

Göran Duus-Otterström

Benefiting from injustice and the common-source problem

According to the Beneficiary Pays Principle, innocent beneficiaries of an injustice stand in a special moral relationship with the victims of the same injustice. Critics have argued that it is normatively irrelevant that a beneficiary and a victim are connected in virtue of the same unjust 'source'. The aim of this paper is to defend the Beneficiary Pays Principle against this criticism. Locating the principle against the backdrop of corrective justice, it argues that the principle is correct in saying that innocent beneficiaries of an injustice may have an extra reason to remedy the victims of the same injustice. This is (1) because it may be necessary to defeat the immoral plan of the perpetrator of the injustice and (2) because it may satisfy weak restitution. The conclusion is that the principle is distinctive from related views, such as that property should be returned to its rightful owner and that tainted benefits should be given up for general use.

Acknowledgements

Previous versions of the paper were presented at the University of Gothenburg, at the 2016 Nordic Network for Political Theory in Oslo, and at the Institute for Futures Studies and Ratio (both in Stockholm). I want to thank everyone who attended those talks for valuable feedback. I owe a special debt of gratitude to Sune Lægaard and Tim Campbell for providing written comments, and to Ed Page for extensive discussion.

The Institute for Futures Studies is an independent research foundation financed by means of a government subsidy and external research funding. The institute conducts interdisciplinary research with a focus on future issues and works to promote public debate about the future by means of publications, seminars and conferences.

© Institutet för Framtidsstudier 2016

Table of contents

1. Introduction.....	4
2. Defeating unjust plans	7
3. Restitution of misallocated benefits.....	10
4. The Indirect Transfer Objection	14
5. Conclusion	16
References.....	17
Arbetsrapporter/Working papers.....	19
Forskningsrapporter/Research reports	19

1. Introduction

Many philosophers and political theorists today accept:

The Beneficiary Pays Principle (BPP): ‘the involuntary receipts of benefits stemming from injustice can, in some circumstances, give rise to rectificatory obligations to the victims of the injustice in question’ (Butt 2014, p. 336).

This principle has been invoked in a wide range of debates.¹ It is often originally attributed to J.J. Thomson (1973), who drew on the principle in her defense of preferential hiring. Today it is perhaps most widely discussed in the literature on how the burdens of mitigating and adapting to climate change should be allocated, where BPP is sometimes considered a valuable complement to the Polluter Pays Principle.² The merit of the principle, according to its defenders, is that it allows us to assign remedial obligations even when the perpetrators of an injustice cannot be held liable, but in a way that does not boil down to brute ability to pay.

BPP needs to be fleshed out in several ways. One question concerns the proper definition of benefits. This has partly to do with settling the metric, that is, whether ‘benefits’ refer to welfare, resources, or something else. But it also involves working out the *generic* meaning of what it means to benefit from something. The traditional (counterfactual) understanding here is that an actor *A* ‘benefits’ from *X* if and only if *X* renders *A* better off than *A* would otherwise have been. But it could also be argued that *A* ‘benefits’ from *X* simply if *X* produced some good that ended up in *A*’s possession. On this actual-sequence approach to benefitting, it is not necessary that *X* renders *A* better off than otherwise (Lippert-Rasmussen 2016, p. 14).³

Another question concerns how to understand the ‘injustice’ from which actors benefit. This is not always straightforward. Consider, for example, the aforementioned case of climate change: should we target (1) the benefits flowing from excessive greenhouse gas emissions, (2) the benefits flowing from the international failure to prevent climate change, or (3) the benefits flowing from the changing climate? The choice makes a big difference for which actors BPP will single out. The benefits that were produced by past emissions, for example, are probably not the same as the benefits produced by the international policy failure.

But suppose we have completed these steps, and suppose further that we agree that benefits stemming from injustice at least sometimes should be disgorged, even when people have done nothing wrong to possess these benefits.⁴ This

1. See, e.g., Anwander (2005), Butt (2007; 2014), Pogge (2008), Barry & Kirby (2015). BPP is sometimes referred to as ‘the benefitting view’ or the ‘wrongful benefit principle’.

2 For BPP and climate justice, see, e.g., Shue (1999), Gosseries (2004), Caney (2005), Page (2012), Lawford-Smith (2014).

3. Lippert-Rasmussen (2016, pp. 10–14, 15) makes further illuminating distinctions relating to how the baseline of comparison is set.

4. For cases where the beneficiaries are not morally innocent, see Pasternak (2014) and Goodin & Pasternak (2016).

would not amount to our accepting BPP, because it does not commit us to the ‘directed’ nature of this principle. Note that Butt’s formulation talks specifically about rectificatory obligations to ‘the victims of the injustice in question’. This feature is common to almost all formulations of BPP. The idea is that there is normative significance to the fact that someone gains and someone else loses as the result of the *same injustice*. In the climate justice debate, for example, it is often claimed that the costs of responding to climate change should to a large extent be covered specifically by the wealth stemming from the economic activities that caused climate change (Shue 1999; Page 2012). This directedness is what makes BPP different from the *Generalized BPP* (beneficiaries of injustice in general have rectificatory obligations to victims of injustice in general; see Huseby 2015) and *undirected disgorgement* (benefits tainted by injustice should be disgorged but should go back into society’s general pool of resources; see Goodin 2013). Let us say that BPP posits that there is normative significance to the fact that there is a ‘common source’—typically a wrongfully harmful act or policy—between victims and beneficiaries. This means that the principle is, as I shall also say, ‘source sensitive’.

