, internal problem is not reduced at all where international libertarianism replaces right libertarianism. Butt recognizes that his position that ‘present day parties who are benefiting from the [unjust] act in question may face compensatory duties to rectify historic injustice ... is indeed controversial, as it seems to contravene the common libertarian principle that one can only owe obligations to others as a result of one’s own voluntary actions’.³¹ In response to this difficulty, Butt says that he will ‘challenge this principle’.³² However, the centrepiece of the challenge presented in the indicated section turns out to be a Standard Case (specifically, the Polychrestos plant example).³³ While I am happy to grant that this challenge suggests

³⁰ Butt, *Rectifying International Injustice*, 71.

³¹ Butt, *Rectifying International Injustice*, 99.

³² Butt, *Rectifying International Injustice*, 99.

³³ Butt, *Rectifying International Injustice*, 119-120.

reasons for departing from libertarian principle, it offers no reason for *only* departing from libertarian principle in Standard Cases, as the benefiting view requires. The crucial Bystander and Unfortunate Cases receive no discussion in this passage. Butt's approach is simply to show that our intuitions run counter to libertarianism in Standard Cases, so we should relax our libertarianism in those cases. But if we are to respond to the anti-libertarian intuitive phenomena in Standard Cases, there is no reason of principle why we would not also respond to it in the Bystander and Unfortunate Cases.

One last way of combining libertarianism and the benefiting view was put to me by a referee, who urged that 'we might maintain that injustice automatically undercuts entitlement. It then follows that if A violated B's rights and in so doing bestowed a benefit on C, then the post-violation pattern of holdings simply does not respect principles of justice in acquisition and transfer'. The idea, as I understand it, is to specify that injustice-derived benefits necessarily violate libertarian principles, so the internal problem does not arise. This response does not, of course, address the external problem, and is less effective than it seems regarding the internal problem. While it might be true that beneficiaries have no libertarian entitlements where they have directly benefited from injustice (as where A took B's wallet, and gave it to C), this is less plausible in the many cases in which the beneficiaries benefit less directly. For instance, Haydar mentions a case in which 'country A unjustifiably invaded country B and destroyed its oil producing facilities. Suppose that this has led to higher oil prices which in turn benefited C, another oil producing country'.³⁴ It seems clearly contrary to libertarian principles to maintain that C has no entitlement to the increased oil income. Benefiting theorists might

³⁴ Haydar, 'Special Responsibility and the Appeal to Cost', 142.

respond by holding that these less direct cases of benefiting from injustice do not call for redress. But in that case, the onus is on them to explain exactly why this is the case, and in a way that is compatible with libertarianism. To date, that has not been attempted.

Free-riding. The final justification to be considered has been developed by Axel Gosseries. According to Gosseries, I free-ride where ‘(1) another person’s action (2) benefits me (3) while the costs involved in it are being more than proportionately covered by other people (i.e. the author and/or third parties)’.³⁵ In his (deliberately simplified) example, if (1) the US’s carbon emissions (2) benefit the EU through trade, and (3) anthropogenic climate change damages fall disproportionately on Bangladesh, the EU free rides with respect to Bangladesh. While Gosseries intends only to justify the Standard Claim, the argument might be extended to cover the Bystander and Unfortunate Cases. Beneficiary would seem to be a free-rider, as she has benefited from Wrongdoer’s actions, which have disproportionate cost for Victim. Bystander is not a free-rider, as she has benefited from nobody’s costly actions. Thus, free-riding may seem to justify the difference of obligations between Beneficiary and Bystander that the benefiting view assigns. That view’s differential treatment of Victim and Unfortunate may be justified on a similar basis, as Victim’s disadvantage is connected to the benefit of a free-rider (Beneficiary), but Unfortunate’s disadvantage is not.

