

The Beneficiary Pays Principle and Climate Change

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Statement

This thesis is solely the work of its author, except Chapter 3 which is a modified version of a paper co-authored with Christian Barry and accepted for publication in the *Journal of Applied Philosophy*. Our respective contributions to that publication were equal. No part of this thesis has been submitted for any degree, or is currently being submitted for any other degree. To the best of my knowledge, any help received in preparing this thesis, and all sources used, have been duly acknowledged. This thesis is approximately 63,500 words in length.

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Abstract

This thesis is about our moral responsibility towards climate change. More narrowly, it is about whether benefiting from the processes which cause climate change makes a moral difference to the costs one should bear in addressing its associated harms. Many proponents of the ‘beneficiary pays principle’ think that it does. This principle claims that being an innocent beneficiary of significant harms inflicted by others may be sufficient to ground special duties to address these harms, at least when it is impossible to extract compensation from those who perpetrated the harm. My main aim in this thesis is to give a novel theoretical defence of the beneficiary pays principle, and justify its application to climate change.

Part I of this thesis motivates the beneficiary pays principle in the context of climate change. In Chapter 1, I survey recent empirical literature and argue that climate change raises an important moral problem: who should bear the costs of addressing its associated harms? I argue that the answer to this question involves weighing the duties allocated by various principles of responsibility: namely, the ability to pay principle, the contributor pays principle, and the beneficiary pays principle. I then discuss some support for the beneficiary pays principle that has been developed in the literature. Chapter 2 (co-authored with Christian Barry) examines what we take to be the most challenging objections that have been presented to the beneficiary pays principle. We argue that none of these existing objections undermine it as a principle of moral and practical importance for allocating the costs of addressing human-induced climate change.

Part II of this thesis gives a theoretical defence of the beneficiary pays principle. Chapter 3 examines four possible (and exhaustive) ways of formulating beneficiary pays and gives a *prima facie* argument in favour of a formulation that holds that the moral relevance of benefiting from wrongdoing reduces to some other factor, and that duties

should only be allocated to beneficiaries in the presence of some other factor. This chapter then critically examines four existing proposals regarding when beneficiary pays is triggered to allocate duties, paving the way for my own positive account. In Chapter 4, I develop a rule-consequentialist rationale for beneficiary pays. I argue that benefiting-related duties should be allocated in cases (I call these property-violation and motivational-cause cases) in which this practice, if the wide majority tried to internalise it, should be expected to result in good consequences. In Chapter 5, I argue that this same rationale for beneficiary pays is also able to justify allocating duties to beneficiaries who hold or express pro-attitudes towards wrongdoing.

Part III applies my defence of beneficiary pays to the case of climate change. In Chapter 6, I argue that climate change should be assimilated to a property-violation, motivational-cause, and pro-attitude case. Since I argued in Part II that beneficiary pays is justified in these cases, I claim that the beneficiary pays principle is justified in playing an important role in allocating the costs of addressing climate change.

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Part I: Motivation

Chapter 1: Introduction

This thesis is about our moral responsibility towards climate change. More narrowly, it is about whether benefiting from the processes which cause climate change makes a moral difference to the costs we should bear in addressing its associated harms. Many proponents of the ‘beneficiary pays principle’ think that it does. This principle, put generally, claims that being an innocent beneficiary of significant harms inflicted by others may be sufficient to ground special duties to address these harms, at least when it is impossible to extract compensation from those who perpetrated the harm. My main aim in this thesis is to give a theoretical defence of the beneficiary pays principle, and justify its application to climate change.

In the course of making this argument I will employ a central methodology shared by many proponents and critics alike of beneficiary pays in the literature. One fruitful way of understanding this methodology is in terms of what John Rawls called reflective equilibrium.¹ According to the method of reflective equilibrium, we should aim, as best we can, to bring our moral intuitions, principles, and broader theoretical commitments into an acceptable coherence with each other—acceptable, that is, in the sense that mere consistency is not enough. Rather, intuitions, principles, and theory should offer explanatory support for each other. This will inevitably involve “working back and forth”, revising and/or abandoning our principles and theoretical commitments when they stand in tension with each other and our intuitions, as they often will.² Furthermore, there may

¹ John Rawls, *A Theory of Justice: Revised Edition* (Cambridge, Massachusetts: Harvard University Press, 1999), pp. 44-46.

² For a good overview of reflective equilibrium, see Norman Daniels, "Reflective Equilibrium," <http://plato.stanford.edu/entries/reflective-equilibrium/>.

be no way to retain all the intuitive judgments that we give with respect to the various cases we reflect on. The best overall account may require us to reject some of our intuitions as erroneous. Reflective equilibrium is achieved when no further revisions would bring a more acceptable coherence. This methodology is explicitly employed by other theorists who discuss the beneficiary pays principle. For example, Christian Barry and David Wiens write: "...we appeal to our readers' considered moral judgments about simple cases as our starting point, aiming to achieve a reflective equilibrium between these judgments and the theoretical account we propose. We recognize that there are instances in which our account may conflict with some people's considered judgments. When this is so, we try to show that there is nevertheless reason to accept our account as a stable equilibrium point".³ Understood in this way, this thesis is an attempt to justify beneficiary pays by showing that endorsing this principle, rather than rejecting it, sits best in reflective equilibrium.

The argument in this thesis is separated into three parts. Part I motivates the beneficiary pays principle in the context of climate change. In this chapter, I survey recent empirical literature on climate change and argue that climate change raises an important moral problem: who should bear the costs of addressing its associated harms? I argue that the answer to this question involves weighing pro-tanto duties allocated by various compelling principles of responsibility: namely, the ability to pay principle, the contributor pays principle, and the beneficiary pays principle. I then discuss some intuitive, theoretical, and other support for the beneficiary pays principle that has been developed in the literature. In Chapter 2 (which is a modified version of a paper co-

³ Christian Barry and David Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," *Journal of Moral Philosophy* (2014): p. 5.

authored with Christian Barry), we examine what we take to be the most challenging objections that have been presented against the beneficiary pays principle. While we do not attempt to develop a positive argument for the principle, we argue that none of the existing objections undermine it as a principle of moral and practical importance for allocating the costs of addressing human-induced climate change. A major innovation of this chapter is our account of how the concept of benefiting should be understood in order to trigger beneficiary pays. We argue that we should be pluralists regarding the concept of benefiting, endorsing a ‘non-comparative’ test as a sufficient condition to trigger beneficiary pays while at the same time accepting that particular ‘counterfactual’ tests may constitute other, independent, sufficient conditions.

Part II of this thesis gives a novel theoretical defence of the beneficiary pays principle. Chapter 3 examines four possible (and exhaustive) ways of formulating beneficiary pays and argues that there is a prima facie case in favour of a formulation of this principle which holds that the moral relevance of benefiting from wrongdoing reduces to some other factor, and that duties should only be allocated to beneficiaries in the presence of some other factor. This chapter then examines – and rejects – four existing proposals regarding when beneficiary pays is triggered to allocate duties, paving the way for my own positive account. In Chapter 4, I defend beneficiary pays by arguing that a morality which incorporates the practice of allocating benefiting-related duties should, if the wide majority of people tried to internalise it, be expected to result in morally better consequences than a morality that does not. In particular, I give a rule-consequentialist argument that benefiting-related duties should be allocated in cases (I call these property-violation and motivational-cause cases) in which this practice, if the wide majority of people tried to internalise it, should be expected to result in good consequences—and not

allocated in cases in which this practice would not. I also demonstrate that rule-consequentialism can justify why beneficiaries in some cases should be allocated more stringent and demanding duties than in other cases. Chapter 5 examines whether, and how, beneficiaries' attitudes might make a moral difference to the duties that they should be allocated. I argue that the same rule-consequentialist rationale for beneficiary pays that I have already developed in the previous chapter is, without modification, also able to justify why a beneficiary's holding or expressing pro-attitudes towards wrongdoing is itself wrong, and why such beneficiaries in turn should be allocated duties to relinquish their benefits. Rule-consequentialism can also justify why some attitudes are more relevant than others, in the sense that they more greatly increase the stringency and demandingness of the duty that the beneficiary should be allocated.

The upshot of Part II of the thesis, then, is that beneficiaries should be allocated duties to relinquish their benefits in property-violation, motivational-cause, and pro-attitude cases. But what are these cases? Property-violation cases are those in which a beneficiary accrues benefits that they have no entitlement to, where a victim may or may not retain an entitlement to those benefits. Motivational-cause cases are those in which a perpetrator of wrongdoing intends to benefit the beneficiary by acting wrongly. Pro-attitude cases are those in which a beneficiary of wrongdoing or injustice holds an attitude which characteristically increases the risk of wrongdoing, or expresses such an attitude by retaining the benefits. In these cases, I argue that beneficiaries should be allocated benefiting-related duties and this practice is justified since it should, if the wide majority of people tried to internalise it, be expected to result in good consequences.

Finally, Part III of this thesis applies my defence of beneficiary pays to the case of climate change. In particular, in Chapter 5, I argue that climate change should be

assimilated to a property-violation, motivational-cause, and pro-attitude case. Put briefly, climate change is a property-violation case because affluent states (and their citizens, in per capita terms) have wrongfully appropriated a greater share of the atmosphere's safe absorptive capacity than a fair distribution would allow. Climate change is a motivational-cause case since decision-makers in democratic states are motivated to fail to enact morally defensible climate change policies in order to benefit their citizens, out of a concern for re-election. Lastly, climate change is a pro-attitude case because many citizens either hold or express attitudes that display indifference towards the harms of climate change from which their benefits derive (for example, citizens routinely fail to vote against parties that do not enact morally defensible climate change policies and vote for these parties instead). Since I argued in Part II that beneficiary pays can be justified in these cases, I claim that the beneficiary pays principle is justified in playing an important role in allocating the costs of addressing climate change. I conclude by giving an overview of my argument, observing where my account leaves room for further research, and note how my defence of the beneficiary pays principle can helpfully guide that research.

1. Climate Change as a Moral Problem

Climate change is one of the most pressing problems of our time. In their most recent *Fifth Assessment Report*, the authoritative Intergovernmental Panel on Climate Change (IPCC) warns that "Warming of the climate system is unequivocal, and since the 1950s,

many of the observed changes are unprecedented over decades to millennia”.⁴ Furthermore, they say: “It is *extremely likely* that human influence has been the dominant cause of the observed warming since the mid-20th century”.⁵

Humans influence the climate system by emitting greenhouse gases—for example, carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O)—into the atmosphere. Once in the atmosphere, these gasses disperse and act like a blanket, preventing heat from reflecting off the Earth’s surface and back into space. The IPCC describes the contribution of these greenhouse gases to climate change in terms of their ‘radiative forcing’. Put simply, “Positive RF leads to surface warming, negative RF leads to surface cooling”.⁶ Global warming is occurring because positive radiative forcing exceeds negative radiative forcing. According to the IPCC, carbon dioxide emissions are the chief culprit: “The largest contribution to total radiative forcing is caused by the increase in the atmospheric concentration of CO₂ since 1750”.⁷ However, each of the three main greenhouse gases exerts positive radiative forcing, which, over time, has resulted in a warming climate.

The atmospheric concentrations of the greenhouse gases carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O) have all increased since 1750 due to human activity. In 2011 the concentrations of these greenhouse gases were 391

⁴ Original emphasis. IPCC, "Summary for Policymakers," in *Climate Change 2013: The Physical Science Basis. Contribution of Working Group 1 to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. T.F. Stocker, et al. (Cambridge, UK, 2013), p. 17.

⁵ Ibid.

⁶ Ibid., p. 13.

⁷ Ibid.

ppm, 1803 ppb, and 324 ppb, and exceeded the pre-industrial levels by about 40%, 150%, and 20%, respectively”.⁸

Carbon dioxide, methane, and nitrous oxide are now at levels of atmospheric concentration unprecedented in the last 800,000 years.⁹

Climate change is expected to cause various significant impacts. According to the IPCC, it is virtually certain that “there will be more frequent hot and fewer cold temperature extremes over most land areas daily and seasonal timescales as global mean temperatures increase”, and that heat waves will very likely occur with a higher frequency and duration.¹⁰ There will very likely be, by the end of this century, more intense and more frequent extreme precipitation events over most mid-latitude land masses and wet tropical regions.¹¹ The world’s oceans will continue to warm and will affect circulation.¹² And global mean sea level will continue to rise due to this warming combined with the loss of ice mass from glaciers and ice sheets, very likely at increased rates than already observed between 1971 and 2010.¹³ The oceans will increasingly acidify.¹⁴

Why are these impacts of climate change morally relevant? These impacts are morally relevant in large part because they are expected to cause severe harm. Indeed, they already *are* causing severe harm.¹⁵ Recently, a World Health Organisation (WHO)

⁸ Ibid., p. 11.

⁹ Ibid.

¹⁰ Ibid., p. 20.

¹¹ Ibid., p. 23.

¹² Ibid., p. 24.

¹³ Ibid., p. 25.

¹⁴ Ibid., p. 26.

¹⁵ Even though the current contribution of climate change to ill-health, globally, is relatively small compared with other causes. "Summary for Policymakers," in *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. C.B. Field, et al. (Cambridge, UK, 2014), p. 6.

quantitative assessment “concluded that the effects of the climate change that has occurred since the mid-1970s may have caused over 150,000 deaths in 2000”.¹⁶ The IPCC likewise writes with very high confidence that “Impacts from recent climate-related extremes, such as heat waves, droughts, floods, cyclones, and wildfires, reveal significant vulnerability and exposure of some ecosystems and many human systems to current climate variability”, and that these impacts “include alteration of ecosystems, disruption of food production and water supply, damage to infrastructure and settlements, morbidity and mortality, and consequences for mental health and human well-being”.¹⁷ With high confidence, the IPCC lists various risks of climate change as:

- i) Risk of death, injury, ill-health, or disrupted livelihoods in low-lying coastal zones and small island developing states and other small islands, due to storm surges, coastal flooding, and sea level rise.
- ii) Risk of severe ill-health and disrupted livelihoods for large urban populations due to inland flooding in some regions.
- iii) Systemic risks due to extreme weather events leading to breakdown of infrastructure networks and critical services such as electricity, water supply, and health and emergency services.
- iv) Risk of mortality and morbidity during periods of extreme heat, particularly for vulnerable urban populations and those working outdoors in urban or rural areas.

¹⁶ World Health Organisation, "Climate Change and Human Health," <http://www.who.int/globalchange/news/fsclimandhealth/en/>.

¹⁷ IPCC, "Summary for Policymakers," pp. 6-8.

- v) Risk of food insecurity and the breakdown of food systems linked to warming, drought, flooding, and precipitation variability and extremes, particularly for poorer populations in urban and rural settings.
- vi) Risk of loss of rural livelihoods and income due to insufficient access to drinking and irrigation water and reduced agricultural productivity, particularly for farmers and pastoralists with minimal capital in semi-arid regions.
- vii) Risk of loss of marine and coastal ecosystems, biodiversity, and the ecosystem goods, functions, and services they provide for coastal livelihoods, especially for fishing communities in the tropics and the Arctic.
- viii) Risk of loss of terrestrial and inland water ecosystems, biodiversity, and the ecosystem goods, functions, and services they provide for livelihoods.¹⁸

Many have argued that, in light of these expected harms of climate change, we ought to pursue both mitigation and adaptation efforts. As I will understand these terms, mitigation efforts are directed at *preventing* the impacts of climate change, chiefly by limiting the concentration of greenhouse gas emissions in the atmosphere. Adaptation efforts are directed at *alleviating* the impacts of climate change, for example, by improving infrastructure to withstand extreme weather events, moving populations away from low-lying coastal zones, planting a higher proportion of drought resilient crops, cooling buildings in periods of extreme heat, and so on. In the following, I will refer to both mitigation and adaptation efforts as efforts to *address* climate change.

¹⁸ Ibid., pp. 12-13.

On the mitigation side of the problem, some have suggested that we should attempt to limit global warming to 2°C above 1861-1880 levels, in order to avoid unacceptably dangerous climate change.¹⁹ Unfortunately, this sets us a very hard task, since the IPCC states that staying within the 2°C limit with a probability of >66% will require stabilising total CO₂ emissions up to about 1000 GtC. And since we had already emitted over half this amount by 2011, we are already far along the path towards greater global warming.²⁰ More worryingly, there is good reason to think that we should accept even tougher emissions constraints than this.²¹

Concerns with a 2°C limit were reflected in recent international climate negotiations held in Paris in December 2015. In these negotiations, member states adopted the *Paris Agreement* in which they agreed to “Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change”.²² While this is a genuinely aspirational target and a real mark of progress in climate policy negotiations, critics have argued that the *Paris Agreement* does almost nothing to ensure that global

¹⁹ For example, *The Stern Review* states that “The risks of the worst impacts of climate change can be substantially reduced if greenhouse gas levels in the atmosphere can be stabilised between 450 and 550ppm CO₂ equivalent (CO₂e)”. And the figure 550ppm corresponds to “at least a 77% chance – and perhaps up to a 99% chance, depending on the climate model used – of a global average temperature rise exceeding 2°C”. Nicholas Stern, *The Economics of Climate Change: The Stern Review* (Cambridge: Cambridge University Press, 2007), p. vii and iii.