Source sensitivity may seem intuitively plausible, but advocates of BPP regularly omit to explain why it is important, and several critics have recently argued that it is in fact normatively irrelevant.⁵ Worse, they maintain that BPP’s source sensitivity leads it into making mistaken recommendations (Knight 2013; Huseby 2015; Lippert-Rasmussen 2016; Parr 2016).⁶ These two claims are intertwined. The charge is that BPP results in various kinds of unfairness because it (mistakenly) assumes that common sources matter. To see what the critics have in mind, consider the case Carl Knight (2013, p. 587) calls *Unfortunate*:

Unfortunate: In her dying moment Wrongdoer acts. As a result of this, Victim is unjustly harmed and Beneficiary innocently benefits. When Victim is harmed she becomes as badly off as Unfortunate, who suffers from some natural event.⁷

Since BPP thinks that it is normatively significant that harms and benefits flow from the same unjust source—in this case Wrongdoer’s harmful act—it will say that Beneficiary has a reason to address Victim’s loss that she does not have towards Unfortunate. The critics argue that this is wrongheaded. Victim and Unfortunate are equally badly off for reasons beyond their control. To favor Victim would therefore be unfair to Unfortunate. If Beneficiary were unable to assist both Victim and Beneficiary, it would be fairer if she split her illicit benefit between the two, or, if the benefit is indivisible, decided whom to help by

5. For examples where BPP’s source sensitivity is endorsed but not explained, see Page (2012, p. 307); Goodin (2013, p. 489); Lawford-Smith (2014, p. 396); Barry & Kirby (2015, p. 11).

6. While these critics share this worry about BPP, it is important to point out that they have different aims. Knight (2013) argues that luck egalitarianism is strictly preferable to BPP. Huseby (2015) only makes the negative point that BPP is indefensible. Lippert-Rasmussen’s (2016) main aim is likewise to reject BPP, but he also defends that luck egalitarianism can explain what seems right about BPP. Parr (2016), finally, seeks to reject what he calls the ‘Connection Account’ in favor of the ‘Moral Taintedness Account’. We will return to Parr’s account in section 2.

7. I have taken some liberties with Knight’s case.

flipping a coin. The fact that Beneficiary and Victim are causally connected in virtue of Wrongdoer's act is a 'quite superficial reason' to favor Victim (Huseby 2015, p. 219. cf. Knight 2013, pp. 594–595; Lipper-Rasmussen 2016, pp. 7–8; Parr 2016, pp. 989–991).

It may be complained that this criticism presupposes a number of things that a proponent of BPP need not concede. First, it seems to ignore that someone else might have a special duty to remedy Unfortunate's situation. Perhaps Unfortunate is the victim of a different injustice? If so, it could be argued that the beneficiaries of *that* injustice should be singled out for remedial responsibility when it comes to her. But the example can of course be specified so that Unfortunate is not a victim of any injustice at all (this is what I intended to capture by saying that Unfortunate is suffering 'from some natural event').⁸ BPP would then be silent for the simple reason that there is no injustice from which to benefit.

Second, the criticism seems to presuppose that BPP aspires to be a comprehensive approach to the distribution of duties. But this is too strong; BPP is at most only part of a fuller, pluralist picture. If nothing else, this is evident from the fact that most would hold Wrongdoer under the primary duty to remedy Victim's loss if it were possible. So BPP could easily work alongside other principles that mandate that Unfortunate should be helped, for example, a principle saying that there is a general duty to improve wretched lives. But this response, while correct, misses the challenge laid down by the critics. They want to know why Beneficiary should be taken to have a special duty to assist Victim in the first place.

Let us refer to this challenge as the *common-source problem*. The problem can be stated as follows:

Common-source problem: is there any normative significance to a common source between unjust harms and unjust benefits such that those who innocently draw benefits from an injustice have special moral reason to remedy the situation of those who are unjustly harmed by that injustice, that is, a moral reason to address this harm in particular?

Notice that this formulation refers to reasons as opposed to duties. While the debate about BPP is often couched in the language of duties or obligations, it is enough here to consider whether common sources can alter the moral reasons of innocent beneficiaries in the sense of making it more morally important or appropriate that they should assist the victims as opposed to other people. The meaning of 'altered moral reasons' should be clarified, though, because we can mean two subtly different things by this: that innocent beneficiaries are picked out for remedying the victims, or that innocent beneficiaries have a reason to prioritize the victims over other people. I shall use the latter sense. A useful,

8. There is a discussion as to whether BPP should only work with unjust *acts* or if it could also incorporate unjust *events* (Huseby 2015, p. 210). I think the former, for reasons laid out by Lippert-Rasmussen (2016, p. 8).

if somewhat stylized, way of bringing out what I have in mind is the following: suppose you have benefitted from an injustice and that you are to give this benefit up. Is there any normative significance to common sources such that you have a special reason to direct the benefit to the victims of the very same injustice? Supplying an affirmative answer is the same thing as solving the common-source problem.

Again, it is important to underline that we are here only looking for a special reason for beneficiaries to *prioritize* the victims, not a reason that is supposed to knock out all other moral considerations. Some critics have complained that BPP is absurd since it instructs Beneficiary to remedy Victim's loss even though Unfortunate might be in much worse shape (Knight 2013, p. 596). This would indeed be absurd, but a proponent of BPP need not say that Beneficiary has a *conclusive* reason to direct her disgorged benefit to Victim. As we just noted, it is crucial to distinguish between what Beneficiary should do all-things-considered and what she should do as far as BPP is concerned. It is perfectly possible to hold that BPP instructs Beneficiary to assist Victim while maintaining that other concerns (for example, desperate need) mean that she should assist Unfortunate instead. We are here only interested in whether there is any reason to believe, as BPP says, that Beneficiary has an extra reason to assist Victim simply because they are connected in virtue of the same unjust action. This is compatible with holding that this reason is quite weak all-things-considered (for example, that it can only break ties between otherwise identically situated recipients of assistance).