For the free-riding justification to work, we need to be given reasons for thinking that free-riders are under obligations that those who have received similar benefits, but not as the result of another’s cost-imposing action, are not. In real world cases, there are

³⁵ Gosseries, ‘Historical Emissions and Free-Riding’, 43.

often efficiency reasons for putting disincentives on free-riding. For instance, a public transport system may be highly beneficial to a city, but unsustainable if there are too many fare dodgers. But that kind of consideration is inapplicable here, as the beneficiary view is supposed to apply even if there are no incentive effects.

Gosseries recognizes the importance of providing a deeper justification, writing that ‘free-riding based claims need to be located among other justice-based claims’.³⁶ He suggests that it might be supported either on a distributive justice basis or an ‘interactive (or rectificatory) justice’ basis. However, the benefiting view’s treatment of the Bystander and Unfortunate Cases clearly cannot be supported in either of these ways. Gosseries’ distributive justice argument is that free-riding might be viewed as falling within the purview of the principle that ‘all disadvantages resulting from circumstances (natural events or involuntary human actions) that were imposed should be compensated’.³⁷ This principle in essence expresses luck egalitarianism. While Gosseries is correct that it supports the Standard Claim, I think he would agree that it is at odds with the benefiting view in the Bystander and Unfortunate Cases, where it allows disadvantages of circumstance. The same is true of the interactive justice argument, which applies where benefiting is viewed as an action rather than a circumstance (as where Beneficiary and Bystander actively claim their benefits). Gosseries understands interactive justice ‘as a way of rectifying unfair departures from the baseline situation resulting from the implementation of distributive justice’.³⁸ But creating an avoidable

³⁶ Gosseries, ‘Historical Emissions and Free-Riding’, 49.

³⁷ Gosseries, ‘Historical Emissions and Free-Riding’, 49.

³⁸ Gosseries, ‘Historical Emissions and Free-Riding’, 49.

inequality between Beneficiary and Bystander, or between Victim and Unfortunate, is clearly not a sensible way of rectifying an unfair departure from distributive justice, where that is stipulated to be luck egalitarian.³⁹

In sum, the free-rider justification is, like the unjust enrichment and libertarian justifications, itself reliant for its appeal on deeper moral positions. These are, to date, either undefended, or unable to support the benefiting view's treatment of the Bystander and Unfortunate Cases.

Objections to the Benefiting View

No satisfactory justification for the benefiting view's distinctive features has been found. Even so, from what has been said so far, we have been given no grounds for rejecting the benefiting view in favour of luck egalitarianism or some other view. Perhaps the benefiting view's treatment of the Bystander and Unfortunate Cases is a benign feature of an otherwise attractive view. In this section I present reasons for thinking that this is not so.

³⁹ Anwander develops the free-riding justification in a different way, focusing on *moral* free-riding, which 'occurs when someone benefits from another person's wrongful action, from situations of injustice, or generally from what is morally unacceptable, without covering some appropriate share of the moral costs' ('World Poverty and Moral Free-Riding', 185). Yet we need to be given reasons for thinking that moral free-riders are under special obligations that non-moral free riders lack, just as we did when considering Gosseries' conventional free-riders. Anwander does not provide an explanation here, and the kind of distributive or interactional justice explanation Gosseries provided would work no better as regards the Bystander and Unfortunate Cases when applied to moral free-riding.

Brute bad luck. Silence in the Bystander Case is on the face of it an unattractive feature of the benefiting view. Beneficiary has not caused the injustice suffered by Victim, and has indeed made relevantly similar choices to Bystander. But Beneficiary is under obligations that Bystander lacks, just because of the way that events outside their control have impacted upon them. If performance of these obligations is enforced, Beneficiary will be worse off than Bystander, as a matter of brute luck.

