

## *On Benefiting from Injustice*

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How do we acquire moral obligations to others? The most straightforward cases are those where we acquire obligations as the result of particular actions which we voluntarily perform. If I promise you that I will trim your hedge, I face a moral obligation to uphold my promise, and in the absence of some morally significant countervailing reason, I should indeed cut your hedge. Moral obligations which arise as a result of wrongdoing, as a function of corrective justice, are typically thought to be of a similar nature. If I set fire to your hedge, I owe you compensation: both for the damage caused to your property and for any directly related losses you may have suffered as a consequence of my actions. It is more controversial, although not uncommon, to suggest that agents can acquire moral obligations as a result of the actions of others. Cases of rescue are an obvious example: if another individual is pushed into a pond and is about to drown, and I (and only I) can rescue her at no risk and little cost to myself, many would maintain that I face an obligation to save her. This obligation may impose costs upon me (which may be unrecoverable), but it mandates me regardless of the fact that I have done nothing to bring this obligation upon myself, other than happening (blamelessly) to be in a particular place at a particular time. The case of how an agent may be said to acquire moral obligations involuntarily is particularly important in philosophical consideration of present day obligations arising from historic injustice. One commonly expressed claim has it that agents can acquire rectificatory obligations as a result of *benefiting* from acts of injustice committed by others, such as their ancestors. Judith Jarvis Thomson makes the case in the context of the debate over positive discrimination, maintaining that it is not inappropriate to impose costs upon young white males, even though 'no doubt few, if

any, have, themselves, individually, done any wrongs to blacks and women,' since 'they have profited from the wrongs the community did.'<sup>1</sup> More generally, claims that various Western nations owe compensation to their former colonies as a consequence of the (disputed) fact that they are benefiting from colonialism and/or from slavery in the present day are commonplace.

This article examines, and defends, the claim that agents can acquire rectificatory obligations through involuntarily benefiting from acts of injustice.<sup>2</sup> I start, in Part I, by considering David Miller's article 'Distributing Responsibilities,'<sup>3</sup> which focuses on the distribution of duties of assistance, in cases where it is accepted that someone ought to provide assistance to those in need but where it is controversial upon whom the costs of assistance should fall. Miller proposes four morally relevant forms of connection with the victims of injustice which can give rise to moral obligations to assist — I propose that benefiting from the plight of those in desperate need, however involuntarily, constitutes an additional morally relevant form of connection. Part Two goes further, and argues that moral agents can possess compensatory obligations as a result of involuntarily benefiting from injustice even when the victims of injustice do not need to be lifted above some minimal threshold level of well-being.

## I Miller on duties of assistance

In 'Distributing Responsibilities,' David Miller seeks to address what he calls 'the problem of remedial responsibility,' which he defines as follows:

To be remedially responsible for a bad situation means 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.<sup>4</sup>

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1 Judith Jarvis Thomson, 'Preferential Hiring,' in *Rights, Restitution and Risk: Essays in Moral Theory* (London: Harvard University Press 1986) 135-53, at 152

2 I use 'involuntary' here, and throughout, to indicate that the benefits in question are not voluntarily acquired or accepted, in that they are conferred upon those who receive the benefits without an exercise of the will on the part of the beneficiaries.

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

4 Miller, 'Distributing Responsibilities,' 454

The kinds of 'bad situation' Miller has in mind are those where individuals or groups are below some minimal threshold of well-being, such as Iraqi children who are malnourished and lack access to proper medical care. In such cases, Miller supposes that it is not in question whether the situation requires a remedy, given that it is possible that a remedy could be given;<sup>5</sup> the interesting question is who it is that should do the remedying (in the absence of an institutional mechanism for formally assigning responsibility.) His aim is to find a principle, or set of principles, for assigning this responsibility 'which carries moral weight, so that we can say that agents who fail to discharge their remedial responsibilities act wrongly and may properly be sanctioned.'<sup>6</sup> His methodology here makes explicit reference to our existing intuitive beliefs as to who it is that properly bears these responsibilities: his aim is to 'lay out principles for distributing responsibilities that we hope will command widespread agreement.'<sup>7</sup> He considers four different approaches that seemingly find support in the real world: based upon causal or on moral responsibility for the occurrence of the condition; on capacity for remedying the condition and on communal obligations to the affected party or parties. He concludes that no single approach can give a full account of who should remedy the situation in any given situation — using a single principle results in intuitively unpalatable outcomes. Instead, he argues for a 'connection theory,' whereby any of the four relations listed above may establish a sufficiently strong link between parties to allocate remedial responsibility. Which principle is to be invoked in a given case will depend upon its particular characteristics, so that 'when connections have to be weighed against each other, we can do no more than appeal to our shared moral intuitions about which is the stronger.'<sup>8</sup>

In this section I accept the idea of the connection theory, but argue for a fifth possible ground for the acquisition of remedial responsibility, specifically that of receiving benefits from the occurrence in question. My claim is that it is possible to think of cases where this form of

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5 This is consistent with his argument in *On Nationality* (Oxford: Clarendon Press 1995), in which he outlines a theory of basic rights with correlative obligations regardless of nationality. These are principally conceived of as rights to forbearance, 'but may also include rights to provision, for example in cases where a natural shortage of resources means that people will starve or suffer bodily injury if others do not provide for them' (74).

6 Miller, 'Distributing Responsibilities,' 454

7 Miller, 'Distributing Responsibilities,' 454

8 Miller, 'Distributing Responsibilities,' 469

connection seems intuitively to give rise to remedial responsibilities, even though other forms of connection, as listed by Miller, are also present.