2. Defeating unjust plans

So we are trying to identify cases where beneficiaries of an injustice have a reason to prioritize the victims of the same injustice. But not just any reason will do. Someone might think that the common-source problem is not much of a 'problem' given that we can easily imagine explanations why a beneficiary should prioritize the victim with whom she is causally connected. For example, doing so might promote the most welfare in a particular situation, or promote distributive justice.⁹ This would give beneficiary a utilitarian or a distributive reason to direct the benefit to the victim. But the basis for doing so is now entirely dependent on the contingent facts of the case. We should cease to be source sensitive as soon as it does not promote aggregate welfare or distributive justice. This is tantamount to saying that we should never be source sensitive, which is obviously no solution to the common-source problem. To consider the problem solved, there must be a stronger connection between being an innocent

9. In a two-person world populated by Victim and Beneficiary, a prominent version of luck egalitarianism would say that Beneficiary should assist Victim only if Wrongdoer's act renders Beneficiary better off than Victim (Temkin 1993). However, on a version of luck egalitarianism that focuses on neutralizing differential brute luck, Beneficiary should assist Victim no matter if she is better off, simply because Beneficiary has had good brute luck and Victim has had bad brute luck (Hurley 2003).

beneficiary of an injustice and the reason to be source sensitive.¹⁰ Since BPP is a principle of corrective justice this connection must moreover draw on the aim of righting wrongs (Butt 2014; Huseby 2015; Lippert-Rasmussen 2016).¹¹ So we are looking for an explanation that, in addition to establishing something more than an accidental basis for paying attention to common sources, also belongs to the realm of corrective justice.

I will argue that there are two explanations that satisfy these criteria. First, as explained in this section, source sensitivity may follow from the idea of defeating the immoral plan the perpetrator of an injustice might have had in terms of the allocation of benefits and harms. Second, as explained in the following section 3, source sensitivity might follow from what I will call *weak restitution*. Before I go on to develop these explanations, however, I should first say a few words about what it means to say that BPP is a principle of corrective (as opposed to distributive) justice.

The relationship between corrective and distributive justice is complex and deeply contested (Cohen 2016). Put generally, distributive justice concerns the allocation of goods, whereas corrective justice is about ‘rectification of the wrongful invasions of legitimate entitlements that people hold’ (Iverson 2006, p. 511). Putting it this way reveals that the two may be related in a particular way: distributive justice can be relevant for fleshing out the ‘legitimate entitlements’ the violation of which calls for rectification.¹² Indeed, some argue that there must be a reasonably just background distribution before rectification is called for as a matter of justice (Perry 2000). It is nevertheless true that corrective and distributive justice operate according to different logics. For example, when a billionaire’s car is stolen, corrective justice may demand that the car be returned even though the theft took us closer to a just distribution. This is true if the billionaire—although she may be unjustly rich—had a legitimate entitlement not to have her car stolen.¹³ Many find that examples like this show that corrective justice has an autonomous place in ordinary moral thinking. Corrective justice is about illicit *changes*, not patterns, and with the steps required to revert those changes. In slogan form, it is about ‘righting wrongs’.¹⁴

Since BPP is a principle of corrective justice we are looking for reasons that are recognizably about righting wrongs. To get things started, consider the fol-

10. But I agree with Haydar & Øverland (2014) that it is needlessly strong to demand that there must be a necessary connection such that *every* innocent beneficiary of an injustice *always* has a special reason to remedy the victims of the injustice. Haydar & Øverland rightly argue that BPP is only activated given that certain further conditions (they call it ‘boosting’ factors) are satisfied.

11. BPP is sometimes advanced as a principle for the allocation of remedial responsibility, which strictly speaking is not about (or does not have to be about) corrective justice. For remedial responsibility, see Miller (2001).

12. Cohen (2016) here usefully distinguishes between the *subordination thesis* (corrective justice is subordinate to distributive justice since all correction is about fixing maldistribution) and the *autonomy thesis* (corrective justice is at least sometimes not subordinate to distributive justice).

13. This example is from Goodin (2013, p. 479), who adds that corrective justice ‘typically takes precedence over’ distributive justice. I think that is probably true, but nothing in the paper turns on how corrective and distributive justice are ranked or weighed against each other.

14. ‘Righting wrongs’ can mean different things. See the framework in Goodin (2013), which distinguishes between compensation, punishment, restitution, punishment, and disgorgement.

lowing scenario:

Thefts. Ada steals \$100 from Bob and gives them to wholly innocent Clare as a gift. Meanwhile, David, who is totally unrelated to the whole situation, has also been robbed of \$100.

Ada clearly has the primary responsibility to compensate Bob in this case, but suppose she has fled the scene never to be seen again.¹⁵ Suppose further, as many are inclined to say, that Clare should disgorge her tainted \$100, at least when doing so would serve some important purpose. Should Clare give the money to Bob or David?