²⁰ IPCC, “Summary for Policymakers,” p. 27.

²¹ First, a 2°C limit is somewhat arbitrary since many of the harms of climate change are non-trivially risked well under 2°C of additional warming. Indeed, as I mentioned above, some harms are *already* occurring. Second, even *if* 2°C really is a justifiable threshold level of warming—i.e. the consequences of any greater amount of warming are unjustifiable—then why should we be content with only as good as a >66% probability of staying within this threshold? These would seem unattractive odds in other decision making contexts that involve severe harm. Third, these figures only take into account CO₂ emissions, rather than all greenhouse gases. *Ibid.*, p. 28.

²² UNFCCC, “Adoption of the Paris Agreement,” <http://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf>.

warming will peak below this level. Problematically, they object, the agreement merely calls for each state to volunteer the extent of their own emissions cuts and that the aggregate cuts that were actually volunteered by states would commit the world to around 3°C of warming above pre-industrial levels. Furthermore, they note, these cuts are not legally binding. These critics have therefore suggested that a 1.5°C limit on global warming is unlikely, even within the context of the *Paris Agreement*.²³ Throughout this thesis I will engage with a 2°C limit on warming as a more realistic (and until the *Paris Agreement*, a more discussed) option. Note, however, none of my substantive conclusions will depend on this target rather than any another plausible target.

Even if we do mitigate heavily, adaptation will still be necessary. The IPCC states that “Most aspects of climate change will persist for many centuries even if emissions of CO₂ are stopped. This represents a substantial multi-century climate change commitment created by past, present and future emissions of CO₂”.²⁴ Absent drastic geoengineering techniques (for which there is only limited evidence available for their evaluation²⁵), “A large fraction of anthropogenic climate change resulting from CO₂ emission is irreversible on a multi-century to millennial time scale...”, since about 15% to 40% of emitted CO₂ will remain in the atmosphere for longer than a millennium.²⁶ Therefore, even if we currently cease emitting greenhouse gases into the atmosphere entirely, we will still need to address many of the impacts that have already been locked in place. In

²³ For example, see: Jedediah Purdy, "We Are the Climate Change Complacency We Seek," Foreign Policy, <https://foreignpolicy.com/2015/12/14/we-are-the-climate-change-complacency-we-see/>; George Monbiot, "Grand Promises of Paris Climate Deal Undermined by Squalid Retrenchments," The Guardian, <http://www.theguardian.com/environment/georgemonbiot/2015/dec/12/paris-climate-deal-governments-fossil-fuels>.

²⁴ IPCC, "Summary for Policymakers," p. 27.

²⁵ Ibid., p. 29.

²⁶ Ibid., p. 28.

any case, it is fanciful that humans, globally, will immediately cease emitting, so greater adaptation efforts will be needed.

Mitigating and adapting to climate change will be costly. The costs increase the lower the level we set for the stabilisation of emissions in the atmosphere, and the more substantial our efforts to address the impacts. But not mitigating or making efforts to adapt is also costly, since many must then bear the expected harms of climate change. For example, according to a report by the World Bank, “Adapting to a climate that is about 2°C warmer will be costly, but [...] the impacts of climate change without adaptation will be much more costly” and they find “the costs of adapting to climate change at an average of \$70 billion to \$100 billion a year at 2005 prices between 2010 and 2050”.²⁷ Independent analysis in *The Stern Review* found that “the annual costs of achieving stabilisation between 500 and 550ppm CO₂e are around 1% of global GDP, if we start to take strong action now”.²⁸

There are different ways in which we might respond to these costs. One important consideration is which policies we should favour in terms of mitigation and adaptation. There is controversy, for example, about whether we should favour a carbon tax, emissions trading scheme, or some alternative policy,²⁹ and also about what the precise balance of investing in mitigation as opposed to adaptation should be. Some theorists are even sceptical that we should prioritise addressing climate change over other valuable

²⁷ World Bank, "Economics of Adaptation to Climate Change: Synthesis Report," (Washington DC, 2010), p. 89.

²⁸ Which (at the time of the report's publication was thought) would give us only a chance between 1% and 23% of avoiding global warming above 2°C – again, hardly reassuring odds. Stern, *The Economics of Climate Change: The Stern Review*, p. vii and iii.

²⁹ For a recent ethical objection to emissions trading schemes, see Michael J. Sandel, "It's Immoral to Buy the Right to Pollute," *The New York Times*, <http://www.nytimes.com/1997/12/15/opinion/it-s-immoral-to-buy-the-right-to-pollute.html>. For a defence of emissions trading schemes against recent criticism, see Simon Caney and Cameron Hepburn, "Carbon Trading: Unethical, Unjust and Ineffective?," *Royal Institute of Philosophy Supplement* 69 (2011).

pursuits. For example, some claim that resources spent on abating emissions would be better invested in combating global poverty.³⁰ Nevertheless, contrary to these theorists, there seems to be a relatively wide consensus (as the *Paris Agreement* attests) that at least *some* costs of addressing climate change – whatever policies this will practically involve – should be taken on. This thesis proceeds on the assumption that addressing climate change to some extent is a priority compared to alternative uses to which we might invest our resources. Of course, this is not to say we should entirely neglect other valuable pursuits, even at the cost of *some* progress on addressing climate change.

2. Principles of Responsibility and the Allocation of Pro-Tanto Duties

The assumption that someone should bear costs associated with addressing climate change raises the moral question that this thesis is about: Who should bear them? In other words, how should the costs of addressing climate change be allocated? To answer this question we must look to principles of responsibility that allocate the costs between different agents.

Principles of responsibility identify conditions under which agents have duties to perform particular actions.³¹ I will sometimes call these conditions ‘morally relevant factors’, or ‘factors’ for short.³² For example, that I could prevent someone from dying at

³⁰ For example, see: Bjørn Lomborg, "The Truth About the Environment," *The Economist*, <http://www.economist.com/node/718860>.

³¹ This section was greatly influenced by Christian Barry, "Dissertation: Contribution Based Reasons to Address Acute Deprivation," p. 5.

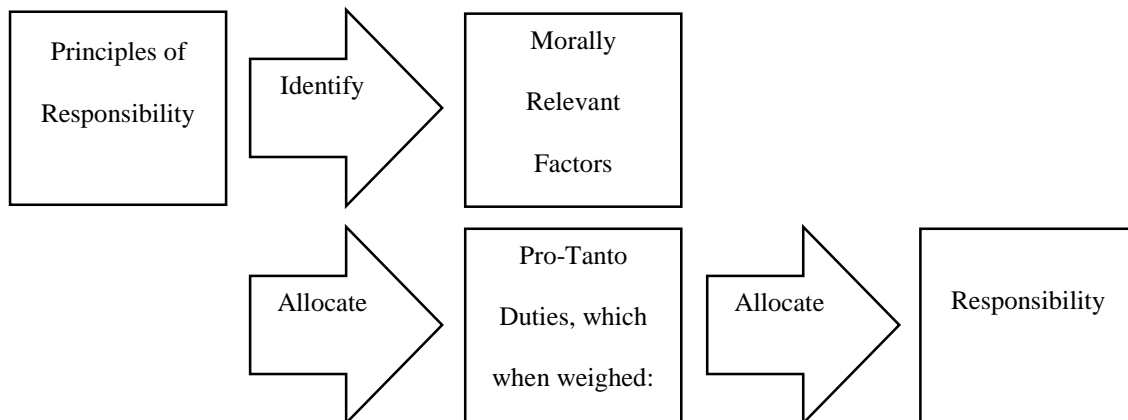
³² This terminology is borrowed from Shelly Kagan, *Normative Ethics*, ed. Norman Daniels and Keith Lehrer, *Dimensions of Philosophy* (Boulder: Westview Press, 1998).

little cost to myself is a factor that plausibly gives me a duty to assist that person.³³ Call each of the duties assigned by principles of responsibility to agents to perform particular actions *pro-tanto*. Each of us will have many pro-tanto duties to perform some action or another, and many of these pro-tanto duties will stand in tension with each other. For example, plausibly, if I am driving my car along a busy road I have a pro-tanto duty to obey the law and drive at the speed-limit. But suppose that I need to transport my passenger as quickly as possible to hospital or else they will die. In this case, it is plausible that I have a pro-tanto duty to assist my passenger by getting them to hospital as quickly as I can, even though this will require of me that I *not* drive at the speed-limit. These two pro-tanto duties must be weighed against each other (and any additional duties that I have) and what emerges from this weighing is what I have an *all-things-considered* duty to do. All-things-considered, I clearly should get my passenger to the hospital before they die, so I should not drive at the speed-limit. I will say that an agent who has an all-things-considered duty to perform some action has a *responsibility* to do so. An agent who performs that action *discharges* their responsibility. With respect to that duty, they have done what is morally required of them. One particular kind of responsibility that I will discuss throughout this thesis is *remedial responsibility*³⁴—namely, responsibility for bearing costs to remedy a bad state of affairs (often where some persons are very badly off). My discussion of responsibility can be represented in the following way:

³³ So weakly put, this claim is relatively uncontroversial. A more demanding argument in this spirit is famously developed by Peter Singer in Peter Singer, "Famine, Affluence and Morality," *Philosophy & Public Affairs* 1, no. 3 (1972).

³⁴ This term is borrowed from David Miller, "Distributing Responsibilities," *The Journal of Political Philosophy* 9, no. 4 (2001): p. 454.

Figure 1. Allocating Duties to Address Climate Change:



Often agents who are picked out by principles of responsibility to perform some action will be able to discharge their responsibility by themselves, for example, by voluntarily taking on its associated costs. If I am responsible for giving a particular amount of money to charity, then I can voluntarily take on these costs by logging onto internet banking and transferring the charity some of my money. By doing so, I discharge my responsibility. In other cases, however, agents will not be in a position to themselves discharge their responsibility because it is out of their control whether or not they are able to take on particular costs. For example, suppose that each well-off adult citizen of Australia has a responsibility to bear some costs associated with providing school education to Australian children. Typically, each of the adults picked out by the relevant principle will not be able to discharge this responsibility by themselves. Rather, the more common way that such responsibilities will be discharged is by paying a corresponding amount of tax to the government, who then implements the school education programs.

To some extent, the issue of allocating the costs of addressing climate change is like the issue of allocating the costs of school education programs. Of course, there are *some* actions that an individual can take to limit their emissions: they could ride a bike to

work, rather than driving, for example.³⁵ But, largely, mitigating and adapting to climate change are things that states must do if the world is to address climate change to an appropriate degree (i.e. 2°C or lower). For example, states must set emissions reductions policies (perhaps in the form of a carbon tax or emissions trading scheme). And by doing so, they will impose costs on their citizens. On the understanding of responsibility that I am working with, a main justification of states imposing these costs on their citizens is that their citizens are individually responsible for bearing these costs, even if they cannot themselves discharge this responsibility. In other words, that a state imposes costs of addressing climate change on its citizens is (in part) justified because such citizens have an all-things-considered duty to bear these costs.

To summarise: to answer the question ‘how should the costs of addressing climate change be allocated?’ we must look to principles of responsibility that allocate agents pro-tanto duties for bearing costs, and we must weigh these duties against each other. An agent will have responsibility to bear some costs of climate change if, after weighing their pro-tanto duties against each other, they have an all-things-considered duty to take on those costs. And if the appropriate method of discharging their responsibility is to contribute tax to their government, or bear other costs imposed by their government (i.e. in the form of an emissions trading scheme), then that is one good justification for the government to impose these costs on them.

³⁵ Some arguments along these lines include: Dale Jamieson, "When Utilitarians Should Be Virtue Theorists," *Utilitas* 19, no. 2 (2007): pp. 73-96; John Broome, *Climate Matters: Ethics in a Warming World* (New York: W.W. Norton & Company, 2012); James Garvey, "Climate Change and Causal Inefficacy: Why Go Green When It Makes No Difference?," *Royal Institute of Philosophy Supplement* 69 (2011); Anders Schinkel, "Causal and Moral Responsibility of Individuals for (the Harmful Consequences of) Climate Change," *Ethics, Policy and Environment* 14, no. 1 (2011). For a sceptical argument, see: Walter Sinnott-Armstrong, "It's Not My Fault: Global Warming and Individual Moral Obligations," in *Climate Ethics: Essential Readings*, ed. Stephen M Gardiner, et al. (New York: Oxford University Press, 2010).

Three principles of responsibility have been the chief focus of debates about allocating the costs of climate change. These are the ‘ability to pay principle’, the ‘contributor pays principle’, and the ‘beneficiary pays principle’. I argue that each of these principles are morally compelling and, therefore, determining how the costs of addressing climate change should be allocated involves weighing the duties allocated by these principles against each other. Put simply, each principle plays an important role, but none *on its own* provides a plausible account of how to allocate the costs of addressing climate change.

3. The Ability to Pay Principle

The ability to pay principle states that agents should bear proportionally greater costs of addressing climate change according to their ability to do so. Here is how Simon Caney has put it:

Stated formally, this approach states that the duty to address some problem (in this case, bearing the burdens of climate change) should be borne by the wealthy, and, moreover, that the duty should increase in line with an agent’s wealth.³⁶

³⁶ Simon Caney, "Climate Change and the Duties of the Advantaged," *Critical Review of International Social and Political Philosophy* 13, no. 1 (2010): p. 213. However, sometimes the principle is put slightly differently. Henry Shue, for example, puts it: "Among a number of parties, all of whom are bound to contribute to some common endeavour, the parties who have the most resources normally should contribute the most to the endeavour." Henry Shue, "Global Environment and International Inequality," *International Affairs* 75, no. 3 (1999): p. 537.

This is an entirely forward looking principle. It does not find relevant that some agents may be differentially related to the problem of climate change, in that some may have contributed to or benefited more from past and present emissions. The only morally relevant factor that this principle identifies as giving agents a duty to take on costs is their *capacity* to do so. Accordingly, this principle allocates agents *capacity-related duties* to prevent or alleviate harm.

The ability to pay principle clearly has broader implications than climate change. Peter Singer, for example, has long been a prominent defender of a demanding duty for affluent individuals to aid needy others, in virtue of their capacity to do so.³⁷ Many other theorists endorse capacity-related duties to aid needy others, though disagree with Singer that they are nearly so demanding.³⁸ On the understanding I will adopt in this thesis, a duty's *demandingness* is proportional to the costs that the duty may justifiably impose on the duty-bearer. The greater the costs a duty may impose on its bearer, the more demanding the duty. For example, it is typically thought that duties not to harm are very demanding whereas duties to be polite are not. That is, I should avoid harming others even at large cost to myself, whereas I am not required to incur nearly so large costs in order to avoid being impolite to others. A duty is *stringent* to the extent that the duty-bearer cannot appeal to other competing values in order to justify failing to act as that duty commands.³⁹ The more easily that other values can justify such a failure, the less stringent the duty. For example, a duty to be polite is not typically thought to be very stringent, whereas a duty not to harm is. Arguably, I can appeal to the harm I would cause

³⁷ Singer, "Famine, Affluence and Morality."

³⁸ For a good discussion of Singer's argument, see Christian Barry and Gerhard Øverland, "How Much for the Child?," *Ethical Theory and Moral Practice* 16, no. 1 (2013).

³⁹ I follow the understanding of demandingness and stringency as discussed in Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," pp. 21-22.

by being polite in some particular case to justify violating a duty to be polite, but not the other way round. I will also understand the *ground* of a duty as whatever factor – or combination of factors – justifies the allocation of that duty. For example, as Singer argues, the capacity to aid needy others is often thought to be a factor that grounds a duty to do so.

The first motivation for the ability to pay principle is *non-comparative* between potential duty-bearers: it is simply intuitively compelling that being in a position to address something bad at little cost to oneself grounds a pro-tanto duty to do so. For example, according to Singer's famous argument, if you could prevent a child from drowning in a shallow pond at only the small cost of getting your clothes muddy, intuitively you ought to do so.⁴⁰ And this only depends on the fact that you have the capacity to do so and that it is not unreasonable that you bear those costs.

A second motivation for the ability to pay principle is *comparative* between potential duty-bearers: we should assign greater costs to some agents insofar as they are better off than others. The idea here is that payment of costs becomes more burdensome the less able one is to bear them, and less burdensome the more able one is to bear them. Therefore, all else equal, it would be wrong not to impose greater costs (that some must bear) on those who can better bear them. This is the same motivation that supports progressive schemes of taxation. As Henry Shue puts it, "progressive rates ... take account of whether contributors [to paying costs] can in fact afford their respective contributions".⁴¹

⁴⁰ Singer, "Famine, Affluence and Morality."