Consider the following example. Four people, A, B, C and D, live on a remote island; each one possesses one quarter of the land. All four are entirely self-sufficient, and their landholdings are separated by high fences. There is little or no contact between the four. The only crop which will grow on the island is the extremely versatile Polychrestos plant, whose root can be used to produce a wide variety of different dishes, as well as providing raw materials for clothing and other household essentials. The Polychrestos plant's root grows underground and is harvested each autumn, and must not be disturbed at any other part of the year. Although this means that the size of the crop will only be revealed at harvest time, the climate on the island is extremely constant, and the island's underground river distributes water evenly throughout the island's soil. Nonetheless, the Polychrestos plant is a high maintenance crop; and the size of the underground portion of the plant therefore is strictly correlated to the amount of care the overground portion of the plant receives. In order for each person to support herself, she must produce 200 kilos of root per year. A is a very hard-working, industrious type, whose agricultural efforts, from dawn to dusk each day, mean that she produces 700 kilos per annum, allowing her to eat very well and produce a wide range of leisure products. B, C and D are rather laid-back in their approach to agriculture, and work just five hours a day to produce the minimum 200 kilos a year. After a year of this, however, D, a rather unsavoury character, decides she does not want to work even five hours each day. Unknown to all the others, she diverts the underground river away from B and C's sections of land, so that her land receives all of their water, boosting, she hopes, her own crop considerably. When harvest time comes, there are a number of surprises. A harvests her regulation 700 kilos. C's land has had no water, and consequently she has no crop. She is destitute, despite her efforts over the past year. It also emerges that D (no water engineer) has in fact diverted the water away from her own land as well as that of C, and B, far from having a failed crop, has been the beneficiary. To her surprise, she harvests 400 kilos. D is also destitute, and in rage and despair hangs herself with a rope fashioned from the last of the previous year's Polychrestos crop. This leaves the problem of C. Without her year's produce, C will die unless A and B provide her with the necessary 200 kilos. How should the remedial responsibilities be distributed? There appear to be no ties of community between the individuals, and neither is either causally or morally responsible for C's fate — that responsibility, in both senses, lies with D. This seems to leave us only with capacity — who is better placed to remedy C's situation? Either A or B could transfer the necessary 200

kilos to C, while retaining at least 200 kilos themselves, but evidently A's extra level of resources mean that her capacity is the greater. As such, on Miller's account, A has the greater connection to C and bears the remedial responsibility. Yet does not such a conclusion seem intuitively objectionable? Miller notes of the capacity approach that, 'its exclusive focus on the present necessarily blinds it to historical considerations'<sup>9</sup> — it does not consider how the resources which are to be redistributed came about. In this case, D's actions conferred benefits upon B. Should we not hold 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?

Thus, one could formulate the following claim in relation to remedial responsibilities:

*If the events which cause agent C to fall below the morally relevant threshold confer benefits upon agent B, then the fact of the receipt of these benefits, however involuntary, establishes a morally relevant connection between C and B, which may give rise to remedial obligations on the part of B.*

It is key that the claim only states that receipt of benefits *may* give rise to remedial obligations. As with Miller's four other forms of morally relevant connection, in cases where more than one party is relevantly connected to the suffering agent we must use our moral intuitions to determine either which party bears the primary responsibility, or how the costs should be shared amongst different parties. My claim in this section is simply that benefiting from injustice constitutes a fifth form of morally relevant connection to go alongside Miller's existing four, which may give rise to remedial responsibilities in certain circumstances. This improves the existing typology in two ways. The first is that it responds directly to the problems that Miller cites with the capacity problem, in that it identifies a class of resources which may be available for remedying a situation — those which have arisen elsewhere as a result of that situation — which do not have a problematic history, in that it is hard to link them to their present owners by any kind of desert claim. But furthermore, there are independent moral reasons for supposing that such resources should be redistributed. It is not so much that they represent a class of neutral resources which can be safely redistributed,

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9 Miller, 'Distributing Responsibilities,' 461

as that, insofar as they represent the 'fruits of injustice,' they may be seen as distortions within the overall scheme of distribution. This can be seen by examining Miller's account of when it is that different relations amongst the four he identifies become relevant in determining remedial responsibility. It is not always the case that this allocation of responsibility should turn on, for example, the extent to which different parties can effectively remedy the situation, and the costs they will bear in doing so. Thus in some cases there are 'independent moral reasons' for assigning remedial responsibility to a particular agent, and this applies most obviously when A is morally responsible for P's injury, when there may be two such reasons. These essentially stem from the concept of corrective justice. The first of these is that:

... first, where A has unjustly benefited from the injury he has inflicted on P — he has stolen something of P's or exploited him, for example — then if A is made to compensate P by returning what he has taken or in some way undoing the damage he has inflicted, then this will help to cancel out A's unjust gain, and so restore justice between them.<sup>10</sup>

Secondly, even if A has not benefited from his actions, he has wronged P, and owes P compensation. Our concern here is with the first of these reasons. We need not think that the only circumstances where a party enjoys an 'unjust gain' are those whereby she gains as a result of acting unjustly. In a legal context, for example, the category of 'unjust enrichment by subtraction' within the law of restitution is principally concerned with those circumstances whereby injustice in distribution arises despite the absence of wrongdoing; in the case, for example, of a mistaken payment.<sup>11</sup> It is possible to see the changes in distribution that emerge as a result of injustice as (to use Nickel's term) 'distortions' in the overall scheme of distribution, even if the party who has benefited has acted legitimately and has not committed any wrongdoing. Such cases may be seen as falling squarely within the preserve of corrective justice, defined by Nickel as, 'the matter of people having those things that they deserve and are entitled to, or otherwise ought to have, and compensation serves justice by preventing and undoing actions that would prevent people from having those things.'<sup>12</sup> Such an approach evidently serves an Aristotelian conception of justice as the maintenance of an

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10 Miller, 'Distributing Responsibilities,' 470

11 See Andrew Burrows, *The Law of Restitution* (London: Butterworths 1993), 16-23.

12 James W. Nickel, 'Justice in Compensation,' *William and Mary Law Review* 18 (1976) 379-88, at 382

equilibrium of goods between members of society.<sup>13</sup> If corrective justice is seen in this way, then, as Coleman writes, ‘rectification ... is a matter of justice when it is necessary to protect a distribution of holdings (or entitlements) from distortions which arise from unjust enrichments and wrongful losses. The principle of corrective justice requires the annulments of both wrongful gains and losses.’<sup>14</sup> The claim here, then, is that insofar as a third party directly benefits from unjust action and the victim suffers, a distortion in the fair scheme of distribution is created. Insofar as pinning remedial obligations on benefiting third parties seeks to correct this distortion, it appears that we have independent moral reasons for the allocation of responsibilities.