To be clear, I do not here rely on an unrestricted luck egalitarian view. In many cases, it would no doubt be acceptable for some to be worse off than others on account of differential brute luck. For that to be the case, weighty non-luck egalitarian moral considerations must be engaged. If an unequal distribution between Bystander and Beneficiary drastically increased the overall amount of advantage (welfare, resources, capabilities, or some combination of these), it might be justified. Or if an unequal distribution between them increased the advantage levels of the worst off, it might again be justified.⁴⁰ In such cases, I think the unchosen inequality is an unattractive feature of the situation – a pro tanto reason for opposing it – even though that unattractiveness is outweighed by the attractiveness of increased overall advantage or increased advantage for the worst off. My claim, then, is that the unattractiveness of the unchosen inequality between Beneficiary and Bystander is not outweighed in this way by any positive feature of that inequality. Indeed, we found no reason in support of it.

⁴⁰ These two considerations are accommodated in Richard Arneson's 'responsibility-catering prioritarianism', a pluralistic view which gives a reduced role to the luck egalitarian objective of eliminating brute luck disadvantage; see 'Equality of Opportunity for Welfare Defended and Recanted', *Journal of Political Philosophy* 7 (1999), 488-97.

Though the above argument assumes only a restricted version of luck egalitarianism, it relies on the appropriateness of assigning *some* weight to relieving individuals of differential brute bad luck. I obviously accept that it is possible to deny that. Still, when we consider two children facing different life prospects on account of being born into different social classes, two workers with different standards of living on account of variations in natural talent, or two retirees with different levels of attainment on account of being members of different societies, I think it is highly plausible that things go in one respect worse as regards justice where individuals are worse off as a matter of brute luck.

Subsistence. As in the Bystander Case, there is in the Unfortunate Case an inequality generated that has no justification from the choices the individuals concerned have made. Unfortunate is, after Victim is compensated, worse off than Victim just because she had the bad luck to be struck by a lack of talent rather than injustice. However, the Unfortunate Case brings to the fore a further unattractive feature of the benefiting view.⁴¹ Not assisting Unfortunate may well mean that she is at the level of subsistence rather than much higher.⁴² The benefiting view allows this even where Unfortunate and Victim could

⁴¹ In principle, this feature might arise in the Bystander Case. This is, however, less likely in the typical contexts in which the benefiting view is invoked (see the next subsection).

⁴² Strictly speaking, the benefiting view would allow even that above-subsistence aid to Victim be prioritized over bringing Unfortunate up to the level of subsistence. But this is an uncharitable interpretation as most of those who propose the benefiting view assume that assisting the very badly off gets priority. For instance, Butt focuses on the duties of those ‘benefiting from the plight of those in desperate need’ (‘On Benefiting from Injustice’, 130), while Haydar opens his article by saying that ‘there

both be brought well above the level of subsistence. It would, for instance, insist on \$20,000 per year for Victim and \$10,000 per year for Unfortunate, rather than \$15,000 per year for both, where Beneficiary receives \$10,000 per year of benefit from some injustice perpetrated on Victim, and Victim and Unfortunate will have \$10,000 per year if Beneficiary does not assist them. To leave someone much worse off than another, and at a low absolute level, on account of differential brute luck, is counterintuitive.

The benefiting theorist might reply by saying that, if we are concerned by how badly off Unfortunate may be in absolute terms, the solution is just to raise the subsistence threshold below which no one may fall. But insofar as this response succeeds in making the view under consideration plausible, it does so by reducing the role of the benefiting-focused part of the view. Furthermore, the higher the subsistence threshold, the less plausible it is that benefits should not be conditional. As Arneson has written, ‘some individuals might behave culpably irresponsibly, again and again, so that the cost of maintaining them at the guaranteed threshold level becomes prohibitive, or swallows up all social resources’.⁴³ A high subsistence threshold objectionably allows individuals to engage in the kind of ‘moral hostage-taking’ usually associated with the expensive tastes objection to equality of welfare.⁴⁴ The subsistence problem arises from the conjunction of (1) individuals being reduced to a low absolute level and (2) this being

are extremely undesirable conditions in our world today’ and ‘it is extremely important that something should be done to alleviate these conditions’ (Haydar, ‘Special Responsibility and the Appeal to Cost’, 144).