⁴¹ Shue, "Global Environment and International Inequality," p. 538.

What are the practical implications of the ability to pay principle with respect to climate change? We live a world characterised by vast inequalities in wealth and life prospects. A recent report by the aid-organisation Oxfam made headlines around the world⁴² when it found that “Almost half of the world’s wealth is now owned by just one percent of the population” and that “The bottom half of the world’s population owns the same as the richest 85 people in the world”.⁴³ According to a World Bank working paper by Branko Milanovic, if we divided the income of the world into two halves, “the richest 8% will take one-half and the other 92% of the population will take another half. So, it is a 92-8 world”.⁴⁴ Likewise, a recent Credit Suisse report finds that “Taken together, the bottom half of the global population owns less than 1% of total wealth. In sharp contrast, the richest decile hold 87% of the world’s wealth, and the top percentile alone account for 48.2% of global assets”.⁴⁵ Different analyses report contrasting figures about the extent of global inequality partly because they take into account different data sets and use different methodologies. But all plausible analyses agree that there is vast inequality between individuals globally.

Inequality is a *relative* measure that compares how well off different people are. But our world is not just characterised by some being much better off than others. Rather,

⁴² For a few examples, see: Graeme Wearden, "Oxfam: 85 Richest People as Wealthy as Poorest Half of the World," *The Guardian*, <http://www.theguardian.com/business/2014/jan/20/oxfam-85-richest-people-half-of-the-world>; Laura Shin, "The 85 Richest People in the World Have as Much Wealth as the 3.5 Billion Poorest," *Forbes*, <http://www.forbes.com/sites/laurashin/2014/01/23/the-85-richest-people-in-the-world-have-as-much-wealth-as-the-3-5-billion-poorest/>; Patricia Cohen, "Oxfam Study Finds Richest 1% Is Likely to Control Half of Global Wealth by 2016," *The New York Times*, <http://www.nytimes.com/2015/01/19/business/richest-1-percent-likely-to-control-half-of-global-wealth-by-2016-study-finds.html>.

⁴³ See Ricardo Fuentes-Nieva and Nick Galasso, "Working for the Few: Political Capture and Economic Inequality," (Oxfam International, 2014).

⁴⁴ Branko Milanovic, "Global Income Inequality by the Numbers: In History and Now," (The World Bank Development Research Group. Poverty and Inequality Team, 2012), p. 8.

⁴⁵ Credit Suisse Global Wealth Report, p. 11.

it is characterised by many being badly off in *absolute* terms. According to the United Nations, 1.2 billion people live on less than \$1.25 per day,⁴⁶ around 795 million people are undernourished,⁴⁷ 748 million people do not have access to an improved drinking water source (of which 173 million people rely on untreated surface water),⁴⁸ 2.5 billion people do not use an improved sanitation facility,⁴⁹ about 1.5 billion people lack access to electricity,⁵⁰ and 781 million adults are illiterate.⁵¹ Around 6.3 million children die before they reach five years old.⁵² This is a situation of dire poverty, and many of these people simply cannot afford to bear further costs associated with climate change.

In the case of climate change, the upshot of the ability to pay principle is clear. Citizens of developed states are generally much better off in relative and absolute terms than the citizens of developing states and, therefore, generally have a far greater capacity to bear the costs of addressing climate change. In virtue of their greater capacity, they should be allocated proportionally greater costs of addressing climate change. Notice that this argument makes an assumption about what the relevant *units* are to which principles of responsibility apply: in particular, I referred to the ‘citizens of developed states’, in general, as having capacity-related duties to address the costs of climate change. However, it is important to note that there are other units to which these principles might also apply, for example: states, corporations, and international institutions such as the

⁴⁶ UNDP, "Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience," (New York, 2014), p. 19.

⁴⁷ IFAD, WFP, and FAO, "The State of Food Insecurity in the World 2015. Meeting the 2015 International Hunger Targets: Taking Stock of Uneven Progress," (Rome, 2015), p. 8.

⁴⁸ UNICEF and WHO, "Progress on Drinking Water and Sanitation 2014 Update," (2014), p. vi.

⁴⁹ *Ibid.*, p. iv.

⁵⁰ UNDP, "The Energy Access Situation in Developing Countries: A Review Focusing on the Least Developed Countries and Sub-Saharan Africa," (New York, 2009), p. 1.

⁵¹ UNESCO, "Education for All 2000-2015: Achievements and Challenges," (Paris2015), p. xii.

⁵² UNICEF, "The State of the World's Children 2015. Reimagine the Future: Innovation for Every Child," (New York, 2014), p. 35.

World Trade Organisation.⁵³ I only commit to the claim that these principles *do* apply to individuals, and not to the claim that they do not apply to other potential duty-bearing units (or that they do apply to them).

4. The Contributor Pays Principle

The contributor pays principle (often called the ‘polluter pays principle’, in the context of climate change) states that agents should bear costs of addressing climate change proportional to their contribution to the problem. According to one proponent, Eric Neumayer:

...those who caused the environmental damage in the first instance have to compensate for it.⁵⁴

The contributor pays principle is an entirely backward looking principle. Unlike the ability to pay principle, it does not find relevant that agents may have differential abilities to bear the costs of addressing climate change. Rather, the only morally relevant factor that this principle identifies as giving agents pro-tanto duties to bear costs is that they *contributed* to the production of those costs. Accordingly, the duties allocated by the contributor pays principle are *contribution-related duties* to not, in the first place,

⁵³ Simon Caney discusses this problem with respect to the contributor pays principle. See, Simon Caney, "Environmental Degradation, Reparations, and the Moral Significance of History," *Journal of Social Philosophy* 37, no. 3 (2006): p. 467.

⁵⁴ Eric Neumayer, "In Defence of Historical Accountability for Greenhouse Gas Emissions," *Ecological Economics* 33, no. 2 (2000): p. 187. Henry Shue endorses a different version of the principle in Shue, "Global Environment and International Inequality," p. 534.

wrongfully impose costs on others and, in the second place, compensate if one has done so.

The contributor pays principle has also been influential outside of the climate change debate. For example, it has been appealed to in the case of affluent individuals' responsibility for global poverty. In particular, Thomas Pogge has recently developed a forceful argument that citizens of affluent states cooperate in the imposition of a global institutional order that foreseeably and avoidably engenders severe human rights deprivations.⁵⁵ And in virtue of their contribution to these human rights deprivations, citizens of affluent states have a duty to compensate for them (and support the reform of institutions so that they do not continue to foreseeably and avoidably engender human rights deprivations).

The main motivation of the contributor pays principle is that it occupies a central place in common sense morality. Many people think that those who contribute to the imposition of unjustified costs on others have a duty to compensate for them, and that one has a duty not to contribute to the imposition of unjustified costs on others in the first place. For example, consider a person who dumps toxins in a river simply so that they do not have to pay the costs of appropriately disposing the waste, despite knowing that downstream there is a popular swimming spot for young children. It is clear to most people that this person would have a moral duty to compensate for any harm that they caused the children to suffer. And it is equally clear that this person has a duty not to endanger the children in the first place. Even some philosophical positions that are very

⁵⁵ Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, Second ed. (Cambridge: Polity Press, 2008).

sceptical of duties to address the plight of others—such as libertarianism—find contribution to harming others morally significant.⁵⁶

What are the implications of the contributor pays principle in the case of climate change? It is clear that developed states have contributed most greenhouse gas emissions since the industrial revolution towards the problem of climate change. A report from the World Resources Institute cites data that “Country-level estimates of CO₂ emissions from fossil fuels go back as far as 1850. Based on that record, the United States ranks first and the EU second in cumulative emissions. Together, the 25 major emitters today account for 83 percent of current global emissions and 90 percent of cumulative global emissions”.⁵⁷ This figure is supported by independent analyses.⁵⁸ Not only have developed states emitted more cumulatively than developing states, but this inequality corresponds to a large *per capita* difference in emissions between developed and developing countries. In 2012, for example, Australians on average consumed roughly 18 tonnes, Americans 16 tonnes, and British 8 tonnes of CO₂ emissions. During the same time, the figures were roughly 6 tonnes for Chinese, 1.5 tonnes for Indians, and 0.5 tonnes

⁵⁶ This is one reason why Thomas Pogge builds his case for addressing world poverty on negative duties: “While some passionately reject such human-rights-imposed positive duties and others passionately endorse them, I simply leave them aside here, without prejudice. To keep my argument widely acceptable, I conceive human rights narrowly as imposing only negative duties”. *Politics as Usual: What Lies Behind the Pro-Poor Rhetoric* (Cambridge: Polity Press, 2010), pp. 28-29.

⁵⁷ Kevin A. Baumert, Timothy Herzog, and Jonathan Pershing, "Navigating the Numbers: Greenhouse Gas Data and International Climate Policy," (World Resources Institute, 2005). They cite this data from G. Marland, T.A. Boden, and R.J. Andres, "Global, Regional, and National Fossil Fuel CO₂ Emissions," in *Trends: A Compendium of Data on Global Change* (Oak Ridge, TN: Carbon Dioxide Information Analysis Center, 2005).

⁵⁸ For example, another report, by the Netherlands Environmental Assessment Agency, gives supportive data for 2011: “The top 6 emitting countries and regions ... produce 70% of total global emissions, whereas the top 25 emitting countries are responsible for more than 80% of total emissions”. See Jos G.J. Olivier, Greet Janssens-Maenhout, and Jeroen A.H.W. Peters, "Trends in Global CO₂ Emissions: 2012 Report," (The Hague: Netherlands Environmental Assessment Agency, 2012).

of CO₂ for Bangladeshis.⁵⁹ On any plausible measure, each of the developed states (and, put in per capita terms, each of their citizens) contributed vastly more emissions to the atmosphere than developing states and their citizens.

There are two complications for this principle. The first complication is that there are various ways in which ‘contributing’ to harm might be understood, and it is controversial which (if any) should be endorsed. Some accounts understand contribution in terms of whether an agent makes a difference to the occurrence or extent of harm. According to this understanding, I might “...contribute to climate change in the sense that I make it worse”.⁶⁰ Another understanding of contribution holds that an agent contributes to harm insofar as they became “a necessary element of a set of antecedent actual conditions that was sufficient for the occurrence of the consequence”.⁶¹ And many other accounts of contribution have been developed in the literature.⁶² Since this thesis is principally concerned with the beneficiary pays principle, and not the contributor pays principle, I will avoid taking a stance on the difficult question of how contribution should best be understood. In any case, without settling on a particular definition, it seems plausible enough that many individuals contribute to climate change in some morally relevant sense.

The second complication is that there seem to be compelling objections to applying the contributor pays principle, as I have stated it, to climate change. Due to these

⁵⁹ I have calculated these figures from the U.S. Energy Information Administration in U.S. Energy Information Administration, "International Energy Statistics," <http://www.eia.gov/cfapps/ipdbproject/IEDIndex3.cfm?tid=90&pid=44&aid=8>.

⁶⁰ See, for example, Sinnott-Armstrong, "It's Not *My* Fault: Global Warming and Individual Moral Obligations," pp. 336-37.

⁶¹ This quote is from R.W. Wright, "Causation in Tort Law," *California Law Review* 73, no. 6 (1985): p. 1774. However, this understanding of contribution was first developed in H.L.A. Hart and Tony Honoré, *Causation in the Law*, 2nd ed. (Oxford: Oxford University Press, 1985).

⁶² See, for example, the accounts mentioned in Christian Barry, "Applying the Contribution Principle," *Metaphilosophy* 36, no. 1-2 (2005): pp. 212.

complications, some theorists instead advocate a close cousin of the contributor pays principle. According to these theorists, merely contributing causally to harm is not enough to allocate agents duties to address that harm. Instead, it is necessary that such agents were somehow culpable for their contribution. Furthermore, they claim, in order to be culpable for one's contribution, one must have known (or should have known) that one's actions would have contributed to such harmful effects. In the context of climate change, therefore, we should only take into account emissions that were produced within the timeframe in which agents knew, or should have known, that their emissions would contribute to harmful climate change (sometimes 1990 is suggested, in which the first IPCC assessment report was released).⁶³ These theorists object that it would be *unfair* to hold persons responsible for emissions before this time.⁶⁴ Furthermore, they point out that according to this principle, only current generations can *conceptually* be held responsible for paying the costs associated with their own emissions. The principle cannot *conceptually* hold current generations responsible for paying the costs of emissions produced by *past* generations, whether or not it would be unfair. But even granting that we should endorse some nearby version of the contributor pays principle that incorporates these culpability concerns, the general upshot seems clear. The citizens of developed states (since 1990, or whatever year serves as a justifiable baseline) have generally contributed much more to the problem of climate change than the citizens of developing states and, therefore, have a duty to bear the preponderance of the costs. As Peter Singer has put it, "If we believe that people should contribute to fixing something in proportion

⁶³ For example, Peter Singer, *One World: The Ethics of Globalisation* (Melbourne: Text Publishing, 2004), p. 38.

⁶⁴ This objection is made by Caney in Caney, "Environmental Degradation, Reparations, and the Moral Significance of History," pp. 469-71.

to their responsibility for breaking it, then the developed nations owe it to the rest of the world to fix the problem with the atmosphere".⁶⁵

5. The Beneficiary Pays Principle

The beneficiary pays principle holds that agents who have benefited from the processes that caused climate change should pay the costs of addressing its harms. In some form or another, this principle has been appealed to by various moral theorists working on this issue.⁶⁶ Edward Page states:

The burdens involved [in addressing climate change] should be distributed amongst states according to the amount of benefit that each state has derived from past and present activities that contribute to climate change.⁶⁷

While Page refers to 'states', we need not define the principle only in terms of states' responsibilities. Instead, we can cast beneficiary pays as a principle of individual responsibility. The morally relevant factor that this principle identifies as giving agents pro-tanto duties to take on costs is their having *benefited*. Accordingly, this principle

⁶⁵ Singer, *One World: The Ethics of Globalisation*, p. 38.

⁶⁶ See Christian Baatz, "Responsibility for the Past? Some Thoughts on Compensating Those Vulnerable to Climate Change in Developing Countries," *Ethics, Policy and Environment* 16, no. 1 (2013); Christian Barry and Robert Kirby, "Skepticism About Beneficiary Pays: A Critique," *Journal of Applied Philosophy* (2015); Axel Gosseries, "Historical Emissions and Free-Riding," *Ethical Perspectives* 11, no. 1 (2004); Clare Heyward, "Benefiting from Climate Geoengineering and Corresponding Remedial Duties: The Case of Unforeseeable Harms," *Journal of Applied Philosophy* 31, no. 4 (2014); Holly Lawford-Smith, "Benefiting from Failures to Address Climate Change," *Journal of Applied Philosophy*.; Neumayer, "In Defence of Historical Accountability for Greenhouse Gas Emissions."; Edward Page, "Give It up for Climate Change: A Defence of the Beneficiary Pays Principle," *International Theory* 4, no. 2 (2012); Shue, "Global Environment and International Inequality."

⁶⁷ Page, "Give It up for Climate Change: A Defence of the Beneficiary Pays Principle," pp. 302-03.

allocates agents *benefiting-related duties* to prevent or alleviate harm. As I argued above, for beneficiaries to discharge their responsibility – according to this principle – may require that their government imposes costs on them (in the form of a carbon tax or by implementing costly emissions trading policies) proportional to the value of the benefits that they have received. And the fact that these beneficiaries are responsible for bearing such costs (i.e. for giving up the value of their benefits) is a good justification for their governments implementing such policies.

The beneficiary pays principle is potentially very practically important. It has been gaining traction in the recent literature on responsibility in the context of climate change. And like the ability to pay and contributor pays principles, the beneficiary pays principle also has broader implications for other practical problems.⁶⁸ Insofar as the beneficiary pays principle is applicable to these other problems, this thesis is also potentially of interest for theorists who are not focusing on issues to do with climate change.