## II Benefiting from injustice and compensation for wrongs

It has been argued that the receipt of benefits — however involuntary — stemming from an act of injustice can confer remedial obligations upon a moral agent. The arguments put forward so far, however, apply only to a particular kind of remedial responsibility, namely responsibility for fulfilling duties of assistance. In such cases, it is a given that assistance should be given by someone; the question is who it should be. There is no question of not imposing a burden on *someone*. But such ‘bad situations’ are not the only ones which may be thought to be in potential need of remedy. What of ‘bad situations’ where one party is wronged and harmed by another, but not so badly harmed as to fall below a minimal level of welfare sufficient to bring duties of assistance into play? Might a third party who benefits from the injustice in such cases potentially acquire compensatory obligations? In speaking of ‘victims of injustice’ here, I mean to refer to people who have been both wronged and harmed by the actions of another agent or agents. The ‘bad situation’ here is not defined in terms of some independently derived minimal level of welfare, an absolute criterion; rather, it involves the position of the victim of injustice relative to a counterfactual position, which may be defined crudely as that where the

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13 For discussion of this in a legal context, see Lon L. Fuller and William R. Purdue Jr., ‘The Reliance Interest in Contract Damages,’ *Yale Law Journal* 46 (1936) 52-96. See also Ellen Frankel Paul’s discussion in ‘Set-Asides, Reparations and Compensatory Justice,’ *NOMOS XXXIII: Compensatory Justice*, John W. Chapman, ed. (New York: New York University Press 1991) 97-139 at 98-104.

14 Jules L. Coleman, *Markets, Morals and the Law* (Cambridge: Cambridge University Press 1988), 185

injured party would have been had the unjust action never occurred.<sup>15</sup> If we assume that the harm suffered is not sufficient to bring the victim below our welfare threshold, then why should we believe that anyone not responsible for causing the harm should have obligations to remedy it? Doing so seems to run counter to the common law principle of 'risk bearing,' which holds that losses should generally lie where they fall.<sup>16</sup> Cane defends the principle thus:

The shifting of a loss — or making one person compensate another for some misfortune — involves an alteration of the *status quo* and so it involves administrative expense. Therefore (it is usually asserted), the onus is on those who wish to shift a loss to justify the shift. Unless there is some good reason for shifting a loss, it should be left to lie where it falls.<sup>17</sup>

This position assumes an account of distributive justice that is generally happy to allow individuals to suffer losses without requiring that others pay compensation to make up for their losses. So the question is whether, within such an account, the fact that an innocent third party has benefited from another's wrongdoing gives us a good reason to shift some or all of the victim's losses to the third party. It is my belief that we lack a coherent set of principles to answer this question. For example, having just cited a common law principle, it is interesting to see how various different branches of legal theory cope with the problem. Consider, first of all, the case of accident liability in tort law, which determines under what circumstances agents should be liable to pay compensation to the victims of accidents. There is no real consideration here given to the concept of benefit at all. There is certainly debate over when parties who cause an accident should pay compensation for the costs of the accident, but this most usually involves a disagreement over the moral legitimacy or otherwise of strict tort liability, which holds that compensation is due if one is causally responsible for an accident, even if one is not at fault.<sup>18</sup> The alternatives to models which place liability on those responsible for the accident are those which place it either on a particular group who

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15 Though see the argument in Part III relating to morally relevant counterfactuals.

16 See Jules L. Coleman, 'Justice and the Argument for No-Fault,' *Social Theory and Practice* 3 (1974) 161-80, at 161.

17 Peter Cane, *Atiyah's Accidents, Compensation and the Law* (London: Butterworths 1993), 355

18 See Coleman, 'The Morality of Strict Tort Liability,' *William and Mary Law Review* 18 (1976) 259-286 and Honoré, 'Responsibility and Luck,' *Law Quarterly Review* 104 (1988) 530-53.

are most likely to cause such accidents, under a principle of risk-sharing (such as when motorists as a group are held responsible for the costs of traffic accidents), or on society as a whole, under a principle of loss-distribution, which broadly stems from communitarian obligations.<sup>19</sup> So no reference is made to the possibility of consideration of third party benefits. Mention has already been made of the concept of unjust enrichment under the law of restitution, according to which, it is maintained, the law protects one person from being unjustly enriched at another's expense. This seems clearly applicable to the present case, and yet the extent to which claims may be made under this general principle are (broadly speaking) limited to cases where one party has either freely accepted a particular benefit or has possession of or legal title to a particular item of property or sum of money to which another party has a strong moral entitlement. For reasons which will be discussed later, moves to claim that an agent might acquire obligations through the involuntary receipt of a benefit in kind are severely restricted. Finally, in the area of criminal law, a slightly different approach is taken to the subject of possessing stolen goods. If I have been given or have bought for a cheap price an item of stolen property in good-faith, I may reasonably be said to have benefited from an act of injustice. The question of what should happen next varies for different kinds of property, and in different legal jurisdictions. In some cases, the beneficiary has to return the item, receiving no compensation even if she has purchased it in good faith. Clearly, this might leave the (one-time) beneficiary of an injustice paying the greatest price for the injustice, and being worse off than she was prior to the injustice. In other cases it is the victim who is held liable for these costs, and the beneficiary keeps the property in question.<sup>20</sup>

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19 Thus Bernard Boxhill argues that community membership is sufficient to ground obligations of compensation to victims on the part of the community as a whole. Such a commitment is, he maintains, implicit in the community's social contract; so he writes, 'The case for rights of compensation depends ... on the fact that the individuals involved are members of a single community, the very existence of which should imply a tacit agreement on the part of the whole to bear the costs of compensation' (Boxhill, 'The Morality of Reparation,' in Gross, ed., *Reverse Discrimination* [Buffalo: Prometheus 1977] 270-8, at 272).

20 Saul Levmore, 'Variety and Uniformity in the Treatment of the Good-Faith Purchaser,' *Journal of Legal Studies* 16 (1987) 43-65. Levmore attributes the wide variety of practice he identifies in the treatment of good-faith purchasers of stolen goods to the existence of uncertainty or reasonable disagreement about the behavioural effects of alternative legal rules: 'some reasonable people might favor the innocent owner, some might prefer the innocent purchaser, and others might split between the two on the basis of time passed, place of purchase, or both' (57).