Source *insensitive* views will say that it is normatively irrelevant that Clare and Bob are causally connected in virtue of Ada's act. Clare might as well flip a coin, or give Bob and David \$50 each (Huseby 2015, p. 220). BPP, however, will say that Clare should give the money to Bob. One explanation for this draws on what the perpetrator of the injustice may have intended. Suppose Ada found Bob an annoying character that deserved to be taken down a peg and concluded that the best way of doing so would be to steal \$100 from him and give it to his least favorite person, Clare. Since the wrong now *contains* elements having to do with the particular distribution of losses and gains, it seems that Clare's causal connection to Bob's loss does matter from the perspective of corrective justice. Clare has a reason to remedy specifically Bob's loss because this is necessary to defeat Ada's plan.¹⁶

Parr (2016) has recently defended this view (cf. Haydar & Øverland 2014). Parr argues that being the intended beneficiary of an injustice provides an extra reason to take remedial action. Goods that are the intended result of injustice are 'morally tainted', he argues, and moral taint generates 'an extra reason for the recipient to relinquish the good or the benefit it yields' (Parr 2016, p. 994). The fundamental reason for this is that it is bad when 'immoral plans' succeed, both because it is bad for the perpetrator and because it is impersonally bad. It follows that it is more important, for example, to remedy a loss that was deliberately inflicted on someone than remedying a comparable loss that happened for natural causes.

This account seems broadly right to me. For anyone who feels the normative force of corrective justice, there is presumably some sense in which it is desirable that a wrongdoer's immoral plan is thwarted.¹⁷ However, surprisingly,

15. I take it that it is uncontroversial that perpetrators of injustice stand in a special moral relationship with their victims. This is brought out nicely by the example of apologies (Cohen 2016). An apology for wrongdoing is clearly owed from the wrongdoer specifically to the wronged party.

16. I think that the value of defeating immoral or unjust plans is the main normative force behind the example in Butt (2014, pp. 344–345). It may be thought that the relevant factor in *Thefts* is that Clare has Bob's property. I discuss this in the next section.

17. Parr's idea that immoral plans should be defeated for the wrongdoer's sake (as her life would otherwise be blighted) is more unusual and not necessary for the argument to go through. Parr also mentions that it is important to thwart immoral plans so as to discourage them (Parr 2016, p. 994).

Parr rejects that his account shows that common sources can have normative significance. While he believes that intended beneficiaries of immoral plans have an extra reason to give up their tainted benefits, he explicitly argues that it is unimportant whether the benefits go to the victims of the same plan as opposed to other people. The beneficiaries should instead consider ‘the claims for compensation of victims of injustice more generally’ (Parr 2016, p. 995).¹⁸ In *Thefts*, for example, Clare should either flip a coin between giving \$100 to Bob or David, or give them \$50 each.

Parr’s position here follows from the aforementioned idea that it would be unfair to prioritize Bob over David given that they have undeservedly suffered comparable losses. From a perspective of distributive justice this may be so, but here we are interested in corrective justice and it seems clear that the idea of defeating immoral plans *is* perfectly able to supply BPP with a solution to the common-source problem thus understood. Ada’s immoral plan would surely be more roundly defeated if Clare gave the money to Bob rather than David. After all, Ada’s plan was to give Clare \$100 *and* to steal it from Bob. If Clare were to give the money to someone else, half of this plan—to make Bob worse off—would succeed. This gives Clare a reason to return the money to Bob that she does not have in relation to other people.

The idea of defeating immoral plans can thus solve the common-source problem. It takes the idea of righting wrongs and then adds that the *wrong* may have been accompanied by an intention to benefit some people and harm others. Such an intention is of course not always there. But when it is there, it seems plausible that corrective justice may give beneficiaries of an injustice a special reason to address the intended victims of the injustice.

3. Restitution of misallocated benefits

The previous discussion may appear unnecessarily complicated. A more immediate—and generally applicable—explanation for favoring Bob seems to be that Clare is in possession of *Bob’s* money, not David’s. This explanation takes us into the territory of restitution, which is a species of corrective justice that focuses on ‘the objects that the victim has lost through the wrongdoing’ and whose aim is to get those objects back ‘into the hands of their rightful owner’ (Goodin 2013, p. 481).

Drawing on restitution to solve the common-source problem is problematic for a number of reasons. However, I will argue that there is a sense of restitution—I will call it *weak* restitution—that BPP could adopt and which would give the principle another way to solve this problem. But first it should be explained why restitution seems an uncomfortable fit for BPP.

18. Thus, his account can be described as a version of the Generalized BPP. Parr also holds that it matters how badly off the recipient is (2016, p. 995). For reasons given above, this is something proponents of BPP could happily concede (for normative reasons other than BPP).

3.1 Problems with restitution

A first objection against drawing on restitution is that it turns BPP into a *resourcist* principle by definition when some would prefer to understand it as a *welfarist* principle.¹⁹ According to the latter approach, BPP would not say that someone is a beneficiary of an injustice simply because they are in possession of resources that were unjustly taken from someone else. The crucial thing is instead that they are rendered *better off*—Clare is not a beneficiary of Ada's theft if it makes her life go worse.²⁰ Though this is the right thing to say according to a welfarist understanding of BPP, there is nothing obviously wrong about treating BPP as a resourcist principle. Indeed, my impression is that this is the most common way to understand the principle. On a resourcist version of BPP, getting resources as a result of injustice is the *same thing* as being a beneficiary of an injustice, at least on an actual-history understanding of that term.²¹ It is also worth noting that receiving \$100 is typically good for one's welfare, so even a welfarist would normally have to agree that Clare is a beneficiary of Ada's unjust act.

Another critique is that restitution is insufficiently general. It cannot explain, for example, that beneficiaries would have reason to prioritize victims when we are dealing with resources that are not 'discrete, tangible "thing[s]"' (Goodin & Barry 2104, p. 364). This is especially clear when we consider immaterial resources like education, which we cannot simply take from someone and give to someone else, but money raises the same concern that restitution is out of place. The intuition that Clare has a reason to direct the benefit to Bob seems much less secure when we are dealing with \$100 as opposed to, say, a family heirloom. This is because money is, as the economists say, a 'fungible' good.²² But since there is no reason to say, a priori, that BPP must be activated by every type of resource imaginable, the value of this critique is unclear.