Nevertheless, what are the implications of the beneficiary pays principle in the case of climate change? Various authors have claimed that citizens of developed states benefit enormously from the industrial processes that caused climate change in the form

⁶⁸ For example, Judith Jarvis Thomson has appealed to benefiting in the context of U.S. sexist and racial inequality to justify a scheme of preferential hiring in which hiring officers declare in favour of female and black job candidates against any equally qualified male competitors. Judith Jarvis Thomson, "Preferential Hiring," *Philosophy & Public Affairs* 2, no. 4 (1973): pp. 383-84. Todd Calder has argued for duties of restitution for those who have benefited (in the form of being unjustly enriched) by sweatshop labour. Todd Calder, "Shared Responsibility, Global Structural Injustice, and Restitution," *Social Theory and Practice* 36, no. 2 (2010): p. 264. Daniel Butt has advocated beneficiary pays in the context of colonisation. Daniel Butt, "Repairing Historical Wrongs and the End of Empire," *Social & Legal Studies* 21, no. 2 (2012). Thomas Pogge has discussed benefiting (in the form of profiting) in the context of an unjust global institutional order. Thomas Pogge, "Severe Poverty as a Violation of Negative Duties," *Ethics & International Affairs* 19, no. 1 (2005): p. 71. Lynn Gillam and Ronald Green have independently discussed benefiting from Nazi experimentation on unconsenting Jews in the context of medical research. See Lynn Gillam, "Is It Ethical to Use Data from Nazi Medical Experiments?," *The Conversation*, <https://theconversation.com/is-it-ethical-to-use-data-from-nazi-medical-experiments-39928>; Ronald M. Green, "Benefiting from Evil: An Incipient Moral Problem in Human Stem Cell Research," *Bioethics* 16, no. 6 (2002).

of their high standard of living. For example, Eric Neumayer argues “There can be no doubt that the development of ‘Northern’ countries was eased, if not made possible in the first place, by having had the possibility of burning large amounts of fossil fuel...”.⁶⁹ Peter Singer similarly asserts: “...the wealth of the developed nations is inextricably tied to their prodigious use of carbon fuels”.⁷⁰ And these claims are backed by independent economic analysis. For example, Janssen, den Elzen, and Rotmans found that there is a significant “positive relation between welfare, measured by GNP per capita, and the relative contribution to the CO₂-concentration rise by fossil fuel combustion per capita” in a regression analysis over 11 world regions.⁷¹ And beneficiary pays need not be limited only to benefits derived from *past* industrial processes. Many *present* individuals benefit from *present* failures to reduce emissions, in the form of maintaining their high-emissions dependent lifestyles. They can heat their houses, fly overseas, buy electronics and other consumables, and so on, cheaper than they would be able to if demanding emissions constraints were implemented. So the implication of beneficiary pays in the case of climate change is that the citizens of developed states, all else equal, have a pro-tanto duty to bear the preponderance of the costs of climate change.

Lastly, beneficiary pays has not only been appealed to in allocating costs for addressing the harms of our past and present industrial emissions. Beneficiary pays has additionally been appealed to in order to allocate costs associated with the potential harmful effects of our *policy responses* to climate change. For example, Clare Heyward has argued for benefiting-related duties in the context of the deployment of

⁶⁹ Neumayer, "In Defence of Historical Accountability for Greenhouse Gas Emissions," p. 189.

⁷⁰ Singer, *One World: The Ethics of Globalisation*, p. 35.

⁷¹ M.A. Janssen, M.G.J. den Elzen, and J. Rotmans, "Allocating CO₂-Emissions by Using Equity Rules and Optimization," (Bilthoven: Dutch National Institute of Public Health and Environmental Protection, 1992), p. 23.

geoengineering policies (that is, “the deliberate large-scale manipulation of the planetary environment in order to counteract anthropogenic climate change”).⁷² Heyward focuses on the possibility that, “due to the complexity of the global climate system, the full consequences of an [geoengineering] intervention might not be knowable at the time the decision was made to deploy”. And some of these consequences may result in unforeseeable harms that must be dealt with, which raises another issue of remedial responsibility: who should bear the costs of these harms? Heyward proposes that “...with some modification, the principle that agents should surrender benefits that have accrued to them from using geoengineering techniques can be a good basis” for a scheme of “redress for any adverse impacts that could not have been predicted at the time of deployment”.⁷³

I have now introduced the beneficiary pays principle alongside the ability to pay and contributor pays principles. What reasons do theorists give for endorsing the beneficiary pays principle? I will now begin to motivate beneficiary pays by discussing various forms of support that have been developed in the literature.

6. Intuitive Support for Beneficiary Pays

Many theorists have attempted to motivate the beneficiary pays principle by showing that its application to hypothetical and real scenarios has significant intuitive appeal. For example, consider the following case adapted from Daniel Butt:

⁷² Heyward cites this definition from John Shepherd et al., "Geoengineering the Climate: Science, Governance and Uncertainty," (London: The Royal Society, 2009), p. 1.

⁷³ Heyward, "Benefiting from Climate Geoengineering and Corresponding Remedial Duties: The Case of Unforeseeable Harms," p. 405.

Island: Four people live on an island, each of whom grows the water-intensive Polychrestos plant in order to survive and who only require 200kg of the crop to subsist. Each of the islanders are entirely self-sufficient and there is little or no contact between them. Rich, who is industrious, works very hard to produce 700kg. Beneficiary and Victim put in enough work to merely ensure they have the necessary 200kg. Wrongdoer, who is an unsavoury character, does not work to cultivate his crop and instead secretly diverts water away from Victim's plantation towards his own. However, because he is incompetent, he also diverts water away from his own plantation and towards Beneficiary's. Come harvest time, Rich returns 700kg, Beneficiary returns a surprising 400kg, while Victim and Wrongdoer return no Polychrestos crop at all. Dismayed by his failure, Wrongdoer hangs himself. Sadly, now, in order for Victim to survive, either Rich or Beneficiary (or both) must give some of their crop to Victim.⁷⁴

In this case, how should remedial responsibility be distributed between the agents? Butt points out that there are no ties of community between Rich, Beneficiary, and Victim. Of course, it is true that they inhabit an island together. But there is little or no contact between them. Furthermore, neither Rich nor Beneficiary contributed to Victim's plight. The only remaining relevant considerations seem to be that Rich has a greater ability to assist Victim and that Beneficiary was enriched by the process that harmed Victim. One option, then, would be to allocate Rich alone a duty to surrender his Polychrestos to

⁷⁴ Butt, "On Benefiting from Injustice," p. 132.

address the harm done to Victim. However, Butt writes: "...does not such a conclusion seem intuitively objectionable?"⁷⁵ Butt's claim is not that Rich has *no* duty to surrender *any* Polychrestos to Victim. Rather, his claim is that it is intuitive that Beneficiary *also* has a duty to surrender at least *some* of his Polychrestos to Victim. If this is right, however, then according to Butt we should infer that the beneficiary pays principle is warranted in some cases of benefiting.

Consider another case adapted from Christian Barry and David Wiens:

Stolen Car: Bill steals John's car and gives it to Susan, who is innocent of any wrongdoing herself. Bill can no longer be found, nor does he leave behind assets that can be seized.⁷⁶

According to Barry and Wiens, it is intuitive to think that Susan has a duty to give the car back to John, even though Susan was in no way related to the initial wrongdoing other than that she benefited. However, if this is right, then the beneficiary pays principle at least makes intuitive sense of agents' responsibilities in cases where some property has been wrongfully transferred between victims and beneficiaries. Now, it is a tricky question to answer (one that I will take a stand on in this thesis) in which cases does beneficiary pays make sense? But there is, at least, some intuitive support for the principle in some hypothetical cases of benefiting.

⁷⁵ Daniel Butt, "On Benefiting from Injustice," *Canadian Journal of Philosophy* 37, no. 1 (2007): p. 133.

⁷⁶ Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," p. 3.

7. Theoretical Support for Beneficiary Pays

In addition to intuitive support, theorists have now developed various theoretical rationales for beneficiary pays. In the following section, I will discuss three main bases of beneficiary pays along which these rationales can usefully be grouped.

A first basis for beneficiary pays focuses on the attitudes we should take towards wrongdoing and injustice. For example, Daniel Butt has developed an influential justification of beneficiary pays in terms of condemning injustice. He writes:

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 act 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.⁷⁷

This justification has proved very influential with theorists writing on beneficiary pays. For example, Edward Page entertains this justification as part of his support for beneficiary pays in the case of climate change. He writes: "Not to disgorge their fair share

⁷⁷ Butt, "On Benefiting from Injustice," p. 143.

of climatic benefits for the sake of the global climate response would put states in the position of condoning the setbacks of interest to which their affluence can historically be linked”.⁷⁸ Christian Baatz endorses this argument when he writes: “The duty results from a genuine aversion to injustice and it would constitute a conceptual error to condemn an act as unjust but, simultaneously, not be willing to mitigate its effects on the grounds that it has benefited us; the refusal undermines the condemnation”.⁷⁹ Clare Heyward has endorsed a version of this argument too, claiming: “If an agent benefits from another knowingly acting unjustly, then the beneficiary might be accused of condoning the action if she keeps the benefits. Failure to surrender benefits indicates that wrongs committed against the victim do not matter”.⁸⁰

A second basis for beneficiary pays appeals to ideas of unjust enrichment, restitution, or tainted title.⁸¹ The basic idea of these accounts is that a violation of rights has occurred somewhere along the line of the benefits accruing to the beneficiary, and that this violation undermines their entitlement to those benefits. As a result, the beneficiary has a duty to relinquish those benefits that they unjustly possess and have no moral claim to. For example, Bigelow, Pargetter, and Young defend an unjust enrichment account, in which they compare white Australians’ benefiting from colonisation with benefiting from piracy: “Where the great gains to the original pirates have been passed on to the descendants of those pirates, unless those descendants have divested themselves of the stolen property and made restitution, descendants of the original victims have a

⁷⁸ Page, "Give It up for Climate Change: A Defence of the Beneficiary Pays Principle," p. 315.

⁷⁹ Baatz, "Responsibility for the Past? Some Thoughts on Compensating Those Vulnerable to Climate Change in Developing Countries," p. 98.

⁸⁰ Heyward, "Benefiting from Climate Geoengineering and Corresponding Remedial Duties: The Case of Unforeseeable Harms," p. 410.

⁸¹ In addition to the authors I discuss below, see also: Page, "Give It up for Climate Change: A Defence of the Beneficiary Pays Principle," p. 314.

legitimate claim against them.”⁸² Similarly, in the context of benefiting from sweatshop labour, Todd Calder argues, just as a person “would not be entitled to a stolen bicycle, however innocently he acquired it, since stealing is unjust, he is not entitled to the benefits resulting from sweatshops if sweatshops are unjust”.⁸³ According to Calder, the amount that a beneficiary must pay in restitution is the amount that they have been unjustly enriched.

Lastly, Robert Goodin has argued for duties of disgorgement in terms of ‘tainted title’.⁸⁴ This account is structurally similar to Robert Nozick’s entitlement theory of justice in holdings. According to Nozick, “A distribution is just if it arises from another just distribution by legitimate means”.⁸⁵ Unlike what he called ‘end-state’ principles (which look at a particular distribution of holdings at a given time to check whether it corresponds with a substantively favoured just distribution), Nozick’s historic entitlement theory looks to the actual past history of acquisition and transfer of holdings alone. If holdings were initially acquired justly and then transferred justly, whatever the pattern of holdings that obtained is just. On the other hand, if holdings were either not acquired justly initially or not transferred justly, then the pattern of holdings that obtained is not just—in this case, holdings are in the wrong hands and should be relinquished according to a principle of justice in rectification.

Goodin discusses the implication of this view for duties of disgorgement on the part of innocent beneficiaries:

⁸² John Bigelow, Robert Pargetter, and Robert Young, "Land, Well-Being and Compensation," *Australasian Journal of Philosophy* 68, no. 3 (1990): p. 336.

⁸³ Calder, "Shared Responsibility, Global Structural Injustice, and Restitution," p. 274.

⁸⁴ Robert E Goodin, "Disgorging the Fruits of Historical Wrongdoing," *American Political Science Review* 107, no. 3 (2013).

⁸⁵ Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974), p. 151.

Disgorgement can be analyzed in precisely the same manner that Nozick's logic would have us analyze rectification in general. In the process of original acquisition and the subsequent transfer, one seriously wrong step anywhere along the line prevents the process from being "justice preserving." One seriously wrong step anywhere along the line suffices to taint the holder's title to the object. What happens to titles that are tainted? They are extinguished; they are rendered void. If your title to an object is tainted, then the object is not rightfully yours. You have no legitimate claim to it, and you may properly be required to relinquish it.⁸⁶

Thus, according to Goodin, an innocent beneficiary may properly be required to relinquish their benefits when their claim over these benefits qualifies as 'tainted'.

A third basis for beneficiary pays emphasises the manner in which retaining the benefits of wrongful harm can involve the beneficiary in a separate wrong. Ronald Green has recently argued that "Everyone has a stake in opposing forms of benefiting from evil that encourage the further commission of evil deeds", and that such acts of benefiting are themselves prima facie wrong.⁸⁷ Another account which focuses on how retaining benefits might involve the beneficiary in performing a distinct wrong is developed by Christian Barry and David Wiens, who argue that: "...beneficiaries incur a benefiting-related remedial duty to the victims of wrongdoing if and only if they sustain wrongful harm by retaining the benefits".⁸⁸ And they argue that there are two ways by which an innocent beneficiary can sustain wrongful harm: "First, an innocent beneficiary sustains

⁸⁶ Goodin, "Disgorging the Fruits of Historical Wrongdoing," p. 487.

⁸⁷ Green, "Benefiting from Evil: An Incipient Moral Problem in Human Stem Cell Research," p. 548.

⁸⁸ Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," p. 18.

wrongful harm if she receives and retains an item or quantum of value to which another person has a justified claim. Second, an innocent beneficiary sustains wrongful harm if she receives and retains benefits derived from advantages conferred by a social practice or institution in violation of another person's justified claim(s) against that practice or institution".⁸⁹ Put another way, Barry and Wiens argue that beneficiaries should relinquish their benefits when their failure to do so would present an obstacle for the reconciliation of the victims' claims.

8. Further Support for Beneficiary Pays

The beneficiary pays principle has significant intuitive and theoretical appeal. However, some theorists have also developed further support for the beneficiary pays principle by pointing to several of its attractive features that are left out of some other accounts. For example, in the case of climate change, Edward Page and Ramon Das have independently argued that beneficiary pays owes some of its appeal to the way that it treads a plausible middle ground between the ability to pay and contributor pays principles.⁹⁰ Recall that, on the one hand, the ability to pay principle is entirely forward looking in that it only finds relevant the capacity of agents to take on cost to address climate change. On the other hand, the contributor pays principle is an entirely backward looking principle in that it only finds relevant the contributions that agents have made towards climate change in the past. Each of these principles, claim Page and Das, focus on factors which are morally

⁸⁹ Ibid., p. 4.

⁹⁰ Page, "Give It up for Climate Change: A Defence of the Beneficiary Pays Principle," p. 307. See also, Ramon Das, "Has Industrialization Benefited No One? Climate Change and the Non-Identity Problem," *Ethical Theory and Moral Practice* 17, no. 4 (2014): p. 749.

important: it seems to morally matter whether, and to what extent, an agent is *able* to take on costs to address harm. And it also seems to morally matter whether, and to what extent, an agent is (at least partly) responsible for having *caused* harm to begin with. But just as each principle captures a factor that morally matters, each correspondingly neglects a factor of moral importance—that is, the factor the other principle finds relevant. Uniquely, they claim, the beneficiary pays principle is able to capture both morally relevant factors: beneficiaries are likely to be better off and therefore better able to bear costs (the forward looking element) because they have benefited from past and present industrial processes that contribute to climate change (the backward looking element).

A second source of additional motivation for the beneficiary pays principle in the context of climate change relates to how it answers an objection to the contributor pays principle: we have seen that some theorists argue that the contributor pays principle cannot (without being unfair) allocate responsibility for *contemporary* individuals to bear the costs associated with the emissions of *past* individuals. So, the objection challenges, even if developed states have contributed more to the problem of climate change, why should their present citizens be willing to bear many of these costs (in particular, the costs of emissions prior to the birth of these presently alive citizens)?

Some proponents of beneficiary pays have answered that they should be willing to pay these costs precisely when and because present individuals have benefited from the emissions produced by their ancestors. As Eric Neumayer says, “The fundamental counter-argument against not being held accountable for emissions undertaken by past generations is that the current developed countries readily accept the benefits from past

emissions...”.⁹¹ Henry Shue similarly responds: “...current generations are, and future generations probably will be, continuing beneficiaries of earlier industrial activity”.⁹² Christian Baatz similarly remarks: “When I talk to friends, students or colleagues about responsibility for past emissions and explain why it is problematic to apply the PPP [polluter pays principle] to the intergenerational context, most of them ask ‘but what about the benefits?’ before I have even mentioned the BPP [beneficiary pays principle]”.⁹³ If this is right, then beneficiary pays gets part of its normative appeal by achieving the right intuitive results in cases where other principles of responsibility – in this case, the contributor pays principle – cannot do so.