Given the variable legal treatment of the issue, we must look to its theoretical underpinning. The most common way that moral agents are said to acquire compensatory obligations is through what is sometimes called 'the fault principle.' In broad terms, this is the idea that those who are responsible for injuring other parties bear a moral responsibility to compensate the victims of their actions, precisely because it is their fault that the injuries in question occurred. Once it is established what would compensate the injured party, the guilty party has a moral obligation to so act, insofar as they are able to do so. Evidently, this is the understanding of moral responsibility discussed by Miller in the previous section, and, as before, it seems clear that this should generally be the primary response to acts of injustice and is in most cases the ideal response. However, what of circumstances where the parties who were actually responsible for the act of injustice do not or cannot fulfil their obligations? For some writers this is the end of the matter, and any suggestion of the acquisition of compensatory obligations without fault is simply unacceptable. Thus O'Neill writes:

some laissez faire liberals are dubious about rights to compensation except where the individuals who inflicted wrong are identifiable and obliged to compensate for the injuries they inflicted. On such views rights to compensation are symmetrical with rights to punish, in that they are absent when there is no wrongdoer, or no identifiable wrongdoer. Just compensation presupposes an injuring as well as an injured party.<sup>21</sup>

As it stands, such a position is too strong, as it rules out the possibility that non-offenders may acquire compensatory obligations through prior agreements that one party will cover another's losses in the event of them suffering particular harms. This may be either as a result of a contractual arrangement, as in the case of buying insurance, or simply as a result of a promise or commitment, such as when a government sets up an agency to compensate victims of crime for their injuries. Such schemes are not normally seen as justifiable if they actually allow the offender to escape responsibility, but rather act as a safety net to compensate victims should they not receive their due from the offender. Thus, for example, car insurance should not protect one from a conviction for dangerous driving, nor from subsequent claims for damages, but covers one for accidental harm one causes and for any harms one may suffer through accident or the fault of others. This is simply a case of a special obligation,

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21 Onora O'Neill, 'Rights to Compensation,' *Social Philosophy and Policy* 5 (1987) 72-87, at 77

of the same nature as a promise. As such, the obligation is essentially voluntaristic.

The issue becomes controversial, then, when it is claimed compensatory obligations can be acquired involuntarily. As noted above, the question of the involuntary receipt of benefits has been explicitly invoked in the context of discussions of the normative justifications of reverse discrimination as a compensatory response to injustice. A frequently cited example comes from the writing of Judith Jarvis Thomson. She concedes that practices of reverse discrimination in hiring impose costs upon the (say) white males who are affected by them, but she argues that this is not necessarily unjust:

of course choosing this way [reverse discrimination] of making amends means that the costs are imposed on the young male applicants who are turned away. And so it should be noticed that it is not entirely inappropriate that those applicants should pay the costs. No doubt few, if any, have, themselves, individually, done any wrongs to blacks and women. But they have profited from the wrongs the community did. Many may actually have been direct beneficiaries of policies which excluded or downgraded blacks and women — perhaps in school admissions, perhaps elsewhere; and even those who did not directly benefit in this way had, at any rate, the advantage in the competition which comes of confidence in one's full membership, and of one's rights being recognized as a matter of course.<sup>22</sup>

The principle at stake seems to be that, by benefiting from an act of injustice, one can acquire obligations towards the victims of that injustice. This is not an uncontroversial conclusion, and it has been strongly criticised by Robert Fullinwider. Fullinwider claims that the passage cited above reflects a particular moral principle, 'he who benefits from a wrong must help pay for the wrong.'<sup>23</sup> Fullinwider claims that this is

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22 Thomson, 'Preferential Hiring,' 152. This position, insofar as it relates to the benefit acquired by a group rather than by individuals, obviously raises important questions as to the distribution of compensatory burdens within the benefiting group, which Thomson only addresses fleetingly. For criticism, see Jones, 'On the Justifiability of Reverse Discrimination' in Gross, ed., *Reverse Discrimination*, 348-57. Others have questioned the extent to which all white males do in fact benefit from their societal identity. For defence of the proposition, see Charles R. Lawrence III and Mari J. Matsuda, *We Won't Go Back: Making the Case for Affirmative Action* (Boston: Houghton Mifflin Company 1997). For opposition, see Gertrude Ezorsky, *Racism and Justice: The Case for Affirmative Action* (Ithaca: Cornell University Press 1991), 83-4.

23 This is the version of the principle given in Fullinwider's 1980 book, *The Reverse Discrimination Controversy* (Totowa, NJ: Rowman and Littlefield 1980). It replaces the more commonly cited 'he who benefits from a wrong shall pay for the wrong' from his 1975 article, 'Preferential Hiring and Compensation,' *Social Theory and Practice* 3 (1975) 307-20.

'surely suspect as an acceptable moral principle,' suggesting that only 'he who wrongs another shall pay for the wrong' is justifiable as a principle of compensatory justice.<sup>24</sup> To illustrate his case he uses the following example:

While I am away on vacation, my neighbour contracts with a construction company to repair his driveway. He instructs the workers to come to his address, where they will find a note describing the driveway to be repaired. An enemy of my neighbour, aware, somehow, of this arrangement, substitutes for my neighbour's instructions a note describing *my* driveway. The construction crew, having been paid in advance, shows up on the appointed day while my neighbour is at work, finds the letter, and faithfully following the instructions, paves my driveway.<sup>25</sup>

It is clear that in this case the neighbour is a victim of his enemy's unjust act, and has a valid claim against him. But what is to be done in the absence of the enemy? Fullinwider rejects the conclusion, which he believes follows from the principle of compensatory justice he attributes to Thomson, that I am obliged to pay my neighbour for his driveway, contending that to do so would constitute an act of moral supererogation: a laudable act certainly, but not one which is required by a moral obligation. The key point for Fullinwider is that the receipt of the benefit in this case is *involuntary*. Perhaps the situation is different with regard to those who willingly accept benefits stemming from injustice: 'If I knowingly and voluntarily benefit from wrongs done to others, though I do not commit the wrong myself, then perhaps it is true to say that I am less than innocent of these wrongs, and perhaps it is morally fitting that I bear some of the costs of compensation.'<sup>26</sup> But those who involuntarily receive benefits bear no compensatory obligations.

This takes us to the heart of the issue. Is Fullinwider right about the involuntary receipt of benefits? It seems to me that he is not, and that the power of his example derives from a confusion over how extensive compensatory obligations stemming from injustice should be.