The basic problem with appealing to restitution is instead that it appears to draw on a different principle that seems orthogonal to BPP—the principle that property should be returned to the rightful owner. One worry is that this risks rendering BPP trivial and redundant, since the principle then only expresses an old and familiar idea with new terminology. But the more serious worry is that once we focus on restitution, it no longer seems to matter whether someone has come to possess someone else's property as a result of an injustice (Parr 2016). Suppose Bob's \$100 was not stolen but simply carried into Clare's possession by a gust of wind. Restitution appears to give Clare just as strong

19. For a good discussion of different 'currencies' of justice, see Hurley (2003, chapter 5).

20. For the same reason a welfarist would not say that Bob is a victim of injustice unless his welfare took a negative hit.

21. If BPP is understood as a counterfactual view, it is not enough that Clare has been rendered better off *than before*; it also have to be the case that she is rendered better off *than otherwise*. Such counterfactual claims inevitably raise difficult questions about the baseline against which the ex post situation is to be compared. These questions are equally pressing on a resourcist or welfarist understanding of 'better off', but resourcism is arguably easier to pair with an actual-history understanding of BPP.

22. Fungible goods are goods that are mutually substitutable. Money is fungible in the sense that one \$100 note is mutually substitutable with another \$100 note. It is admittedly possible that even money (cash) is non-fungible—a particular \$100 note might have some special significance to me—but the general point still stands.

a reason to return the money in this scenario as when it was given to her by Ada. This sits very uneasily with BPP since this principle states that there is something distinctive about benefitting *from injustice*.

Proponents of BPP have a choice between two options in responding to this problem. The first is to argue that injustice does make a difference, in affecting the *strength* of the duty of restitution. Put briefly, the idea here would be that it is harder for a current possessor to *acquire* property rights over an object if the original owner was unjustly deprived of it.²³ The greater the wrong that was involved in depriving someone of their property, the more pressing it is to return the property. Though I do not think that this idea is hopeless—if there is ever such a thing as acquiring property rights over an object that the original owner did not voluntarily relinquish, it is not unreasonable to think that the presence or absence of injustice matters for this process—it is clearly somewhat unusual.

The second and more common option is to argue that BPP is only supposed to operate in situations where property rights have not been violated. Haydar & Øverland (2014, p. 352) have the following case:

Bribe. ‘Adam and Sam are applying for the same job. It is certain that Adam will get the job since he is clearly the best candidate. Polly has a conflict with Adam and wants to make sure that he doesn’t get the job. So he bribes the members of the selection committee to make sure that they will not offer the job to Adam. The plot works and Sam gets the job as a result. (Let us assume that it is no longer possible to reverse the decision and hire Adam, and that, had Sam failed to get the job, he would have obtained another job that pays 20% less.)’

Here the intuition is strong that Sam has a special reason to disgorge his extra income to Adam. But the basis for this, Haydar & Øverland argue, is not that Adam’s property rights have been violated. Sam has the job Adam would otherwise have had, and as a consequence earns money Adam could have earned, but none of this is something over which Adam has property rights. Haydar & Øverland suggest that the main factor explaining our reaction to *Bribe* is instead that Polly’s wrongdoing was a direct interference in a ‘structured competition’.²⁴

I agree that Sam is not in violation of Adam’s property rights in the same way Clare is in violation of Bob’s property rights in *Thefts*. But it does not seem accurate to say that Sam’s reason to direct his unjust benefit (the extra 20 percent income) to Adam is not one of restitution. After all, restitution is the idea

23. For example, the new possessor might have gotten used to the object and might have started to plan her life around it. In such cases we could talk of the injustice having been ‘superseded’ (Waldron1992).

24. Structured competition occurs when there is a ‘relatively fair competitive procedure for allocating a given benefit and reward’ (Haydar & Øverland 2014, p. 354). Haydar & Øverland argue that we are especially troubled by interferences with such competitions. It will be observed, though, that *Bribe* also activates the aforementioned idea of defeating immoral plans, since Polly intended to prevent Adam from getting the job. Haydar & Øverland (2014) argue that this, too, can be a ‘boosting’ factor necessary to explain why the moral position of innocent beneficiaries is different compared to people in general. They also believe that it matters whether the perpetrator of the injustice directly bestowed the benefit upon the beneficiary.

of returning objects to their rightful owner, and although we cannot speak of Adam having property rights to the income he never received, it is nevertheless plausible that the income belongs to him in the weaker sense that he would have had it, were it not for an injustice committed against him. To see this clearly, suppose Adam got the worse-paying job that Sam would have gotten had Polly not interfered. Surely it is then reasonable to say that the difference between Adam's (lower) income and Sam's (higher) income in some sense belongs to Adam. This suggests that we should distinguish between a weaker and a stronger form of restitution. *Strong* restitution is when someone returns a discrete and individuated object (e.g., a car, a family heirloom) to the person who has property rights over that object. *Weak* restitution is when objects that are *not* discrete and individuated are returned to where they would have resided were it not for an injustice.²⁵ Sam giving his extra income to Adam is a case of weak restitution thus understood—he gives Adam the income that Adam would have gotten were it not for Polly.²⁶ The two types of restitution shares the same concern that resources are not in the location they would have been if no injustice took place. They also agree that this 'misallocation' should be reversed as a matter of corrective justice. But they differ as to which types of resource they deal with.