⁴³ Richard Arneson, ‘Luck Egalitarianism and Prioritarianism’, *Ethics* 110 (2000), 339-349, 349.

⁴⁴ Simon Keller, ‘Expensive Tastes and Distributive Justice’, *Social Theory and Practice* 28 (2002), 529-552.

due to differential brute luck. Given this, the most plausible response is not simply to raise the responsibility-insensitive threshold, but to give priority to those who are badly off as a matter of brute luck. But to do so is to reject the benefiting view and accept a restricted form of luck egalitarianism.

Excusing the rich, excluding the poor. The benefiting view has most often been invoked in relation to what may be the two biggest problems of justice of our times: global poverty and climate change. Invariably, the view is advanced in these contexts as a reason for rich countries to be under significant obligations, either to assist poor countries' development, or to cut their own emissions and fund developing world mitigation and adaptation. But if the argument I have made is correct, this is a poor fit with the benefiting view.

Consider first the Bystander Case. The benefiting view is distinguished here from luck egalitarianism by providing a reason why, in principle, some rich countries might be excused from obligations, on the basis that they have not benefited from injustice. It may be that no rich countries actually fall into this category, but that requires further contentious historical and economic argument. Maybe the present wealth of Australasia, Canada, Ireland, the Nordic Countries, Singapore, and South Korea, say, derives from injustice at the expense of poor countries, but that is not so obvious that the contrary argument is unsustainable. By contrast, the luck egalitarian basis for obligations for rich countries can not be threatened simply by raising doubts about causal connections between their wealth and others' suffering. It is incontrovertible that Ethiopians are worse off than Australians through (to at least a very significant extent) differential option luck.

What I am suggesting, then, is that, contrary to its adherents' typical intentions, the benefiting view is an insecure basis for many rich countries to have duties to assist poor countries, as it does not allocate such duties to countries that are well off but not as a result of injustice.

Benefiting theorists' typical motivations are similarly at odds with their treatment of the Unfortunate Case. Here the benefiting view is distinguished from luck egalitarianism by providing a reason why, in principle, some poor countries are not due assistance, as they have not been subjected to injustice. It may be that, in reality, no countries fall into this category, but that may be hard to prove. If the benefiting view is to justify transfers from rich to poor countries it is, then, again reliant on potentially controversial historical and economic contentions. This is particularly hard work when one considers the interpersonal nature of the benefiting view's obligations. It would not be enough that, say, Bangladesh has been harmed by rich countries' trade policies or greenhouse gas emissions. In order for a rich country to be obliged to assist, its individual contributions to Bangladesh's situation would have to be distinguished and identified as unjust. By contrast, it suffices for luck egalitarian assistance that Bangladeshis are worse off as a matter of brute luck.⁴⁵

Conclusion

⁴⁵ It is important here that individual Bangladeshis are not on the whole poor on account of their own bad choices. This allows us to sidestep some complications with applying luck egalitarianism to choices made in unequal circumstances. See Gideon Elford, 'Men Who Would Be Kings: Choice, Inequality, and Counterfactual Responsibility', *Social Theory and Practice* 38 (2012), 193-212.

I have argued that the Standard Case favoured by those who endorse the view that benefiting from injustice gives rise to special obligations supports a luck egalitarian view to the same extent. The benefiting view is distinguished from luck egalitarianism by (1) its silence on the question of whether those who are well off but not as a result of injustice should be assigned special obligations to assist the brute luck worse off, and (2) its silence on the question of whether those who are badly off but not as a result of injustice should be assisted. Finding that there are no successful justifications of this stance, and that it is subject to important theoretical and practical objections, I conclude that luck egalitarianism is a more plausible view. If that is right, it becomes less pressing to identify those who have benefited and lost out from the historical and ongoing injustices associated with globalization and climate change, and more pressing to identify those who are advantaged or disadvantaged by differential brute luck, whether it by acts of injustice or natural misfortune.⁴⁶

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