So let us return to the drive. The crucial question here seems to stem from my attitude towards my newly re-surfaced drive. Let us suppose that the drive cost my neighbour £500. I have not, however, benefited

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24 Fullinwider, 'Preferential Hiring and Compensation' in Steven M. Cahn, *The Affirmative Action Debate* (New York: Routledge 2002) 68-78, at 75

25 Fullinwider, 'Preferential Hiring and Compensation,' 75-6

26 Fullinwider, 'Preferential Hiring and Compensation,' 76. This point mirrors the legal doctrine of free acceptance. See Birks, *An Introduction to the Law of Restitution* (Oxford: Clarendon Press 1989), 265ff.

financially, as the re-surfacing has added no value to my property.<sup>27</sup> But let us also assume that I have indeed derived overall benefit from the experience, in that I prefer my new drive to my old one. This is not to say, of course, that I would necessarily have been willing to pay £500 to have it re-surfaced. Let us suppose that, had the drive re-surfacer knocked on my door the day before and offered to re-surface my drive for £500, I would have refused.<sup>28</sup> Asking me to pay £500 in this circumstance does seem unfair, since to do so would leave me worse off than I would have been had the whole experience not taken place. I would, in truth, have become the victim of the piece. But this is not the only alternative open to us. Imagine that the drive re-surfacer had in fact offered to do my drive for £200. This is considerably below the going rate, and I may well have leapt at the opportunity. If this was indeed the case, and I am correspondingly (at least) £200 better off on the basis of my own evaluation, then is it unreasonable to say that I should pay £200 to my neighbour? After all, I am still benefiting from the whole transaction; to use economic terminology, I am on a higher utility curve than before. We may well think that I do not (necessarily) owe my neighbour £500, but it does not necessarily follow from this that I owe him nothing at all. Certainly I am innocent of wrongdoing towards him at this point. But might it not be that our moral relationship, the balance between the two of us, will be altered if I materially benefit from my neighbour's unrectified experience of injustice without making any effort to offset his losses?

Fullinwider's example seems initially powerful due to its 'all or nothing' character. However, one can have compensatory obligations to X without having an obligation to compensate X fully. Thomson's point in relation to affirmative action, if it is to succeed, must be that the situation of white males even after policies of affirmative action have been put into place is better than it would have been had past and recent injustice not occurred; they derive a net benefit from their social position even when such policies have been enacted. Clearly, the principle 'he who benefits from a wrong shall pay for the wrong,' which Fullinwider initially erroneously attributes to Thomson, is nonsense, given that the benefit one receives from the wrong might be utterly marginal, whereas

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27 Perhaps I rent my house on a long-term lease. Or perhaps the re-surfacing has been cosmetic rather than structural. I am grateful to Hillel Steiner for helping to clarify this point.

28 Fullinwider assumes this to be the case: 'Presumably I valued other things more dearly than having my own driveway repaired; otherwise I would have done it myself' (*The Reverse Discrimination Controversy*, 39).

the cost of paying for it might be monumental. So the compensatory obligations of the beneficiaries of injustice can be limited to paying compensation up to the point where they are no longer beneficiaries of the injustice in question. Nor is it necessarily the case that a beneficiary need pay anything at all, given that other parties (most notably, the agent responsible for the act in question) may have prior obligations which fully compensate the victims, leaving no work for the beneficiary to do.<sup>29</sup> Insofar as the receipt of benefits does give rise to a principle, it can only be as demanding as, 'she who benefits from a wrong may have obligations to (help to) pay for the wrong, insofar as doing so does not leave her worse off than had the wrong not occurred.' Interestingly, this follows closely a parallel argument within the literature on political obligation, over the extent to which the involuntary receipt of benefits provided by the state can ground obligations to obey the law. Jonathan Wolff, for example, disputes the extent to which this can be the case on the basis that, for some people, the benefits the state provides are not worth the price the state extracts: i.e. acceptance of political obligations. Thus he writes (of the fairness account of political obligation):

a revised account does not appeal to the idea that the mere receipt of benefits is sufficient to create obligations.... Rather obligations are generated for an individual only if an individual receives a *net* benefit according to his or her subjective scale of valuation.<sup>30</sup>

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29 Generally, it seems to me that we should see the obligations of offender to victim as conceptually prior to any compensatory obligations other parties might have. O'Neill argues that only when compensation is forthcoming from offender to victim can restitution, in the sense of the restoration of the moral relationship between the parties, occur. As such, compensation is always a second-best response to an incidence of injustice. Thus there is a temptation to introduce lexical priority here, and hold that third parties only acquire compensatory obligations when offenders cannot or will not fulfil their own obligations. However, some may prefer to extend Miller's 'connection theory' into this area, and maintain that this is only a presumptive priority. It is quite possible to think of circumstances where relatively minor wrongs could have massive consequences, in that one party could lose and a third party could gain huge amounts, but where the offender makes no material gain at all, or even an overall loss (should, for example, her plans go awry). It is not necessarily clear that the offender should foot all of this bill, even if she is able to, when such an obvious distortion has entered into the distributive scheme. Nonetheless, even Fullinwider's revised formula, 'he who benefits from a wrong must help pay for a wrong' is far too strong here, as in many cases of wrongdoing when a third party benefits, the entire burden of compensation will fall on the wrongdoer.

30 Jonathan Wolff, 'Political Obligation, Fairness and Independence,' *Ratio* 8 (1995) 87-99, at 96. This point can be used in the context of Nozick's famous account of the community public address system, whereby it is claimed that one has an obligation

It is my contention that compensatory obligations can be generated in a similar fashion. Moral agents can have obligations to compensate victims of injustice if they are benefiting and the victims are suffering from the automatic effects of the act of injustice in question. It is crucial to the argument that the losses and benefits in question arise from injustice, which is to say wrong-doing by other agents. The individual's duty not to benefit from another's suffering when that suffering is a result of injustice stems from one's moral condemnation of the unjust act itself. In consequence, a duty to disgorge (in compensation) the benefits one gains as a result of injustice follows from one's duty not to so benefit. My claim is that taking our nature as moral agents seriously requires not only that we be willing not to commit acts of injustice ourselves, but that we hold a genuine aversion to injustice and its lasting effects. We make a conceptual error if we condemn a given action as unjust, but are not willing to reverse or mitigate its effects on the grounds that it has benefited us. The refusal undermines the condemnation. The belief that certain acts are wrong and should not be performed on account of their harmful consequences commits one to endorse the application of corrective justice to seek to undo the effects of injustice, insofar as doing so does not render oneself a victim, by making one worse off overall. Being a moral agent means being committed to the idea that justice should prevail over injustice. Losses which others suffer as a result of the unjust actions of other persons cannot be dismissed as arbitrary or simply unfortunate: they create distortions within the scheme of fair distribution. If no one else is willing or able to make up these losses, then the duty falls to those who are benefiting from the distortions in question.<sup>31</sup>

It is useful here to consider Janna Thompson's work on the nature of apologies for historic wrongs. Thompson's query is what it means to say that one is 'sorry' that a particular event occurred. She identifies what she calls, 'the apology paradox': if we owe our existence to a given act of injustice, and if we are happy that we are alive, how can we meaning-

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to contribute a day's labour to the system on the grounds that one has benefited from it, even though one voted against its institution. See *Anarchy, State and Utopia* (New York: Basic Books 1974), 93-5. The burden becomes less onerous if the proviso that one receives *net* benefit is included, which is to say that one has benefited even after doing one's day of service. Nozick's initial example has such force because we imagine the possibility of an individual who has indeed benefited from the system, but not to the extent that he would receive a net benefit from having listened to the system and provided a day's labour.