We might expand on this argument by pointing out that the contributor pays principle may fail to assign responsibility in another way that the beneficiary pays principle does not. Irrespective of whether the contributor pays principle can allocate duties to present people to compensate for *past* persons’ emissions, some moral theorists are sceptical that a convincing story can be told that links *present* individual emissions to climate change related harms.⁹⁴ For example, Walter Sinnott-Armstrong has recently argued, “...global warming is such a large problem that it is not individuals who cause it or who need to fix it”.⁹⁵ This claim is largely based on his argument that no ordinary individual acts of emitting are necessary or sufficient for global warming: whether or not I drive an inefficient car to work rather than ride my bike will make no difference to the occurrence or extent of climate change. Therefore, there will be no individual who is

⁹¹ Neumayer, "In Defence of Historical Accountability for Greenhouse Gas Emissions," p. 189. See also, Shue, "Global Environment and International Inequality," p. 536.

⁹² "Global Environment and International Inequality," p. 536.

⁹³ Baatz, "Responsibility for the Past? Some Thoughts on Compensating Those Vulnerable to Climate Change in Developing Countries," pp. 96-97.

⁹⁴ We make this point in Barry and Kirby, "Skepticism About Beneficiary Pays: A Critique," p. 2.

⁹⁵ Sinnott-Armstrong, "It's Not *My* Fault: Global Warming and Individual Moral Obligations."

worse off due to my choice.⁹⁶ It is rather the aggregate of our emissions which cause climate change related harms. Therefore, Sinnott-Armstrong argues, individuals should focus their efforts on persuading governments to respond appropriately to climate change, rather than moderate their own individual emissions: “Finding and implementing a real solution is the task of governments. Environmentalists should focus their efforts on those who are not doing their job rather than on those who take Sunday afternoon drives just for fun”.⁹⁷

Some theorists have rejected this argument. They claim that each individual’s emissions *do* make a difference to the extent of harm expected from climate change. According to John Nolt, for example, “...the average American causes through his/her greenhouse gas emissions the serious suffering and/or deaths of two future people”.⁹⁸ And John Broome has similarly argued that “...it can be estimated very roughly that your lifetime emissions will wipe out more than six months of healthy human life”.⁹⁹ But I do not aim to resolve these disagreements here. For my purposes, the important point is that no matter how complex the climate system is, no matter how over-determined are its harms, it is a fact that a great many people have benefited from past and present emitting activities (Chapter 2 will address an objection to this claim arising from what has been called the non-identity problem). In this sense, the beneficiary pays principle potentially provides a more robust argument (than the contributor pays principle) for allocating

⁹⁶ Ibid., pp. 334-36.

⁹⁷ Ibid., p. 344.

⁹⁸ John Nolt, "How Harmful Are the Average American's Greenhouse Gas Emissions?," *Ethics, Policy and Environment* 14, no. 1 (2011): p. 9.

⁹⁹ Broome, *Climate Matters: Ethics in a Warming World*, p. 74.

individuals duties to pay the costs associated with *their own* emissions, let alone the emissions of their ancestors.¹⁰⁰

Beneficiary pays succeeds where contributor pays potentially fails because the former, unlike the latter, does not require culpability for attributing moral responsibility. This attractive feature of benefiting-related duties has been explored by Holly Lawford-Smith, who attempts to “...undermine that sense of entitlement the affluent (and otherwise able) have over their holdings, without accepting the fundamental assumption of justice-based arguments, namely that the best way to do that is to pin culpability on them”. She does this, precisely, by arguing for “...a principle upon which it is impermissible to retain the material benefits of the world going other than it ought”.¹⁰¹ The thought is that whether or not individuals have culpably contributed to climate change, they may still properly be required to take on costs (in the form of relinquishing their benefits) when they have benefited from the world going other than it ought to have gone. And the world can go other than it ought to, according to Lawford-Smith, without anyone being culpable.

9. Conclusion

¹⁰⁰ A similar motivation for beneficiary pays has been appealed to in the case of duties of the affluent to address global poverty. Bashshar Haydar and Gerhard Øverland have argued that “It may be argued that ordinary people are too remotely related to what their governments do as to assign to them a contribution-based requirement to assist the global poor. Yet, even if affluent people do not contribute to global poverty on this account, it can still be argued that they benefit from what their governments do. If that is the case, it could imply that ordinary affluent people have benefiting-based requirements to address global poverty”. Bashshar Haydar and Gerhard Øverland, “The Normative Implications of Benefiting from Injustice,” *Journal of Applied Philosophy* 31, no. 4 (2014): p. 358.

¹⁰¹ Holly Lawford-Smith, “Benefiting from Failures to Address Climate Change,” *Journal of Applied Philosophy*: pp. 392-93.

In this chapter, I surveyed recent empirical literature and argued that climate change raises an important moral problem: who should bear the costs of addressing its associated harms? I argued that the answer to this question involves weighing the duties assigned by various compelling principles of responsibility: namely, the ability to pay principle, the contributor pays principle, and the beneficiary pays principle. I then discussed various motivations for the beneficiary pays principle developed in recent literature. The next chapter evaluates various theorists' sceptical reactions to the beneficiary pays principle.

Chapter 2: Scepticism about Beneficiary Pays: A Critique

In the previous chapter I introduced and motivated beneficiary pays as a principle of responsibility for allocating the costs of climate change. This chapter – based on a paper co-written with Christian Barry and accepted for publication in the *Journal of Applied Philosophy* – develops a negative defence.¹⁰² Our aim in this chapter is to examine some critiques of beneficiary pays (both in general and in the particular case of human-induced climate change).¹⁰³ We conclude that, while they have made important points, the principle remains worthy of further development and exploration. Our purpose in engaging with these critiques is constructive—we aim to formulate beneficiary pays in ways that would give it a plausible role in allocating the cost of addressing human-induced climate change, while acknowledging that some understandings of the principle would make it unsuitable for this purpose. A major innovation of this chapter is our account of what form benefiting must take in order to trigger beneficiary pays. We argue that we should be pluralists regarding benefiting, endorsing a ‘non-comparative’ test as a sufficient condition to trigger beneficiary pays while at the same time accepting that particular ‘counterfactual’ tests may constitute other, independent, sufficient conditions.

¹⁰² For the full unmodified paper, see: Christian Barry and Robert Kirby, "Skepticism About Beneficiary Pays: A Critique," *Journal of Applied Philosophy*. (2015).

¹⁰³ We will focus on objections developed in Carl Knight, "Benefiting from Injustice and Brute Luck," *Social Theory and Practice* 39, no. 4 (2013); Ewan Kingston, "Climate Justice and Temporally Remote Emissions," *Social Theory and Practice* 40, no. 2 (2014); Robert Huseby, "Should the Beneficiaries Pay?," *Politics, Philosophy & Economics* (2013); Rudolf Schüssler, "Climate Justice: A Question of Historical Responsibility?," *Journal of Global Ethics* 7, no. 3 (2011); Caney, "Environmental Degradation, Reparations, and the Moral Significance of History."

1. Non-Identity

The objection from non-identity is not an objection against the idea of beneficiary-pays generally, but only in its application to the case of human-induced climate change. For the beneficiary-pays principle to have any traction in assigning special duties to address the harms of climate change, two minimal requirements must be met. We must be able to identify (1) some parties that have suffered harm and (2) some parties that have benefited, as a result of the processes that caused climate change. But can we make sense of the idea that there exist individuals who have benefited from such processes? The objection based on the non-identity problem asserts that condition (2) cannot be met.

To identify beneficiaries we must be able to find particular individuals who have been made better off as a result of industrialization. And to do this we need to be able to compare the state of these individual people without industrialization (or without industrialization in the form that our world actually experienced) with their state given the form that industrialization has taken. The objection is that this makes no sense, since different people would have existed had history taken such a different form.¹⁰⁴ People who currently exist do so only because history has followed a particular path. It thus makes no sense to say that actually existing individuals are beneficiaries of carbon emissions that have caused climate change. Simon Caney writes:

They [currently alive members of industrialized states] have not been made better off than they would have been by industrialization because without

¹⁰⁴ See Derek Parfit, *Reasons and Persons* (New York: Oxford University Press, 1984), pp. 351-79.

industrialization they would not have been at all. The Beneficiary Account, it is argued, works where you have a preexisting individual who then receives a benefit. In such a scenario, we can clearly and unequivocally say that they have been benefited. In an intergenerational context, however, the non-identity problem entails that industrialization has not improved the lot of current people.¹⁰⁵

This is a powerful objection. It does not challenge the idea of benefitting-related duties as such, but alleges a deep incoherence in the use of the beneficiary pays principle as it applies to climate change: since no one now alive has benefited from past industrial processes that contributed to climate change, there can be no one alive who should be responsible for bearing the costs of addressing the problem. We discuss this objection at greater length than the others, since it is so potentially damaging. It also quickly uncovers basic issues regarding the formulation of the beneficiary pays principle.

The first response to this objection relates to its scope. The non-identity problem is specifically a problem for the intergenerational application of beneficiary pays. It does nothing to undermine its application to harms and benefits that arise *intra*-generationally. That is, once a person has been born, it surely can make sense to claim that they have benefited (or not) from policies that were sustained during the period in which they were alive. Had any of those policies been different, they would still exist. And insofar as some are better off as a result of contemporary carbon-intensive industrial policies (for example, because they pay less tax, have lower business expenses, can access cheaper energy, travel, and so on, than if stronger climate change policies been adopted) while

¹⁰⁵ Caney, "Environmental Degradation, Reparations, and the Moral Significance of History," p. 475.

others are worse off, it is possible to claim that the former may have a special duty to disgorge their benefits in order to address the harms the latter suffer.¹⁰⁶

A second and more fundamental response challenges whether the counterfactual baseline that is being invoked in making the objection is appropriate, and whether alternative baselines would be vulnerable to it. Caney originally states the baseline: “A benefits from X **if** A is better off with X than she would otherwise have been (hereinafter *the standard version*)”.¹⁰⁷ Is the standard version the best way of conceiving the relevant baseline? He provides two examples in support of it:

If A takes part in a neighborhood watch scheme that successfully deters theft, then we will say that A benefits in the sense that she is better off after the institution of the scheme than before. Or if A takes part in a scheme with other parents in which each takes turn to take the members’ children to school, then again A benefits in the sense that A is better off under the scheme than she would have been without it. The *standard version* seems then a pretty plausible conception of ‘benefit’.¹⁰⁸

¹⁰⁶ A potential problem arises here, since there may be a significant lag between our benefiting from contemporary carbon-intensive industrial policies and their negative effects on the climate system. Emissions may cause some of their contribution to climate change only after a significant amount of time in the atmosphere. If so, contemporary emissions may make us better off now, but those who will be mostly effected by these emissions will exist in the future (who will not be worse off, according to the non-identity problem, since they would not otherwise exist). Therefore, one might object that the *intra*-generational application of beneficiary pays is inert with respect to contemporary carbon-industrial policies. However, we think that: First, the lagging effect may not be absolute: contemporary emissions may result in *some* contemporary persons being worse off to *some* extent due to their effects of the climate system, even if most of these effects occur later. Second, many contemporary persons (for example, in developing countries) may be made worse off in the sense that they may be required to limit their emissions to a greater degree, given carbon-intensive policies (in affluent countries), than they would otherwise have needed to in order to avert dangerous climate change. In other words, when we enjoy the benefits of contemporary carbon-intensive policies, others are worse off *now* because they then do not get to do so. Edward Page discusses this point in terms of “constrained development”, see: Page, “Give It Up for Climate Change: A Defence of the Beneficiary Pays Principle,” p. 315. We thank David Wiens for raising this problem with us.

¹⁰⁷ We have bolded the sufficiency claim “if”, but the italics are Caney’s: see Caney, “Environmental Degradation, Reparations, and the Moral Significance of History,” p. 474.

¹⁰⁸ Original emphasis. *Ibid.*

Note that the first example does not actually support the standard version, since the comparison it makes is a diachronic (how things were before and how things were after) comparison, rather than a counterfactual test (what things would have been like without the scheme and what things were like with the scheme). This example, if correct, would in fact undermine the claim that the standard version of benefiting is a necessary condition of benefiting. But we will not dwell further on this point. The second example Caney employs for his preferred baseline would support only that it constitutes a sufficient condition of benefiting. For his argument that non-identity worries make beneficiary pays inapplicable to succeed, however, he needs to show also that that there are no other conditions that are independently sufficient for claiming that people today have benefitted from climate change. If there were other independently or jointly sufficient conditions, then people could benefit without benefiting in the manner envisioned in the standard version. So Caney needs to show that standard version provides both necessary and sufficient conditions for benefitting, and the examples he provides clearly do not do this. But of course it is very difficult to show that something is a necessary condition, and it will not do to simply shift the burden of proof back to Caney. Instead, we will explore alternative conditions for benefiting that seem intuitively plausible and which can be satisfied when the standard version is not.

Daniel Butt has defended an explicitly moralised alternative counterfactual baseline to the standard version in which “the actual world, following an act of injustice, is compared to an alternative, possible world where injustice is absent”.¹⁰⁹ He claims we

¹⁰⁹ Butt, "On Benefiting from Injustice," p. 146.

should not compare the actual world to the *most likely* alternative in which injustice is absent, since victims of injustice may be better off than they otherwise would have been. For example, victims of exploitative labour will often be better off receiving wages than not being employed at all, which may well be the most likely alternative scenario.¹¹⁰ Instead, Butt argues that we should pick out a counterfactual scenario in which “all the interaction between the relevant parties was just and consensual”.¹¹¹ In other words, we should compare the exploited labourers’ position with how well off they would have been had the employer instead provided a fair wage and decent working conditions. And likewise, presumably, we should compare the employer’s position (paying low wages) with how well off they would have been had they offered fair wages and conditions. It seems clear that there will be cases where Butt’s baseline and the standard version yield quite different verdicts. Moreover, it seems that the verdicts yielded by Butt’s baseline will often be more plausible than those of the standard version.¹¹²

So there are reasons to prefer Butt’s baseline to the standard version. Will it avoid the non-identity problem? Butt claims that it will.¹¹³ He writes: “Insofar as it generates counterfactuals in a non-probabilistic fashion, it is able to make reference to a counterfactual state where the individuals who claim compensation exist, but where the action did not occur”.¹¹⁴ While it is highly improbable that had wrongdoing or injustice

¹¹⁰ Daniel Butt, *Rectifying International Injustice: Principles of Compensation and Restitution between Nations* (New York: Oxford University Press, 2009), pp. 105-15.

¹¹¹ *Ibid.*, p. 115.

¹¹² Indeed, the standard version conceived as a necessary condition of benefiting is vulnerable to the very same objections that beset its corollary for the case of harm. If Bill breaks Bobby’s nose with a punch he harms him, but according to a simple counterfactual account of harm he would not harm him in case Judith (who unbeknownst to both is waiting in the wings) would have broken Bobby’s nose and his harm had Bill not punched him.

¹¹³ He credits this argument to A. John Simmons, "Historical Rights and Fair Shares," *Law and Philosophy* 14, no. 2 (1995).

¹¹⁴ Butt, *Rectifying International Injustice: Principles of Compensation and Restitution between Nations*, p. 105.

not occurred the same individuals would exist today, it is not strictly *impossible*. And insofar as it is not strictly impossible that history could have been different and the same persons could exist, we can select such a scenario as the morally relevant counterfactual, no matter how improbable it is.

One general difficulty with Butt's proposal is that beneficiaries may be *worse off* given wrongdoing or injustice than they would have been had all the interaction between the relevant parties been just and consensual; yet it is still intuitive to think that they ought to use their benefits to address harm suffered by victims. Consider an example used by Nibert Anwander, "some white businesses in South Africa which were said to have profited from the apartheid regime argued that, all in all, they would have been better off if there had been no such regime".¹¹⁵ But even if these white businesses would have been better off if interaction had been just and consensual (i.e., in fact, they were worse off due to apartheid), it nevertheless seems appropriate that beneficiary pays would assign them special duties in virtue of profiting from that unjust regime. Note that the standard version does not seem to capture this sort of case any better than Butt's proposal does unless we suppose that the alternative to the Apartheid regime was not the just regime but something much worse for white South Africans. So neither seems to provide a plausible account of necessary conditions for benefiting. We return to the importance of this sort of case below.

Holly Lawford-Smith has a different proposal for a counterfactual baseline, according to which a person has benefited if they possess holdings that are "necessary to

¹¹⁵ Nibert Anwander, "World Poverty and Moral Free-Riding: The Obligations of Those Who Profit from Global Injustice," in *Absolute Poverty and Global Justice: Empirical Data - Moral Theories - Initiatives* ed. Elke Mack, et al. (Farnham: Ashgate Publishing Limited, 2009), footnote 8, pp. 181-82.

the world going as it morally ought to have gone”.¹¹⁶ She argues that this baseline avoids the non-identity problem since it makes reference to *holdings* rather than *persons*. She writes: “If the world had gone as it ought, the holdings would be one way; given that it goes other than it ought, the holdings go another way. We figure out who counts as a beneficiary by figuring out what the pattern of holdings would look like”.¹¹⁷ It is true that present-day members of developed states may not have existed had industrialization not occurred in the manner it historically did, but this is compatible with present-day members enjoying holdings that were necessary to the world going as it ought to have gone.