3.2 Weak restitution for BPP

The concept of weak restitution allows BPP to help itself to the forceful intuition that unjust misallocations of resources should be reversed without collapsing into a mere extension of the idea that property should be returned to its rightful owners. For example, it is arguably weak restitution that is doing the work when people claim that consumers in rich countries have rectificatory obligations towards workers in sweatshops in poor countries. The idea here is presumably that the consumers are enjoying cheap goods as a direct result of the workers being underpaid. This is tantamount to saying that they have (and therefore owe) some wealth that, though not the workers' property, would have been enjoyed by the workers under fairer conditions. Weak restitution also seems involved when people argue that the costs of averting climate related harm should be shouldered by those who have benefitted from greenhouse gas emissions. Past emissions have contributed significantly to the national wealth of the world's richest countries. Ed Page (2012) argues that the holders of that wealth are unjustly enriched and should therefore shoulder a large share of the burden of climate change mitigation and adaptation. A reasonable interpretation of this is that the rich countries are sitting on a wealth that would have been more evenly spread if the atmosphere's absorptive capacity had been more equitably used. The countries sitting on a disproportionate share of the tainted wealth therefore owe it to other countries to cover the costs of combat-

25. The structure of weak restitution is thus similar to the account sketched in Nozick (1974, pp. 152–153). See also Lawford-Smith (2014) on 'the world going other than it ought.'

26. Some might prefer to call this compensation, but I here follow Goodin (2013) in saying that compensation is concerned with restoring victims' welfare whereas restitution is an 'object-centered' form of corrective justice.

ting climate change and its adverse effects (Page 2012, p. 315–316).²⁷

But maybe weak restitution activates BPP in too many cases? Haydar & Øverland (2014, p. 351) seem to think so, on the back of the following case:

Invasion. ‘Country A unjustifiably invaded country B and destroyed its oil producing facilities. This has led to higher oil prices, which in turn benefitted country C, another oil producing country.’

Haydar & Øverland find it intuitive that country C has no special reason to assist country B. Their main reason for this is that the two countries are not engaged in a structured competition but are merely operating in the same market. Weak restitution challenges that conclusion, since the important thing according to this perspective is that country C is sitting on oil revenue that would have resided in country B were it not for country A’s unjust invasion. Contrary to Haydar & Øverland, however, I do not think that this is a counterintuitive implication. The fundamental concern behind weak restitution is that resources are allocated in a certain way as a result of an injustice, and this condition is satisfied in *Bribe* and *Invasion* alike. The presence of a structured competition makes it clearer where a benefit would *reside* if no injustice was committed, but the normative force behind correcting interferences with competitions has to do with fixing misallocations of benefits, and this can clearly occur even in the absence of competitions.²⁸ I would therefore argue that BPP does give country C a special moral reason to disgorge its extra oil revenue and direct it specifically to country B. It is crucial, though, that BPP does not end up saying that every benefit that is causally downstream from an injustice comes within the purview of restitution. As Goodin and Barry argue (2014, p. 365) benefit must be an ‘essential’ rather than an ‘incidental’ feature of the injustice. This is not the place to explore this important restriction on BPP. I will just note that the restriction seems satisfied in a case like *Invasion*. Country C’s increased revenue is a direct consequence of the ceasing oil export from country B, which (let us assume) would have exported oil at normal rates were it not for the unjust invasion.

4. The Indirect Transfer Objection

It may be objected that neither explanation discussed above solves the common-source problem because they are both vulnerable to what we may refer to as the *indirect transfer objection*. Consider again the case where Polly cheats Adam out of a well-paying job that Sam instead gets. Now consider:

27. Climate change is arguably a tricky case for BPP. For example, it is not clear that extensive greenhouse gas emissions, for much of their history, could be called unjust, let alone be said to involve an intentionally immoral plan. See here Page’s (2012) useful distinction between ‘wrongful enrichment’ and ‘unjust enrichment’ versions of BPP as well as my remarks on ‘objective injustice’ (Duus-Otterström 2014). Intergenerationally, BPP also invites the non-identity problem (Caney 2006). I cannot get further into these fascinating questions here.

28. Structured competition makes it clearer where a benefit would reside because specifies the actors that are involved and because there is a procedure for allocating the benefit. In a sports competition, for instance, we know that the gold medal belongs to the runner up if it turns out that the original winner cheated.

Direct remedy. Sam gives 20 percent of his income to Adam.

Indirect remedy. Sam gives 20 percent of his income to a charity. Edna, who is unrelated to the whole situation, gives Adam a sum of money that is equivalent to 20 percent of Sam's income.

According to the indirect transfer objection, there is no difference between these two scenarios as far as corrective justice is concerned. In both scenarios, any plan Polly might have had to inflict a loss on Adam and to benefit Sam would be defeated, and restitution also seems satisfied. This suggests that source sensitivity does not matter after all. Someone other than Sam can just as well right the wrong that was committed against Adam.

In response, recall that the common-source problem is not about explaining why Adam's loss must be remedied specifically by Sam. BPP should just happily accept that his loss could be adequately remedied in other ways.²⁹ The problem instead consists in showing that Sam has moral reason to address Adam's loss that he does not have to people who have suffered losses in general. Thus, the challenge is not to differentiate between *Direct remedy* and *Indirect remedy* but between:

Source sensitivity. Sam decides to give up 20 percent of his income. He gives it to Adam.

Source insensitivity. Sam decides to give up 20 percent of his income. He gives it to Donna, who has been cheated out of a similar job by someone else.