31 My exposition of this section of the argument is deeply indebted to an anonymous referee for the *Canadian Journal of Philosophy*.

fully say that we regret the act of injustice that brought our very existence about? And if we do not regret the act of injustice, how can we apologise for it? Thompson argues that we need to reinterpret what we are actually doing when we apologise for historic injustice:

Many people feel uncomfortable or even apologetic about benefiting from an injustice even when they had no responsibility for it. They are sorry that the good things they now possess came to them because of a past injustice. They do not regret that they have these things, but that they came to have them in the way they did. An apology could be interpreted as an expression of this kind of regret. So interpreted it is not, strictly speaking, an apology *for* the deeds of our ancestors or an expression of regret that they happened. Rather, it is an apology *concerning* deeds of the past, and the regret expressed is that we owe our existence and other things we enjoy to the injustices of our ancestors. Our preference is for a possible world in which our existence did not depend on these deeds.<sup>32</sup>

The claim here is not that we should regret our own existence, insofar as it stems from historic injustice, but that we should regret the fact that our existence is a result of unjust rather than just actions. We would prefer a world where both we existed and where our ancestors had not acted unjustly. But if we accept (as I think we should) all that Thompson says, are we not obliged in fact to do rather more than simply regret the fact that the world is as it is, and issue an apology in recognition of this fact? If we actually wish that we were in a different kind of world, and think that such a world would be more just than our current world, surely it follows that we should seek to make our world more similar to the counterfactual world in question? Thompson specifically refers to 'our existence and other things we enjoy.' But while we obviously cannot alter the fact that we have come into existence, we do have control over those 'things we enjoy' which are transferable resources. Suppose that, through the intervention of an unknown enemy, the estate of A's parents is left to B in their will rather than to A, as A's parents had intended. A would surely be entitled to feel aggrieved if B expressed her sorrow at what had taken place, and expressed the wish that they lived in a counterfactual world where the event had never happened, while still retaining the estate. My point is not just that B's expressed sentiments seem empty; it is that they are incompatible with her subsequent actions. If our moral condemnation of injustice, our regret that injustice has occurred, is to be taken seriously, it must be matched by action to remedy the effects of injustice, insofar as they persist as the automatic effects of

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32 Janna Thompson, 'The Apology Paradox,' *The Philosophical Quarterly* 50 (2000) 470-5, at 475

injustice. We are right to feel guilty at benefiting from others' misfortune, precisely because this suggests that we have not fulfilled our compensatory obligations.

One final point in this section. In his article 'Superseding Historic Injustice,' Jeremy Waldron refers to what he calls the 'contagion of injustice.'<sup>33</sup> The interdependence of different parties, both domestically and internationally, and their involvement in, for example, market transactions makes it likely that many people may, to an extent, have benefited as a result of a given act of injustice. It follows from the preceding argument that such people collectively possess a duty to put the situation right, insofar as doing so does not leave them worse off than if the injustice had not occurred. So it might well be argued, for example, that the West as a whole has benefited from the injustices of the colonial period, and so even those countries which did not directly act as colonial powers may have compensatory duties in the current day. When considered at a domestic level, the likelihood that many and diverse innocent third parties may have benefited from a given act of injustice may in some cases make the fulfillment of the ensuing collective duties at best onerous, and at times practically impossible. This might well be thought to provide an argument for an automatic, government-sponsored scheme for compensation for the victims of crime. But this notwithstanding, we might nonetheless think that some duties may appear more pressing to some beneficiaries of injustice than to others. This relates to the earlier claim that recognising one's duties amounts to a condemnation of the previous act of injustice, and a kind of determination that injustice should not prevail. It seems to me that the parties who should feel this most strongly are those people who were intended to benefit from the act of injustice. Consider, yet again, the example of the driveway. Suppose that the purpose of the evil note leaver was not only to harm my neighbour, but also to benefit me specifically. Insofar as I have in fact benefited from his actions, he has achieved his aim and injustice, as it were, has triumphed. This is true not only in the sense that a distortion in the fair scheme of distribution remains, but also in the sense that what has resulted is the precise unfair distribution which the perpetrator of injustice intended. This has relevance in an intergenerational context, in that it is often a major aim of those who seek to gain advantage to improve the prospects of their descendants, and relevance in an international context, as frequently the motivation for international wrongdoing is to benefit one's nation, understood as a historic commu-

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33 Waldron, 'Superseding Historic Injustice,' *Ethics* 103 (1992) 4-28, at 11

nity which exists through time. There is, then, a sense in which it might not be wholly accurate to see some innocent persons or groups as genuinely third parties in relation to injustice. Their position is more involved or implicated than this. It is not a necessary condition of having these duties that it was intended that we benefit from the act of injustice, but it may be that we can see our moral duties more clearly when this is indeed the case.

### **III From theory to practice — problems of measuring benefit**

It has been claimed that insofar as moral agents have benefited from the wrongdoing of others, they may have obligations to compensate the victims of this wrongdoing. Undoubted complications arise, however, when we come to consider what it means to say that a given agent has indeed benefited from a given act of injustice. Thus far, the argument has concerned clear cases where one party suffers and another party benefits as an automatic result of an instance of injustice. As such, it is clearly dependent upon an understanding of what it means for a person or persons to so benefit, and for another to be disadvantaged. Such an assessment relies upon some kind of counterfactual calculation, whereby the actual world, following an act of injustice, is compared to an alternative, possible world where injustice is absent. The earlier example of the Polychrestos harvest is deliberately simplified in order to make calculations of the counterfactual seem uncomplicated: the relevant counterfactual is the world where D does not direct the underground river and B, C and D each harvest 200 kilos after 5 hours of work each day. The case is straightforward because the sole difference between the actual, unjust world and the just counterfactual world can be described as the automatic effect of the act of injustice. B has not done anything to deserve the extra 200 kilos she has gained, nor can it be maintained that C is at fault in any way, or has worked less hard than she would have done had the act of injustice not occurred. So it seems relatively unproblematic to propose a transfer of 200 kilos from B to C. The driveway example is relevantly similar in this regard — all the difference between the actual world after the note switch and the counterfactual world where no injustice occurred can be attributed to the direct results of the dastardly actions of my neighbour's enemy.