This is an interesting proposal and may well constitute an adequate sufficient condition for benefiting without falling victim to the non-identity problem. It does raise difficult questions about how the relevant comparisons are to be made. How, exactly, do we calculate how much of their holdings any given individual has a duty to disgorge? One plausible method would be to place individuals into wealth quintiles and compare the supposed difference, on average, between what holdings an individual belonging to this quintile has in the world as it is against what an individual belonging to this quintile would have had if industrialization did not occur in the manner that it historically did. If so, one might worry that the individuals that make up the top quintile would have found a way to be wealthy no matter what (if they couldn’t enrich themselves through climate change they would find other opportunities to enrich themselves), in which cases there may be little difference between the pattern of holdings in the two quintiles being

¹¹⁶ The full reading of the counterfactual is: “If there is at least one person who suffers as a result of the world going other than it morally ought to have gone who can be compensated or made reparation, then to that extent it is impermissible to retain any benefits necessary to the world going as it morally ought to have gone”: Lawford-Smith, “Benefiting from Failures to Address Climate Change,” pp. 399-400.

¹¹⁷ *Ibid.*, pp. 401-02.

compared – the richest twenty-percent may be equally well off in both. But that would just mean that the wealthy weren't beneficiaries according to this baseline, which is hardly a decisive objection to it.

So far, we have been considering counterfactual baselines for determining benefits from wrongful harm and whether they are morally plausible while avoiding the non-identity problem. But there is another way of conceiving of benefiting from injustice that seems to make sense of our judgments about cases that counterfactual baselines have difficulty with. To explain, we need to make a brief detour into some of recent literature on the metaphysics of harm. Recently, Seana Shiffrin and Elizabeth Harman have argued for a conception of “harming as causing harm” which does not rely on counterfactual assessments of the sort we have been discussing.¹¹⁸ The basic idea is that an agent is harmed if they are caused to be in a particular kind of bad state—for example, if they are caused “to be in pain, to be in mental discomfort, to be in physical discomfort, to have a disease, to be deformed, to be disabled, or to die”.¹¹⁹ Of course, what it means to be in a bad state of the relevant sort will be controversial: Shiffrin argues for a particular view upon which the relevant bad state is constituted by a “significant chasm, conflict, or other form of significant disconnect between one’s will and one’s life”.¹²⁰ But one need not accept this particular view to get the basic idea of this notion of harm.

¹¹⁸ See Seana Shiffrin, "Wrongful Life, Procreative Responsibility, and the Significance of Harm," *Legal Theory* 5, no. 2 (1999); "Harm and Its Moral Significance," *Legal Theory* 18, no. 03 (2012); Elizabeth Harman, "Can We Harm and Benefit in Creating?," *Philosophical Perspectives* 18, no. 1 (2004); "Harming as Causing Harm," in *Harming Future Persons*, ed. Melina A. Roberts and David T. Wasserman (Dordrecht: Springer, 2009). Matthew Hanser develops an entirely distinct “event-based” account in Matthew Hanser, "The Metaphysics of Harm," *Philosophy and Phenomenological Research* 77, no. 2 (2008).

¹¹⁹ Harman, "Harming as Causing Harm," p. 149.

¹²⁰ Shiffrin, "Harm and Its Moral Significance," p. 384.

On this account, one can be harmed without being made worse off. Consider the following case:¹²¹ A couple knows that if they conceive now, a temporary infection will cause their child to inherit a permanent painful condition. If they wait a few months, the infection will have cleared and their child will be unaffected. Now, suppose that they choose to conceive during the time of infection. On the standard counterfactual version of harming, the parents do not harm the child. Their child is not worse off than she would have been had the parents conceived later—if they had conceived later, the child would not exist (and a different child would). The conception of harm as causing harm, in contrast, entails that the parents harm their child (even if they also benefit their child), since they cause their child to be in pain, mental or physical discomfort, to have a disease, and so on.

We can similarly say that an agent is benefited if they are caused to be in a particular kind of good state—for example, if they are caused to be in pleasure, in mental or physical comfort, to be alive, and so on. And this makes sense of some cases that the counterfactual interpretations of benefiting tend to have trouble with, for instance, the case of white South Africans under the Apartheid regime discussed earlier. Moreover, we can say that someone is benefited by being brought into existence (insofar as they are brought into a good state), even though they are not better off than they would have been had they not existed.

By employing this account, we can claim that residents of industrialised countries, for example, enjoy many benefits—the goods and services made available through industrialised economies, for example—and we can point to various activities which are

¹²¹ Similar cases are common in the literature on the non-identity problem. See, for example, the various cases developed in Parfit, *Reasons and Persons*, p. 351-79.

responsible for the creation of these benefits. We can then also say that the processes of industrialisation have contributed to the creation of the benefits that people now are enjoying. And insofar as these processes involved excessive carbon emissions, we can say that they are responsible for producing some of the benefits that people now enjoy.

Those who are enjoying these benefits are beneficiaries in the relevant sense to trigger beneficiary pays; they thus have duties to disgorge some of the benefits or compensate those who are suffering harms caused by the same processes that have secured these benefits. None of this requires denying that some counterfactual baseline (whether the standard version or others) may also be employed as a sufficient condition of benefiting. Rather, it suggests that a distinct concept of benefiting as being caused to benefit may also play a role in applying beneficiary pays. We may, that is, be pluralistic about the form that benefiting may take to trigger remedial duties.

It might be objected that benefiting as being caused to benefit is simply not what people have meant when they have invoked beneficiary pays. This is unconvincing. If this notion of benefiting makes sense of commonplace examples that people will unreflectively give of some people benefiting from processes that cause harm (such as past industrialisation), then we submit that in these cases theorists would misinterpret these claims by framing them as false claims involving a counterfactual notion of benefiting rather than as true claims involving this notion.

Note also that there is an interesting asymmetry between harming and benefiting that make appeals to benefiting as being caused to benefit morally plausible in ways that harming as being caused harm arguably is not. Consider people who are caused to be harmed by some industrial process that their existence was contingent on, and who gained the benefit of existence from the same process that caused them harm. Arguably, it would

be strange for these people to complain about the harms, given that they were part of a process to which they owe a great benefit. It can be pointed out to them that they presumably would not wish to reach back in time and prevent the process that harmed them because it was also the process that caused them to exist. In the benefiting case things are different. People who are beneficiaries of past injustice often owe both their existence and further benefits to the injustice. It is hard to see how they can legitimately claim to hold on to all of the *further* benefits they receive that result from the injustice. That is, they benefitted from wrongful harm by being born and then additionally were caused to have many further benefits stemming from that harm.

2. Past Beneficiaries

Many people who have benefited from climate change are no longer alive, and their assets cannot now be seized to address the costs of climate change. A second objection to beneficiary pays is that it would be unfair to require current beneficiaries to pay the value of all the benefits generated by global climate change to address its harms. Here's how Caney puts the objection:

The desirable consequences of industrialization have been enjoyed not simply by those currently alive, but also by members of earlier generations—some of those who lived in the industrial revolution and the middle classes in the early and middle twentieth century. So the benefits of industrialization (the use of electricity) have been enjoyed by people no longer alive. It, therefore, follows that

it would be unfair to require current beneficiaries to pay for all of the benefit generated by the activities which cause global climate change.¹²²

But the beneficiary pays principle need not hold that present-day beneficiaries have a special duty to disgorge *all* the benefits enjoyed by *everyone* at *all times* as a result of the processes that have led to the harms engendered by human-induced climate change. Rather, present-day beneficiaries might be held responsible for giving up only (some of) the benefits that *they* enjoy as a result of industrialization.

Is it unfair that the beneficiary pays principle requires present-day beneficiaries to part with the benefits they enjoy, given that there are many past beneficiaries who are now dead and, therefore, no longer in a position to relinquish any of their benefits? If two people owe compensation to a third person for damage to which each has contributed, then even if one refuses to pay the other is still under a duty. The first is failing in her duty to the third, but that does not excuse the second.

Perhaps if present-day beneficiaries disgorged all or some of their benefits, this would not be sufficient to remediate the harms caused by excessive carbon emissions. This possibility would not undermine the beneficiary pays principle. It would mean that other principles are also relevant in determining who should bear responsibility for shouldering the costs of climate change, or that there may be costs that no one is responsible for shouldering. There may be problems that cannot be fully addressed without imposing undue burdens on some people.

¹²² Caney, "Environmental Degradation, Reparations, and the Moral Significance of History," p. 473.

3. Conflicting Accounts

A fourth objection is that beneficiary pays will often be in tension with other plausible-seeming principles for allocating the costs of addressing climate change. First, some have argued for *capacity-related duties* to address harm.¹²³ This provides the normative grounds for the “ability to pay principle”, which picks out all those who can address the harms of climate change at little cost to themselves. Second, some have argued for *contribution-related duties* to address harm.¹²⁴ This provides the normative grounds for the “polluter pays principle”, which targets all those who have contributed to climate change. Now, there will be many instances in which the sets of people defined by these principles will not overlap completely.¹²⁵ The objection is that there is no determinate solution of how to allocate the costs of addressing harms amongst the various relevant agents when the various grounds of duties stand in tension, as they inevitably will do in the case of climate change. Caney writes: “It is hard to think of what criterion one can use to allocate these responsibilities”.¹²⁶

It is common for moral theorists to accept various grounds for addressing harm, and it is the complex interaction of these various grounds which determines agents’ duties to address harm.¹²⁷ Robert Huseby offers a case in which “an agent negligently causes an accident, while a different agent intentionally avoids preventing the same accident even

¹²³ See Singer, "Famine, Affluence and Morality.", *The Life You Can Save: Acting Now to End World Poverty* (Melbourne: Text Publishing, 2009).

¹²⁴ See Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*.

¹²⁵ We do not deny that there may also be many instances in which various principles pick out the very same people and assign them duties accordingly.

¹²⁶ Caney, "Environmental Degradation, Reparations, and the Moral Significance of History," pp. 472-73.

¹²⁷ Within a single paper on allocating the costs of environmental protection, Henry Shue, for example, develops and defends versions of three different principles. See Shue, "Global Environment and International Inequality."

if she could have done so with virtually no cost or effort".¹²⁸ It is difficult to determine precisely how costs should be allocated between these agents. But this sort of imprecision seems unavoidable if we are pluralists regarding the grounds of allocating responsibility and rejecting pluralism leads to significant difficulties of its own.¹²⁹ It is commonplace in political theory for values to be in tension with each other, with no obvious way of striking precisely the right balance between them. Giving up on pluralism seems a very high price to pay to gain in precision.

In addition, there is a fairly obvious way in which the tension between beneficiary pays and polluter pays might be partially resolved. In the case of climate change, we might appeal to beneficiary pays in order to allocate costs of addressing the harms of *historic* emissions (produced prior to the birth of anyone now alive), while employing polluter pays to allocate the costs of addressing the harms of *contemporary* emissions (produced within the lifespan of persons now alive). Beneficiary pays might be understood as a defeasible requirement to take on cost to address the harms contemporary emissions cause, outweighed by the reasons why contributors should bear the costs instead.¹³⁰ Indeed, proponents of beneficiary pays often begin their description of cases by stipulating that the contributor to harm is no longer around, the clear implication being that were they still with us, they, rather than the beneficiary, should bear the costs of addressing harm. Nevertheless, while this is a plausible response, we need not rely on it.

4. No Net Benefits

¹²⁸ Huseby, "Should the Beneficiaries Pay?," p. 6.

¹²⁹ Miller, "Distributing Responsibilities."

¹³⁰ Huseby, "Should the Beneficiaries Pay?," p. 6.

Like the non-identity problem, the no-net-benefits objection claims that the beneficiary-pays principle may be inapplicable because there may be no (or not enough) net beneficiaries of climate change. Caney writes:

It is quite conceivable that the costs of industrialization and the costs needed to address anthropogenic climate change exceed the benefits to some, and maybe many, of industrialization. In such a case, there are no net beneficiaries and the Beneficiary Account, again, does not apply.¹³¹

Stated in this fashion the objection includes the costs of addressing the harms of climate change in the calculation of whether there are any net beneficiaries (note Caney's wording in the quote above: "*and the costs needed to address climate change*"). But it's hardly a problem for the beneficiary pays principle that *after* disgorging benefits for the purpose of addressing the harms of climate change, there are no longer net beneficiaries. Indeed, that could be viewed as one of its intended implications.

A second problem relates back to the baseline issue. Note that, insofar as we employ (only) the standard version of the counterfactual baseline suggested by Caney, there is no possibility that present persons net-benefited from past industrial processes that contribute to climate change (due to the non-identity problem). The no-net-benefits possibility only presents a new worry in the intra-generational case: we might wonder whether there are persons now alive who are better off given industrial practices pursued after their birth than they would otherwise have been. But insofar as we want to know the

¹³¹ Caney, "Environmental Degradation, Reparations, and the Moral Significance of History," p. 476.

answer to this question, it seems implausible to say that nobody (or few people) now alive in affluent states has benefited from high-emissions policies after their birth. It is precisely because we enjoy the benefits of emissions now and impose their costs mainly on future generations that climate change constitutes such a vexing problem.

Nevertheless, we have argued that there is another sense of benefiting (“benefiting as being caused to benefit”). And we argued that, on this account, it makes sense to say that an agent can be benefited by some process even when they are made worse off than they would otherwise have been. If this is right, then the following reply to the no-net-benefits objection opens up: even if it were true that there are no net beneficiaries of climate change, this does not entail that those persons who have accrued *some* benefits from the process of industrialization have no special duty (in virtue of benefiting) to take on cost to address the harms of climate change. In other words, the assumption of the no-net-benefits objection—that the beneficiary pays principle cannot be sustained if no present-day (net) beneficiaries can be found—might be mistaken.

If it were true that present-day persons have not net-benefited from climate change, this would not undermine normative plausibility of beneficiary pays. Rather, at most it would show that it lacked implications in the climate change case.

5. Unfairness

Some philosophers agree that innocent beneficiaries will often have duties to address harm, while disagreeing that these duties are grounded in the moral relevance of benefiting *per se*. “In other words”, writes Robert Huseby, “there are many good reasons to agree with the mandates of the BPP [the beneficiary-pays principle], but many of these

reasons are not derived from that principle".¹³² The worry is that in cases in which a beneficiary ought to take on cost to address a victim's harm, some other background morally relevant factor can adequately explain the relevant intuitions, leaving no need to appeal to considerations regarding benefiting.

It has been suggested, for example, that Luck Egalitarianism will account for the relevant intuitions in cases where it is plausible to maintain that the beneficiary has a duty to surrender their benefits to address harm suffered by victims.¹³³ This is the view that, at a minimum, it is in some respect morally worse—but not necessarily altogether morally worse—when agents are unequally well off due to differential brute luck. After all, both the beneficiary and victim owe their benefits and harms to differential brute luck (the fact that some third party caused harm that neither the beneficiary nor victim had a role in). Consider:

Climate Change: Industrial processes that occurred prior to the birth of anyone now alive have contributed to harms to some and benefits to other present-day persons.

A sceptic might agree that beneficiaries of past industrial processes have a duty to use their benefits to address the harms suffered by victims of past industrial processes. But they might argue that this is a paradigmatic instance in which these person are unequally well off due to differential brute luck. After all, the relevant processes occurred before these persons were born. The sceptic might conclude that the duty to disgorge benefits,

¹³² Huseby, "Should the Beneficiaries Pay?," p. 7.

¹³³ For a forceful statement of this objection, see Knight, "Benefiting from Injustice and Brute Luck."

in fact, is owed to this other explanation. This charge may be plausible if we can identify cases where beneficiary pays has counterintuitive implications that luck egalitarianism avoids. Let's consider whether this is plausible.

One might object that beneficiary pays yields unfair implications: (1) if we accept beneficiary pays, then a beneficiary will need to take on cost that others who are equally advantaged by brute luck are not required to. Therefore the beneficiary will be worse off through no fault of their own than the beneficiary of brute luck; (2) if we accept beneficiary pays, then a victim of harm (which has benefited another) will be made better off than a victim of bad brute luck (which has not benefited another).¹³⁴ This is because beneficiary pays only generates a duty for a beneficiary to address the harm suffered by a victim of that harm. The argument holds that these asymmetries in treatment are unfair. Note that this objection is general in form, and is not specific to the specific application of beneficiary pays to the climate case.