This is a challenge the two explanations discussed above can meet. Provided that some further conditions are met, they can both (in combination or taken separately) explain why Sam has a reason of corrective justice to give the money to Adam that he does not have towards Donna.³⁰ Of the two, it is fair to say that the one focusing on immoral plans is the more robust. There is nothing arbitrary about Sam's differentiating between Adam and Donna since this is necessary to defeat Polly's immoral plan. But even weak restitution gives Sam a reason to direct his disgorged income to Adam. I readily admit, however, that weak restitution is more compelling when it comes to distinguishing between:

Special remedy. Adam is owed some extra income. The duty to provide the extra income falls on Sam.

General remedy. Adam is owed some extra income. The duty to provide the extra income falls on people in general.

29. One possibility is that the victim may be source sensitive such that she will not consider herself fully compensated unless the beneficiary remedies her loss. At least as long as we subscribe to a subjective understanding of compensation, whereby the victim's subjective welfare must be fully restored, this would speak in favor of the beneficiary remedying the victim. But it is not clear that this constitutes a principled reason for source sensitivity—if victims *should not* have this attitude, perhaps we would be justified in withholding full compensation. For instructive discussion of compensation, see Goodin (1989).

30. For a similar formulation, focusing on singling out a remedying agent among many capable agent, see Haydar & Overland (2014, p. 352).

Unlike *Source sensitivity* and *Source insensitivity*, these scenarios introduce different remedying agents, not different victims. This is not the focus taken in this paper, which has been preoccupied with the more modest question of whether innocent beneficiaries of an injustice, if they are to disgorge their unjust benefits, have any reason to prioritize the victims of the injustice from which they benefit. But it is clear that BPP is relevant for these scenarios too—indeed, BPP is usually understood as a principle for selecting remedying agents—and weak restitution offers a compelling reason to prefer *Special remedy* to *General remedy*. It is Sam that possesses the extra income Adam would have enjoyed if it was not for Polly's interference.

It may still seem that BPP's source sensitivity is objectionable. Suppose Adam, while robbed of a well-paying job, still leads a perfectly good life. It seems absurd to suggest that Sam should direct the tainted part of his income to Adam when there are much more pressing cases of injustice to attend to, such as sweatshops, tyrannical rule, climate change, and world poverty. Call this the *more pressing concern objection*. We have already discussed this objection in the beginning of the paper, but the objection is so natural that it is worth responding to it again. The response is that while BPP says that Sam has a reason to prioritize Adam's loss, this does not mean that he *should* direct his extra income to Adam when all relevant factors are considered. Reflecting on the good his money could do, Sam might rightly conclude that he should make a donation to Oxfam instead. The BPP only says that if Sam decides to give the money to Oxfam, there is one cause for regret: the injustice Polly committed against Adam is not corrected. In my view, that is not an unreasonable thing to say, and the fact that Polly's injustice was comparatively minor does nothing to change this impression.

5. Conclusion

Many philosophers and political theorists today believe that beneficiaries of an injustice may have special moral reason (or even a special duty) to remedy the harmful effects of that injustice even though they did not contribute to it. Several critics have argued that this view is mistaken. As far as innocent beneficiaries are concerned, it is normatively irrelevant that benefits and harms flow from the same unjust source, and thinking that it does matter leads to various kinds of unfairness.

I have argued that there are explanations having to do with corrective justice for why innocent beneficiaries of an injustice may have a special moral reason to assist the victims of the same injustice. Doing so might defeat the perpetrators immoral plan and it might be called for on the basis of what I have called weak restitution. The Beneficiary Pays Principle is a relatively young normative principle that may well have many problems, but if I am right the common-source problem is not one of them.

References

- Anwander, Norbert (2005) "Contributing and benefiting: two ground for duties to the victims of injustice", *Ethics & International Affairs* 19(1): 39–45.
- Barry, Christian & Robert Kirby (2015) "Skepticism about beneficiary pays: a critique", *Journal of Applied Philosophy*. Online first.
- Butt, Daniel (2007) "On benefiting from injustice", *Canadian Journal of Philosophy* 37(1): 129–152.
- Butt, Daniel (2009) *Rectifying International Injustice: Principles of Compensation and Restitution between Nations*. Oxford: Oxford University Press.
- Butt, Daniel (2014) "'A doctrine altogether new and untenable': defending the beneficiary pays principle", *Journal of Applied Philosophy* 31(4): 336–348.
- Caney, Simon (2005) "Cosmopolitan justice, responsibility, and global climate change", *Leiden Journal of International Law* 18(4): 747–775.
- Caney, Simon (2006) "Environmental degradation, reparations, and the moral significance of history", *Journal of Social Philosophy* 37(3): 464–482.
- Cohen, Andrew (2016) "Corrective vs. distributive justice: the case of apologies", *Ethical Theory & Moral Practice* 19(3): 663–677.
- Duus-Otterström, Göran (2014) "The problem of past emissions and intergenerational debts", *Critical Review of International Social and Political Philosophy* 17(4): 448–469.
- Goodin, Robert (1989) "Theories of compensation", *Oxford Journal of Legal Studies* 9(1): 56–75.
- Goodin, Robert (2013) "Disgorging the fruits of historical wrongdoing", *American Political Science Review* 107(3): 478–491.
- Goodin, Robert & Christian Barry (2014) "Benefiting from the wrongdoing of others", *Journal of Applied Philosophy* 31(4): 363–376.
- Goodin, Robert & Avia Pasternak (2016) "Intending to benefit from wrongdoing", *Politics, Philosophy & Economics*. Online first.
- Gosseries, Axel (2004) "Historical emissions and free-riding", *Ethical Perspectives* 11(1): 36–60.
- Haydar, Bashar & Gerhard Øverland (2014) "The normative implications of benefiting from injustice", *Journal of Applied Philosophy* 31(4): 349–362.
- Hurley, Susan (2003) *Justice, Luck, and Knowledge*. Cambridge, MA: Harvard University Press.
- Huseby, Robert (2015) "Should the beneficiaries pay?", *Politics, Philosophy & Economics* 14(2): 209–225.
- Iverson, Duncan (2006) "Historical injustice". In John Dryzek, Bonnie Honig and Anne Phillips (eds.) *The Oxford Handbook of Political Theory*. Oxford: Oxford University Press.
- Knight, Carl (2013) "Benefitting from injustice and brute luck", *Social Theory and Practice* 39(4): 581–598.
- Lawford-Smith, Holly (2014) "Benefitting from failures to address climate change", *Journal of Applied Philosophy* 31(4): 392–404.