The real world is rarely as straightforward as this. Arguments relating to benefiting from injustice often consider the lasting effects of historic actions, committed some considerable time in the past. Calculations of advantage and disadvantage stemming from historic injustice will, of necessity, have to refer to complicated counterfactuals. The question of

how such counterfactual calculations should be made is undoubtedly a very important question within compensatory justice, and I consider it at length elsewhere.<sup>34</sup> There are an infinite number of ways in which history might have unfolded had injustice not occurred, and so the challenge for the theorist is to identify the 'morally relevant' counterfactual which can be used to assess gain and loss. The claim of this article is simply that, once the appropriate counterfactual has been identified, those who can be seen to have benefited as a result of injustice may bear compensatory duties to those who have been disadvantaged. This argument is quite distinct from the separate question of which counterfactual should apply in a given case, but it is worth suggesting that the most plausible candidates will be those which allow an approximation of the automatic effects of injustice, which should be remedied, while still holding persons accountable for their actions and omissions following an act of injustice. So, for example, George Sher has argued that justice may not, in some cases, require individuals to be brought to the level of well-being they would have if injustice had not befallen them if we hold them to be at least partially responsible for their failure to recover from the effects of injustice. Sher uses the example of a student who is unjustly denied a place at law school. Had this not occurred, the student would have become a prominent lawyer with a high degree of prestige and a high salary. Instead, he allows himself to be discouraged by his rejection and does not reapply the next year, and so has a far inferior life. If we hold the candidate to be partially at fault for his situation for not reapplying, then we might suggest that at least part of his disadvantage relative to the injustice-free counterfactual is not a result of the 'automatic effects' of the act of injustice, but rather because of his own omission. An extreme example will make the point: suppose that one day, when I am walking to the shops, I encounter my childhood nemesis, the boy who bullied me at school. Reverting to type, he trips me up and I fall over. As a result of this, I decide that the world is against me, and I elect to spend the rest of my days skulking in my house brooding upon my misfortune, instead of pursuing my successful and lucrative career as a popular circus performer. Now, in such a case I have been treated

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34 See Butt, *Rectifying International Injustice: Principles of Restitution and Compensation Between Nations* (Oxford University Press, forthcoming) as well as the discussion in George Sher, 'Ancient Wrongs and Modern Rights,' *Philosophy and Public Affairs* 10 (1980) 3-17; A. John Simmons, 'Historical Rights and Fair Shares,' in Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press 2001), 222-48; and Joel Feinberg, 'Wrongful Life and the Counterfactual Element in Harming,' in *Freedom and Fulfillment: Philosophical Essays* (Princeton: Chichester 1992), 3-36.

unjustly, but the vast majority of the responsibility for the difference between my actual and counterfactual positions seems to lie at my door. The suggestion is that I have allowed a trivial incident to blight my life; in short, I should have got over it. Thus the difference between actual and counterfactual world is down to my omissions, and the normative counterfactual — what I 'should' have — is not the same as what I would actually have had if the unjust action in question had never occurred. If I neglect opportunities to acquire alternative entitlements, I cannot necessarily keep on blaming this on the original act of injustice. Sher goes on to link this claim to a more general scepticism concerning compensatory obligations stemming from historic wrongdoing:

Where the initial wrong was done many hundreds of years ago, almost all of the difference between the victim's entitlements in the actual world and his entitlements in a rectified world can be expected to stem from the actions of various intervening agents in the two alternative worlds. Little or none of it will be the automatic effect of the initial wrong itself. Since compensation is warranted only for disparities in entitlements which *are* the automatic effect of the initial wrong act, this means that there will be little or nothing left to compensate for.<sup>35</sup>

The first point to make about this claim, as Simmons notes, is that it does not say that automatic effects of injustice necessarily *cannot* last over long periods of time, simply that it becomes harder to maintain that current disadvantage is the result of historic wrongdoing.<sup>36</sup> Sher himself acknowledges this point when he suggests that ancient wrongs to Native Americans and African Americans within the US may be atypical in that they have made it very hard for the descendants of the originally injured parties to acquire alternative entitlements. Secondly, we should be careful when blaming the lingering effects of historic injustice on the omissions of the victims not to underestimate the profound impact which injustice can have upon its victims, even when they do make reasonable efforts to 'get over' its effects. Of relevance here are Jeremy Waldron's comments concerning the significance of historic wrongs to national and group identity.<sup>37</sup> Insofar as injustice compromises the self-determination of a people, it can have a profound effect upon the national identity of members of the nation, and may indeed damage the ability of the nation to govern itself subsequent to the act of injustice. In cases where the ability of nations to adapt and prosper has itself been affected by historic

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35 Sher, 'Ancient Wrongs and Modern Rights,' 13

36 Simmons, 'Historical Rights and Fair Shares,' 171n.

37 Waldron, 'Superseding Historic Injustice,' 6

injustice, the extent to which they should be deemed responsible for their omissions must be accordingly limited. In any case, the point to be underlined for the sake of the present article is that it is the automatic effects of injustice, however calculated, with which we are primarily concerned.