Luck Egalitarianism, however, would fail to account for the apparently directed nature of these duties. Proponents of beneficiary pays have argued that beneficiaries have special duties to those whose harm their benefits derive from, in particular, rather than anyone in general who has been harmed through no fault of their own. For example, consider the following case:

No Promotion: Senior members of a law firm create a work environment that systematically disadvantages women in seeking promotion to senior positions.¹³⁵

¹³⁴ Ibid., pp. 594-95.

¹³⁵ Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," p. 9.

In this case, it is clear that some men benefit from the firm's discriminatory practices, even if they did not know about or contribute to the discriminatory environment. Some presumably benefited by being promoted unfairly, others enjoyed a better chance of promotion even if they did not receive it. Both Luck Egalitarians and proponents of benefiting-related duties will think that these men incur a duty to surrender their benefits from the discriminatory practices. However, (between the two alternatives) only beneficiary pays entails that the men should address the harm to the women, in particular. Luck Egalitarianism, by contrast, entails that the men ought to disgorge their benefits, but requires only that these benefits are used to address harms suffered by *anyone* who is worse off through no fault of their own. We submit that failing to account for the directed nature of beneficiaries' duties is unfair and, therefore, that beneficiary pays yields more plausible verdicts than Luck Egalitarianism.¹³⁶

6. Unburdening the Affluent?

This objection is that beneficiary pays risks undermining duties of the affluent to take on cost to address harms suffered by the global poor (including harms suffered as a result of climate change). After all, suppose it turned out that the affluent have not, in fact, benefited from wrongdoing or injustice in the case of climate change. In this case, Carl Knight argues, beneficiary pays risks "providing a reason why, in principle, some rich countries might be excused from obligations, on the basis that they have not benefited

¹³⁶ Note, in Chapter 3, I will argue that beneficiary pays is indeed grounded on some other morally relevant factor (not based on Luck Egalitarian considerations) but that this fact does not imperil the beneficiary pays principle.

from injustice.” And, inversely, it also risks “providing a reason why, in principle, some poor countries are not due assistance, as they have not been subjected to injustice.”¹³⁷

Let us grant that *if* the citizens of affluent states have not benefited from wrongdoing or injustice, then beneficiary pays *alone* will not generate a duty for them to address the harms suffered by the global poor as a result of climate change. However, there is no reason to worry about this prospect at all, since citizens of affluent states may be duty-bound to address the harms suffered by the global poor as a result of climate change for reasons unrelated to being beneficiaries of these harms.

An analogy with polluter pays helps to illustrate this. Suppose that there are two towns situated along a river bank. The upstream town releases toxins into the river from which the downstream town draws its water supply. Furthermore, suppose that, shortly after, some of the downstream townsfolk fall ill. If it could be shown that the toxins contributed to the illness, then the upstream townsfolk would incur duties to compensate for the harms that the downstream townsfolk suffer. And if it could be satisfactorily shown that the toxins did not contribute to the illness at all, then the upstream townsfolk would have no duty based on polluter pays to compensate for the illness. But proving that the toxins did not contribute to the illness would do nothing to demonstrate that the upstream townsfolk have no duty to take on cost to address the harms suffered by the downstream townsfolk. Perhaps they are much richer, and therefore have capacity-related duties to aid. Or perhaps some other ground of responsibility applies.

¹³⁷ Knight, "Benefiting from Injustice and Brute Luck," p. 597.

If Knight is instead making the claim that, if the affluent have not benefited from wrongdoing or injustice then external grounds of responsibility will be undermined, the objection is implausible.

7. Excusable Ignorance

Some philosophers have argued that prior to some relevant point in time in which climate change was reasonably well understood, agents were excusably ignorant of the harms their emissions contributed to.¹³⁸ Furthermore, historic emitters were unaware that the atmosphere is an exhaustible good with a capacity for only a limited amount of aggregate emissions. Lastly, these historic emitters were also excusably ignorant of the modern legal idea of strict liability—that is, the idea that they could be held liable for harms caused even under conditions of excusable ignorance. Therefore, the accumulation of emissions during this time should be excused and so contemporary beneficiaries of these emissions have benefited from excused harms. Since beneficiary pays only generates duties to address harm in cases in which some have benefited from non-excused harms (rather than mere harms), then beneficiary pays cannot assign present-day beneficiaries of past industrial emissions with special duties to address its associated harms.

We fully agree that, until some relevant point in time, historic emitters did not know, nor reasonably could have been expected to know, that their emissions would contribute to harmful climate change. So it is true that they should be excused because of the evidence and beliefs they had at the time. Furthermore, we agree that this makes an

¹³⁸ Schüssler, "Climate Justice: A Question of Historical Responsibility?."; Kingston, "Climate Justice and Temporally Remote Emissions."

important moral difference to how we should evaluate their actions—it would be inappropriate to blame historic emitters for their actions or think of them as bad people. Nevertheless, they did, in fact, contribute to a state of affairs in which some are wrongfully harmed. We think that this is enough to ground duties to address the harms of climate change consistent with a plausible interpretation of beneficiary pays. Consider an analogy:

Fishing Villages: There are two villages, the populations of which depend for food upon fishing in a common river. As long as anybody can remember, neither village has ever suffered from scarcity in the supply of fish. Neither village has any accurate means of measuring the quantity of fish that the river contains, but in any case, it does not appear that the fish are an exhaustible resource. For many years now, the Upstream Villagers have been taking out many fish and storing them in the snow in their locality. Eventually, Downstream Village can no longer procure enough fish to sustain its population, which starts to go hungry. Both villages then realise that the fish stocks were exhaustible after all.

The Upstream Villagers are excusably ignorant of the harms their over-fishing is, in fact, contributing to. They believe that the fish are a non-exhaustible resource and have no evidence to contradict this belief (nor should they have, because they had no means to acquire reliable evidence). Nevertheless, as a result of their actions, the Downstream Villagers are now going hungry, while they still enjoy the benefits of the stored fish. Nevertheless, it seems to be a paradigm case in which the Upstream Villagers ought to address the Downstream Villagers' harms by surrendering to them some of their fish

stocks. And they would have more reason to do this than equally well-off people who were not connected to the Downstream Villagers' harms in this way. Furthermore, it does not matter that the Upstream Villagers also contributed to the problem (so were not mere beneficiaries), since we might imagine that the fish stocks were passed down to their descendants, or given to a neighbouring town, in which case the latter ought to surrender a share of their fish. We take this example to show that some agents may be excusably ignorant that their actions contribute to a situation in which some suffer harms, and that this is enough for a plausible version of beneficiary pays to assign duties to address that harm.

8. Conclusion

We have examined what we take to be the most challenging objections that have been presented to the beneficiary-pays principle. While we have not attempted to develop a positive argument for beneficiary pays, we have suggested various ways in which it might be plausibly interpreted so that it can avoid these objections. Beneficiary pays remains a principle of moral and potentially practical importance for allocating the costs of addressing human-induced climate change.

Part II: Theory

Chapter 3: The Conceptual Space of Beneficiary Pays

This thesis has so far introduced beneficiary pays as a principle of responsibility for allocating the costs of addressing climate change. It has also defended this principle against sceptical attack. In short, the beneficiary pays principle seems initially plausible and can be defended against sceptical attack. This chapter examines four possible (and exhaustive) ways of formulating beneficiary pays. I argue that there is a *prima facie* case in favour of an interpretation of beneficiary pays that holds that the moral relevance of benefiting reduces to some other factor, and that duties should only be allocated in the presence of some other factor. The second half of this chapter examines – and rejects – four existing proposals regarding when beneficiary pays is triggered to allocate duties, paving the way for my own positive account in the next chapter.

1. Primitivity, Atomicity, and the Conceptual Space of Beneficiary Pays

I start by mapping the conceptual space of the beneficiary pays principle. A positive account of beneficiary pays must take a stand on two important distinctions. The first of these distinctions is whether benefiting is a primitive or non-primitive factor. The second of these distinctions is whether benefiting is an atomic or non-atomic factor. I will start with the first of these distinctions. Consider the following example, which I will return to later in this chapter:

Stolen Car: Bill steals John's car and gives it to Susan, who is innocent of any wrongdoing herself. Bill can no longer be found, nor does he leave behind assets that can be seized.¹³⁹

Many theorists would agree that the beneficiary, Susan, has a duty to relinquish John's car. But what grounds this duty? One answer is that Susan's duty is grounded in her benefiting from a wrongful process (and she might have an independent duty to relinquish the car too). This view holds that benefiting *per se* is a primitive factor. As I shall understand it, a factor, *F*, is primitive if it grounds a duty to perform some action, ϕ , without that duty being ultimately reducible to some other morally relevant factor, *F**. Yet one might think that Susan's duty to relinquish the car is not ultimately grounded in the fact that she has benefited from a wrongful process, but rather in some additional factor. This view holds that benefiting *per se* is not a primitive factor. Put precisely, a factor, *F*, is non-primitive if it does not ground a duty for agents to perform some action, ϕ , without that duty being ultimately reducible to some other morally relevant factor. In this case, the moral relevance of *F* would in fact reduce to the moral relevance of the other factor *F**. A duty may be grounded in the conjunction of two or more factors, for example *F* and *F**, and neither of these factors reduce to any other factor. In this case, both *F* and *F** would be primitive.

The second distinction is between atomic or non-atomic factors. As I shall understand it, a factor is *atomic* if it generates duties without being conjoined with other

¹³⁹ Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," p. 3.

necessary factors. A factor is *non-atomic* if it only generates duties when conjoined with other necessary factors.

When taken together, these distinctions entail that there are four exhaustive possibilities regarding the conceptual space of the beneficiary pays principle.

Table 1. The Conceptual Space of Beneficiary Pays.

<i>If benefiting is:</i>	<i>Primitive</i>	<i>Non-Primitive</i>
<i>Atomic</i>	All cases of benefiting trigger the allocation of duties by beneficiary pays, and this allocation of duties is grounded in the fact of benefiting. That is, the moral relevance of benefiting does not reduce to any other factor.	All cases of benefiting trigger the allocation of duties by beneficiary pays, but this allocation of duties is not ultimately grounded in the fact of benefiting. That is, the moral relevance of benefiting reduces to some other factor.
<i>Non-Atomic</i>	Not all cases of benefiting trigger the allocation of duties by beneficiary pays. However, in the cases in which duties are triggered, these duties are grounded in the fact of benefiting. That is, the moral relevance of benefiting does not reduce to any other factor (thus, primitive), but beneficiary pays is only triggered in the presence of some other factor (thus, non-atomic).	Not all cases of benefiting trigger the allocation of duties by beneficiary pays. However, in the cases in which duties are triggered, these duties are not ultimately grounded in the fact of benefiting. That is, the moral relevance of benefiting reduces to some other factor (thus, non-primitive), and beneficiary pays is only triggered in the presence of some other factor (thus, non-atomic).

Understood in this way, the primitive or non-primitive distinction concerns the normative grounding of the duties allocated by beneficiary pays – is it the fact of benefiting per se

that grounds the duties allocated by beneficiary pays, or are these duties ultimately grounded in some other morally relevant factor? The atomic or non-atomic distinction concerns the conditions that must be satisfied in order for beneficiary pays to allocate a beneficiary duties – do all cases of benefiting trigger the allocation of duties by beneficiary pays, or do only some? If only some, what are the further conditions that must be satisfied for beneficiary pays to come into play? These distinctions are cross-cutting and exhaustive. I will now examine the strengths and weakness of each of four possibilities.

2. Is Benefiting a Primitive or Non-Primitive Factor?

In this section, I examine whether we should understand benefiting as a primitive or non-primitive factor. If the former, then this rules out the interpretations of beneficiary pays on the right-hand side of Table 1. If the latter, then this rules out the interpretations of beneficiary pays on the left-hand side of Table 1. In section 3, I then examine whether we should understand benefiting as an atomic or non-atomic factor. If the former, then this rules out interpretations of beneficiary pays on the bottom-half of Table 1. If the latter, then this rules out interpretations of beneficiary pays on the top-half of Table 1. Therefore, after examining both distinctions, only one possibility should remain. I conclude that there is a *prima facie* case in favour of an interpretation of beneficiary pays that understands benefiting as a non-atomic and non-primitive factor.

In the previous section I claimed that many theorists will agree that Susan has a duty to relinquish the car towards John in *Stolen Car*. But I asked what grounds this duty? Now, notice that one might appeal to the moral importance of property-entitlements to

explain why a duty should be allocated to Susan in this case. According to this argument, it is because Susan does not have a property-entitlement to the car, and John does, that grounds the allocation of the duty. If this is right, then it is plausible that Susan's duty is not grounded in the moral relevance of benefiting per se but in this additional property-entitlements factor. Notice also, that this property-entitlements rationale for allocating duties is not isolated to the *Stolen Car* case. As Robert Goodin argues, when a person benefits from wrongdoing or injustice, they typically end up with material advantages that they have no entitlement to, yet others do. According to this argument, it is the fact that the beneficiary has no entitlement to these advantages that explains why they should be allocated a duty to relinquish them.¹⁴⁰ If all relevant cases in which beneficiary pays is triggered the allocated duties could be justified by appeal to property-entitlements, then this would suggest that it is property-entitlements which are morally primitive and not benefiting per se.

Some might object that even if we could explain why beneficiaries should be allocated additional duties by appealing to some other factor such as property-entitlements, this would not suggest that benefiting per se is not a morally primitive factor. All that has been shown is that *Stolen Car* is a case in which some other factor – additional to the fact that they benefited – *is* able to ground a duty for the beneficiary to relinquish their benefits. But this does not show that benefiting is not morally primitive, since benefiting might also be morally relevant and capable of grounding Susan's duty to relinquish the car (i.e. even in the absence of considerations about property-entitlements). And even if benefiting could not also ground Susan's duty in *this* case, there might

¹⁴⁰ Goodin, "Disgorging the Fruits of Historical Wrongdoing."

nevertheless be other cases in which benefiting per se can ground the beneficiary's duty to relinquish their benefits (i.e. cases in which a duty should be allocated but considerations relating to property are not relevant). According to this objection, in order to undermine the view that benefiting is a primitive factor, one must show that it is impossible that there *could be* cases in which benefiting per se grounds the allocation of duties. A statement of this objection is given by Bashshar Haydar and Gerhard Øverland, who argue:

Generally speaking, in order to establish that a given factor (F) is not morally relevant, it is not enough to show 1) that F can be overshadowed by other morally relevant factors, or 2) that F on its own does not always make a tangible moral difference. In order to show that F is not a morally relevant factor, one needs to demonstrate that there are *no conditions* under which the presence of F would make a moral difference.¹⁴¹

One problem with this argument is that it allocates the burden of proof in a way that is unduly favourable to the view that benefiting is a primitive factor. Why should the burden be placed on those who believe that benefiting is not a primitive factor to demonstrate that there could be no cases in which benefiting per se grounds the allocated duty, rather than placing the burden on those who support this view to demonstrate that there are some cases where no other factor besides benefiting could justify the allocation of the beneficiary's duty? The problem with Haydar and Øverland's allocation of the burden of

¹⁴¹ Emphasis added. Haydar and Øverland, "The Normative Implications of Benefiting from Injustice," p. 352.

proof is that there is always a possibility that one could develop a case, not previously examined, in which the beneficiary should be allocated a duty and allege that no factor other than benefiting could ground the allocation of duties. And if this was enough to justify the assumption that benefiting is morally primitive, then the opponent of this view would have no possibility of justifying their view, since there is no end to the amount of cases that one can develop. Robert Huseby instead places the burden of proof on those who believe benefiting is a primitive factor to justify their view:

It is hard to argue conclusively that no cases can be devised in which benefiting from injustice gives rise to duties of compensation. But it is noteworthy that many of the cases explicitly intended to support the principle can be explained without reference to the BPP at all. Of course, this could still mean either that it is the BPP that does the work, or that it would have done the work, had the other factors been absent. But there is little reason to think so, given that these other factors are well-known and widely accepted (for instance assisting people in dire need, giving up stolen goods that happen to be in your possession, honouring contracts, LE [Luck Egalitarianism], etc.¹⁴²

According to Huseby, all that can reasonably be expected of those who think that benefiting is not a primitive factor is that they can show that some other factor (such as property-entitlements) grounds the allocation of duties by beneficiary pays in a relevant range of cases. And if the other factor (such as property-entitlements) is already widely-

¹⁴² Huseby, "Should the Beneficiaries Pay?," p. 9.

agreed to be morally relevant, then it is plausible but defeasible assumption that the duty is in fact grounded in that factor, rather than benefiting. Therefore, this assumption is warranted unless (and until) one can develop a new case in which only benefiting *per se* could plausibly ground the beneficiary's duty. Since this is a *prima facie* argument, the warrant for the view that benefiting is a non-primitive factor is not definitive. It could be overturned if the burden of proof is met.