- Lippert-Rasmussen, Kasper (2016) "Affirmative action, historical injustice, and the concept of beneficiaries", *The Journal of Political Philosophy*. Online first.
- Miller, David (2001) "Distributing Responsibilities", *The Journal of Political Philosophy* 9(4): 453–471
- Nozick, Robert (1974) *Anarchy, State, and Utopia*. New York: Basic Books.
- Page, Ed (2012) "Give it up for climate change: a defence of the beneficiary pays principle" *International Theory* 4(2): 300–330.
- Parr, Tom (2016) "The moral taintedness of benefiting from injustice", *Ethical Theory & Moral Practice* 19(4): 985–997.
- Pasternak, Avia (2014) "Voluntary benefits from wrongdoing", *Journal of Applied Philosophy* 31(4): 377–391.
- Perry, Stephen (2000) "On the relationship between corrective and distributive justice". In Jeremy Horder (ed.) *Oxford Essays in Jurisprudence*. Oxford: Oxford University Press.
- Pogge, Thomas (2008) *World Poverty and Human Rights*. Cambridge: Polity, 2nd Edition.
- Shue, Henry (1999) "Global environment and international inequality", *International Affairs* 75(3): 531–545.
- Temkin, Larry (1993) *Inequality*. Oxford: Oxford University Press.
- Thomson, Judith Jarvis (1973) "Preferential hiring", *Philosophy & Public Affairs* 2(4): 364–384.
- Waldron, Jeremy (1992) "Superseding historic injustice", *Ethics* 103(1): 4–28.

Arbetsrapporter/Working papers

- 2016:3 Svallfors, Stefan. *Politics as organized combat – new players and new rules of the game in Sweden*
- 2016:2 Svallfors, Stefan. "Most MPs are not all that sharp." *Political employees and representative democracy*
- 2016:3 Svallfors, Stefan. *Politics as organized combat – new players and new rules of the game in Sweden*
- 2013:1 Mkandawire, Thandika. *Neopatrimonialism and the Political Economy of Economic Performance in Africa: Critical Reflections*
- 2011:13 Theobald, Hildegard. *Long-term Care Insurance in Germany*
- 2011:12 Hallberg, Daniel; Lindh, Thomas & Žamac, Jovan: *Study achievement for students with kids*
- 2011:11 Johansson, Peter. *Den politiska momsdebatten i Sverige efter 1990. Ett bidrag till studiet av skattereformers politiska hållbarhet*
- 2011:10 Adman, Per & Strömblad, Per. *Utopia becoming dystopia? Analyzing political trust among immigrants in Sweden*
- 2011:9 Gavanoas, Anna & Darin Mattsson, Alexander. *Bland Rolexklockor och smutsiga trosor. Om skattereduktioner och segmentering på den svenska hushållstjänstemarknaden*
- 2011:8 Bäckman, Olof; Jakobsen, Vibeke; Lorentzen, Thomas; Österbacka, Eva & Dahl, Espen. *Dropping out in Scandinavia Social Exclusion and Labour Market Attachment among Upper Secondary School Dropouts in Denmark, Finland, Norway and Sweden*
- 2011:7 Avdic, Daniel & Gartell, Marie. *The study pace among college students before and after a student aid reform: some Swedish results*

Forskningsrapporter/Research reports

- 2016:2 Ekholm, Anders et al. *Bortom IT. Om hälsa i en digital tid*
- 2016:1 Carlsson, Christoffer. *Att lämna våldsbejakande extremism*
- 2014:8 Ekholm, Anders & Markovic, Drasko. *När vården blir IT. En underlagsrapport till eHälsokommittén*
- 2014:7 Lindblom, Clara. *Success factors for effective labour market projects*
- 2014:6 Lindblom, Clara. *Framgångsfaktorer för effektiva arbetsmarknadsprojekt. En jämförande studie av femton socialfondsprojekt*
- 2014:5 Bygren, Magnus; Lindblom, Clara & Szulkin, Ryszard. *The more things change, the more they stay the same. A follow up of participants in Social Fund financed projects*
- 2014:4 Karlsson, Jonas; Szulkin, Ryszard; Lindblom, Clara & Bygren, Magnus. *Nya aktörer inom arbetsmarknaden. Hur väl lyckas de och till vilken kostnad?*
- 2014:3 Bygren, Magnus; Lindblom, Clara & Ryszard Szulkin: *Framgång eller återgång till det normala? En uppföljning av deltagare i socialfondsfinansierade projekt*
- 2014:2 Mood, Carina & Jonsson, Jan O. *Poverty and welfare among children and their families 1968–2010*



BOX 591, SE-101 31 STOCKHOLM
SWEDEN
PHONE: +46 8-402 12 00
E-POST: INFO@IFFS.SE
WWW.IFFS.SE