The identification of the morally relevant counterfactual is only half the problem, however, when it comes to making judgments as to advantage and disadvantage. Thus far, the calculation of what constitutes a benefit has been presented as either uncontroversial, as in the Polychrestos case, or as being subjective in that it depends upon the extent to which the putative beneficiaries believe that they have themselves benefited, as in the driveway case. That calculations of advantage will often turn upon the subjective preferences of those concerned does undoubtedly have complications for the application of the theory. It suggests that it would be very difficult to ground legal rights to compensation in a variety of such cases, as is demonstrated by existing laws on unjust enrichment. Seeking restitution in a legal context simply because another has been unjustly enriched at one's expense is difficult in the absence of free acceptance of the benefit in question, because of the problem of subjective devaluation. This is an argument based upon the premiss, 'that benefits in kind have value to a particular individual only so far as he chooses to give them value. What matters is his choice.' So what constitutes a benefit is up to the individual and is an inherently subjective manner: 'Some people like their poodles permed. Others abhor permed poodles.'<sup>38</sup> Only in the case where one party actually receives money can it be taken for granted that she has benefited, since its nature as a medium of exchange is taken to mean that is beneficial by definition: 'Where the defendant received money, it will be impossible on all ordinary facts for him to argue that he was not enriched. For money is the very measure of enrichment.'<sup>39</sup> To refer to the previous example; one could not hold the owner of the new driveway legally liable for the costs to his neighbour, because there is no way for an external agent to determine the degree of benefit the owner has received. There is nothing inherently unreasonable about his claiming that he has received no benefit from the experience whatsoever, and in fact preferred the drive as it was. Even if it is the case that the re-surfacing has unambiguously added to the value of his property, he still has to live with his unfavoured driveway until

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38 Birks, *The Foundations of Unjust Enrichment* (Wellington: Victoria University Press 2002), 95

39 Birks, *The Law of Restitution*, 109

such a time as he sells his house, and it is quite conceivable that this experience might make him worse off overall, even if he eventually receives a higher price for his property. So it may be that, even if one accepts the moral force that attaches itself to benefiting from injustice, there is no way that rights stemming from such obligations can, in many cases, be written into the law, since defendants would simply have to claim that they did not consider themselves to have received benefit to avoid legal obligations. Two things follow from this. First, and most obviously, the topic becomes more a matter of moral than legal obligation, unsuitable for codification into positive law. Benefiting from historical injustice may not present a sound way to ground claims against an unwilling putative beneficiary due to the problem of subjective devaluation. But there is no problem with claiming that moral agents must honestly ask themselves to what extent they have themselves benefited from injustice, and assess their moral obligations accordingly. This is not, of course, to say that the question is not a matter of public policy, but simply that it becomes a moral and a political question, of what ought to be done in policy terms, rather than of what one has to do in order to fulfill one's legal obligations. When the beneficiaries are not individuals, with particular likes and dislikes, but collective entities such as peoples or corporations, it may in any case be easier to make an objective assessment of well-being, and hence of advantage and disadvantage, by reference to material considerations. Such entities will have to debate and decide upon the actions they think it is right to pursue given their circumstances.<sup>40</sup>

Second, it might be that a discourse of 'rights to compensation' on the parts of victims is simply misplaced in this context, and we should

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40 It should be noted here that the fact that the extent to which an individual benefits from a given action will, to a large extent, depend upon the subjective preferences of the agent does not necessarily mean that an individual cannot be mistaken concerning the degree of benefit which they have in fact received. Suppose it is the case both that a) I prefer, in aesthetic terms, my old driveway to my present driveway, and that b) the new driveway adds considerably to the value of my house. If I am not aware of (b), then it may be that I have in fact gained a net benefit from the act of injustice, but mistakenly believe that I have not. (Of course, it is still possible that even though I am ignorant of (b), my dislike of my new driveway is so great that I am not compensated by the increase in my property's value, and so have not benefited overall.) In such a case, I do possess compensatory obligations to my neighbour, even though I am not aware of it. Whether or not I am culpable here, in moral terms, depends on whether we think I am negligent in failing to be aware of the true nature of the lasting effects of injustice. As noted above, I do believe that moral agents face a duty to scrutinise actively the nature and provenance of their place in the world.

instead focus upon a duty based model, where initiatives of compensatory justice gain momentum not from the political protests of victims, but from critical reflection by benefiting moral agents as to the provenance of their advantages. Such an approach might address problems which Onora O'Neill has identified with rights-centred accounts of compensatory justice. She writes:

When we ask what our rights are we no doubt assume that we and others are agents, but our first question is to ask what ought to be done for us, what we ought to receive from others. When we ask what our obligations are we begin by asking what we ought to do.... [The rights-centred approach] invites a conception of oneself and others above all as victims, rather than as doers or citizens; it distracts allocation away from capacity for acting... Only the weak and powerless have reason to make the perspective of recipience and rights their primary concern.<sup>41</sup>

Insofar as those who have benefited from injustice are not the weak and powerless, this duty-based model is surely the approach they should adopt.

One final point arises. Throughout this article, I have sought to depict the involuntary beneficiaries of injustice as innocent third parties, even if their advantage was the motive of the wrongdoer. This is the correct way to address the problem in a purely theoretical sense. Throughout, the beneficiaries of injustice have been presented as if they have only just received the benefits in question. A and B, we might imagine, are considering C's plight as they survey their freshly harvested Polychrestos crop. The surprised owner of the repaired driveway has just come home from work and is trying to work out what to do next. In such cases, the beneficiaries in question truly are innocent third parties. But, if it is accepted that they at this point have rectificatory obligations to others, then they are innocent only insofar as they act reasonably promptly to fulfil the said obligations. A third party who benefits from injustice but does nothing to repair the plight of the victim, when it is clear that no other party is likely to act, is not an innocent bystander; she is acting unjustly in relation to the victim and so becomes a wrongdoer herself. Fullinwider states the principle succinctly in outlining the case against his own position:

Possession of illicit benefits undermines one's claim to 'innocence.' The wrongful possession serves the same function as personal fault, it makes one liable to pay appropriate compensation.<sup>42</sup>

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41 Onora O'Neill, 'Rights to Compensation,' 84

42 Fullinwider, *The Reverse Discrimination Controversy*, 37

This argument is of great significance when it comes to considering real world compensation claims, precisely because they typically respond to acts of injustice which have already occurred, sometimes some distance in the past, and for which no one has paid compensation. In such cases, the argument is not simply that an innocent third party has moral obligations towards victims still feeling the effects of the act of injustice. It further holds that the third parties are themselves guilty of compounding the act of injustice by withholding due compensation, which is to say that they have acted unjustly to the victim and so may owe them compensation over and above that which would have been required had they acted correctly initially. This suggests an alternative vision of historical injustice; instead of seeing it as something which fades with time, perhaps we should see its continued non-rectification as a gigantic perpetuation of the injustice itself, locking successive generations into compensatory obligations which, in their turn, are not met.<sup>43</sup> At the very least, it suggests an urgent need to consider the source of our present-day advantages — and to consider at what expense to others they were procured.<sup>44</sup>

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43 I address this possibility in Butt, 'Nations, Overlapping Generations and Historic Injustice,' *American Philosophical Quarterly* 43 (2006) 357-67.

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