One might object that this argument for shifting the burden of proof neglects an important fact—namely, that there is direct intuitive support for the claim that benefiting *per se* is a morally primitive factor. For example, suppose that we demanded of a beneficiary of wrongdoing that they relinquish their benefits but they refused, pointing out that they did not contribute to the wrongdoing in question. Suppose that we then countered: 'It's true that you did not contribute to the injustice, but you did benefit from it, and because of this you should relinquish your benefits'. If this claim has significant intuitive force, then one might think that the burden of proof should be placed on those who think that benefiting is not a morally primitive factor. But what gives a sentence such as this its intuitive force is precisely what is at stake in the disagreement between those who think that benefiting is a primitive factor and those who do not. The latter already accept that in many cases it will be intuitive that a beneficiary of injustice should relinquish their gains. They merely disagree on what the normative grounds of benefiting-related duties consists in. Perhaps the reason why we find it intuitive that the beneficiary should relinquish their benefits is because they have no entitlement to the property that they gained as a result of wrongdoing. And if this factor is independently plausible, then arguably it accounts for the intuitive force of the sentence, rather than benefiting *per se*.

Whether there is a prima facie case that benefiting is not a primitive factor ultimately depends on whether the allocation of benefiting-related duties can be given a convincing alternative rationale. In the following chapter I argue that rule-consequentialism can justify the allocation of benefiting-related duties in a relevant range of cases. If this is correct, then we should (prima facie) rule out the two possible ways of understanding beneficiary pays on the left-hand side of Table 1. The two possibilities that remain are that benefiting is a non-primitive and atomic factor, or that it is a non-primitive and non-atomic factor.

3. Is Benefiting an Atomic or Non-Atomic Factor?

The task of showing that benefiting is not an atomic factor would be successful if it could be demonstrated that there are at least *some* cases of benefiting in which it is implausible that beneficiary pays should allocate duties, even if it is plausible that there are many other cases in which beneficiary pays should allocate duties. Can it be shown that that there are at least *some* cases of benefiting in which it is implausible that beneficiary pays should allocate duties? Recently, some theorists have claimed that there are such cases.¹⁴³ According to Norbert Anwander, for example, it is counterintuitive that the beneficiaries should be allocated additional duties in:

Hiroshima: Most of us have benefited from what was done to the citizens of Hiroshima. Every time we have an X-ray the safety data used to set the dose of

¹⁴³ Another much discussed case appears in Robert K Fullinwider, "Preferential Hiring and Compensation," *Social Theory and Practice* 3, no. 3 (1975): pp. 316-18. Daniel Butt responds to this case in Butt, "On Benefiting from Injustice," pp. 139-43.

radiation can be directly traced back to the events at Hiroshima. The same holds for patients receiving radiotherapy and for people working in nuclear power stations. We can estimate the risks of radiation because we are able to correlate the incidence of disease with the dose of radiation that the survivors received.¹⁴⁴

Anwander suggests, however, that it is counterintuitive to think that most of us who have benefited in this way have any additional duties with respect to the harm done from the bombing of Hiroshima. He writes: "I take this result to show that we should reject the claim that it is always wrong to benefit from injustice".¹⁴⁵

Another case is developed by Robert Huseby, who similarly claims that "There are quite a few ways of benefiting from injustice, and many of them appear not to imply that one is not entitled to one's holdings or benefits".¹⁴⁶

Shady Garden: Suppose that B has a giant tree in his backyard, and that he is within his right to have it there. The tree provides the shadow necessary to grow some delicate vegetables and flowers that he is fond of. Shadow-intensive gardening, moreover, is B's favourite hobby. A and C, B's neighbours on each side, both despise the tree, as it blocks the sun from their backyards, and prevents them from enjoying fully the pools that they have both put in. ... After a while, A's patience runs out, and one weekend, while both B and C are away, A cuts the tree down. Subsequently, A dies from the effort. B, of course, is devastated (over

¹⁴⁴ Norbert Anwander, "Contributing and Benefiting: Two Grounds for Duties to the Victims of Injustice," *Ethics & International Affairs* 19, no. 1 (2005): p. 40.

¹⁴⁵ *Ibid.*, p. 41.

¹⁴⁶ Huseby, "Should the Beneficiaries Pay?," p. 14.

the loss of the tree rather than A's death). C too is appalled by A's act, and sorry for B's loss, but also quite happy that the tree is finally gone. He can now enjoy swimming in the baking sun.¹⁴⁷

After reflecting on *Shady Garden*, Huseby argues: "B is clearly harmed by A's unjust act, and C has clearly benefited from it. It is very *unclear*, however, that C owes B compensation, or that C is not entitled to either his holdings or his level of benefits or welfare".¹⁴⁸ According to Huseby, the beneficiary pays principle cannot justify duties in this case, and cases structurally analogous to this one in the important respects.

In fact, Huseby claims that "the most severe problem" for the beneficiary pays principle is that it cannot plausibly allocate duties in such cases.¹⁴⁹ But it is worth briefly noting that Huseby's inference from (i) 'it would be implausible for beneficiary pays to allocate duties in some cases' to (ii) 'the truth of (i) is the most severe problem for the beneficiary pays principle' is unsound. Even if it would be counterintuitive to allocate duties to the beneficiaries in these cases, this would not necessarily constitute a severe problem for the beneficiary pays principle, since we might understand that principle as invoking a non-atomic understanding of benefiting. And if benefiting was a non-atomic factor, then the proponent of beneficiary pays could claim that there are other factors in cases in which benefiting-related duties should be allocated that are not present in cases like *Hiroshima* or *Shady Garden*, and that these factors thus explain why no duty should be allocated by beneficiary pays in *Hiroshima* and *Shady Garden*. Consider, for example, an account developed by Christian Barry and David Wiens who claim that beneficiary

¹⁴⁷ Ibid.

¹⁴⁸ Original emphasis. Ibid.

¹⁴⁹ Ibid.

pays is triggered if and only if retaining the benefits would sustain wrongful harm. Plausibly, none of the beneficiaries in either of these cases would sustain wrongful harm by retaining their benefits and, therefore, should not be allocated any additional duty to relinquish their benefits according to this account. In *Shady Garden*, the victim's harm will not be ameliorated if the beneficiary chose to forgo swimming in his pool. In *Hiroshima*, the victims' harm will not be ameliorated by the beneficiary forgoing medical treatment made possible by the use of radiation data. Whether Barry and Wiens's own account is plausible remains to be seen. But the general point is that it is premature to conclude that beneficiary pays is implausible if there are some cases of benefiting in which duties should not be allocated. We can potentially invoke the distinction between benefiting as an atomic or non-atomic factor to undermine some sources of scepticism about beneficiary pays. I will return to accounts of beneficiary pays that understand benefiting as a non-atomic factor later.

But is Anwander and Huseby's general point that it would be implausible for beneficiary pays to allocate additional duties in these cases correct? If so, these cases would strongly suggest that benefiting was not an atomic factor. One might respond that the cases show no such thing. First, one might claim that the objection equivocates on whether these duties are being understood as *pro-tanto* or *all-things-considered* duties. Recall from Chapter 1, a beneficiary who has a *pro-tanto* duty to relinquish their benefits does not necessarily have an *all-things-considered* duty to do so—there might be countervailing considerations which prevent them from having this responsibility. One might agree, then, with Anwander and Huseby that it would be counterintuitive in *Hiroshima* and *Shady Garden* to allocate beneficiaries a full-blown responsibility to relinquish their benefits, but insist that it would nevertheless be appropriate to allocate

them with pro-tanto duties. If so, then even if we agree that the beneficiaries in *Hiroshima* and *Shady Garden* have no responsibility to relinquish their benefits, these cases would not really be counterexamples to beneficiary pays incorporating an atomic understanding of benefiting – in other words, the claim is that these beneficiaries would have a responsibility to relinquish their benefits if there were no sufficiently weighty countervailing considerations, which in fact there are. If, for some reason or another, these countervailing considerations were removed, then the pro-tanto duty would trigger the allocation of a full-blown responsibility to relinquish their benefits.

To make this response plausible, one would need to show that there is some countervailing consideration present in *Hiroshima* and *Shady Garden* that prevents an alleged pro-tanto duty from allocating full-blown responsibility. Perhaps in the former case, for example, one might point out that the benefits are *medical* in nature – we benefit by receiving radiotherapy treatments made safer by the data derived from the bombing of Hiroshima. And one might appeal to the special importance of health in order to outweigh the claim that such beneficiaries should be allocated a responsibility to relinquish these medical benefits, or some monetary value corresponding to these benefits – arguably, it is particularly important that people are not discouraged from medical treatment by the prospect of bearing greater costs. If so, then one might hold that beneficiaries of more accurate radiation therapy have no additional responsibility towards the victims of Hiroshima, but that they would have such a responsibility if it were not for the special medical nature of the benefits in question (so that their pro-tanto duties were not outweighed by considerations regarding the importance of health).

Anwander and Huseby might object to this response that, upon reflection, it is still counterintuitive that the beneficiaries in *Hiroshima* and *Shady Garden* should be

allocated duties to relinquish their benefits, even if we are clear that these may be interpreted in a pro-tanto sense. Their claim would then be that it is counterintuitive that beneficiary pays should allocate a duty at all, no matter whether there were sufficiently weighty countervailing considerations that prevent this pro-tanto duty becoming a full-blown responsibility to relinquish benefits. In *Shady Garden*, for example, do we really think that the neighbour, *C*, should point to some countervailing consideration as a justification for why he refuses to give up the benefit of enjoying his sunny garden? What if he could not point to any such consideration, would he then be required to stop enjoying his sunny garden? The idea that he would be required to do so seems quite implausible.

But we need not rely on intuitions alone. The case in favour of the view that the neighbour, *C*, should not be allocated even pro-tanto duties would be stronger if it could be shown that there are principled independent reasons to say that beneficiary pays should allocate duties in some cases but not others. I have already mentioned one account that attempts to show this – namely, Barry and Wiens’s view that additional duties should (only) be allocated in cases in which retaining the benefits would sustain wrongful harm. If such an account could be maintained, this would offer independent reasons to reject the view that beneficiary pays should allocate pro-tanto duties in *Shady Garden* (insofar as the neighbour would not sustain wrongful harm by enjoying his sunny garden, as seems eminently plausible). In section 3, I consider four such proposals before turning to my own account in the following chapter. If any of these proposals (or my own) is correct, then the argument that it would be implausible for beneficiary pays to allocate duties in *Hiroshima* and *Shady Garden* is not vulnerable to the objection that it would be appropriate for beneficiary pays to merely allocate pro-tanto duties. Thus these cases would strongly suggest that benefiting is not an atomic factor.

One might advance a second objection to Anwander and Huseby's claim that it would be implausible for beneficiary pays to allocate duties in *Hiroshima* and *Shady Garden*—namely, one might claim that while it is indeed implausible that beneficiary pays should allocate *demanding* duties to address the harms done to the victims, it is nevertheless plausible that beneficiary pays should allocate an *undemanding* responsibility to address the harms done to the victims. For example, perhaps we should understand the beneficiaries in *Hiroshima* as having a responsibility merely "...not to forget, and not to whitewash" the historical origin of the medical data from which they benefit, as Lynn Gillam argues with respect to the case of benefiting from data sourced from Nazi experiments.¹⁵⁰ To be reminded of the historical origin of the data used for radiation therapy is a small cost for a beneficiary to pay for the large benefit of undergoing a potentially life-saving treatment. And it is not counterintuitive that they should bear such a minimal cost.

To justify that the beneficiaries' responsibility in *Hiroshima* is especially undemanding, one might appeal to the significant passage of time between the initial wrongdoing and the benefits enjoyed in present-day radiotherapy treatments. One might claim that, ordinarily, the longer the passage of time the less demanding the benefiting-related duties should be. What reasons could be given in support of this claim? First, in general, the longer the passage of time the less likely it is that one's enjoying the benefits would depend only on the initial wrongdoing. For example, independent medical research has also made important contributions to improving the accuracy of radiotherapy treatments, so it is quite plausible that a great part of the production of the benefit was

¹⁵⁰ Gillam, "Is It Ethical to Use Data from Nazi Medical Experiments?".

legitimate. Second, one might think that victims' entitlements over particular benefits may weaken or even vanish over time if, and to the extent that, other agents have pressing needs regarding the benefits.¹⁵¹ In the case of medical radiation therapy, there is clearly a pressing need for using the historical data to determine an accurate dose. However, a problem with this response is that it only applies to *Hiroshima*. In *Shady Garden*, the passage of time between the wrongdoing (the tree being cut down) and the benefit (the neighbour being able to enjoy their now sunny garden) is instantaneous. Therefore, this response is unable to justify that the beneficiary should be allocated a very undemanding duty in this case.

In this section, I have been evaluating the claim that there are cases of benefiting from wrongdoing in which it is counterintuitive that the beneficiary should be allocated a duty to relinquish their gains. If the beneficiaries in *Hiroshima* and *Shady Garden* should not be allocated additional duties, then this strongly suggests that benefiting is not an atomic factor. I responded to two objections to the claim it is counterintuitive that these beneficiaries should be allocated additional duties. The first objection alleged that it is not counterintuitive to think that the beneficiary should be allocated merely a pro-tanto duty, even if it is counterintuitive that they should be allocated an all-things-considered duty. The second objection alleged that it is not counterintuitive to think that the beneficiary should be allocated a very undemanding duty, even if it is counterintuitive that they should be allocated a demanding duty. I argued that neither of these responses succeed. If so, then the case against understanding benefiting as an atomic factor stands. This strongly suggests that we should not formulate beneficiary pays in either of the two

¹⁵¹ Jeremy Waldron makes this point with respect to claims for reparation in the case of historic injustice, such as the colonial appropriation of land from indigenous inhabitants. Jeremy Waldron, "Superseding Historic Injustice," *Ethics* 103, no. 1 (1992).

possible ways on the top-half of Table 1. Since we already (prima facie) ruled out the two possibilities on the left-hand side of Table 1 in the previous section, only the possibility in the bottom-right quadrant remains—namely, that benefiting is a non-primitive and non-atomic factor.

4. Criteria of Distinction

We now turn to accounts of beneficiary pays which hold that benefiting is a non-atomic and non-primitive factor. That is, they claim that not all cases of benefiting trigger the allocation of duties. Furthermore, in the cases in which duties are triggered, these duties are not ultimately grounded in the fact of benefiting. That is, the moral relevance of benefiting reduces to some other factor, and beneficiary pays is only triggered in the presence of some other factor(s).

A main challenge for these accounts is that they are committed to the claim that there must be other factors which are not present in some cases of benefiting which are necessary and sufficient for the allocation of benefiting-related duties. As Christian Barry and David Wiens have argued, theorists who endorse duties in only some cases of benefiting must provide a ‘criterion of distinction’ which gives principled grounds for separating cases of ‘benefiting-with-duty’ from cases of ‘benefiting-without-duty’.¹⁵² What are these factors? In the following, I examine four proposals that aim to provide principled grounds for separating these cases.

¹⁵² Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," p. 6.

5. Actively and Passively Benefiting

In 'Severe Poverty as a Violation of Negative Duties', Thomas Pogge argues for a *specific* negative duty not to profit from injustice without compensating or making reform efforts.¹⁵³ However, while he endorses a *specific* form of this duty, he rejects "...any *general* negative duty not to profit from injustice without compensating protection and reform efforts" and he claims that "Such a duty can be refuted by example".¹⁵⁴ To support this claim, he develops the following case:

Cleaner Air: Whether they want to or not, all people everywhere profit from breathing air that is cleaner than it would be if large numbers of human beings were not unjustly kept in extreme poverty and thereby severely constrained in their polluting activities.¹⁵⁵

With respect to this case, Pogge claims that: "Still, it is plausible that people not involved in sustaining this injustice owe no compensation to the global poor pursuant to a negative duty not to profit from injustice".¹⁵⁶ In other words, while *everyone* benefits from injustice in the form of enjoying air made cleaner as a result of extreme poverty, only *some* of these beneficiaries may owe compensation to the global poor. For the others, the fact of their benefiting alone is not enough to trigger their duty to provide compensation or make reform efforts. According to Pogge, then, benefiting cannot be an atomic factor. Rather,

¹⁵³ Pogge, "Severe Poverty as a Violation of Negative Duties," pp. 69-74.

¹⁵⁴ *Ibid.*, p. 70.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

benefiting must be conjoined with other necessary and sufficient conditions in order for the relevant duty to be generated.

But what are these conditions? Pogge, in discussing objections to his work by Norbert Anwander,¹⁵⁷ entertains a distinction between *actively* and *passively* profiting from injustice to suggest why many beneficiaries in *Cleaner Air* may not have a responsibility to compensate the global poor. The suggestion is that it is only in cases in which a beneficiary actively profits from injustice will they violate the relevant duty. If so, then actively profiting from injustice would be a necessary condition for the violation of the relevant duty. However many beneficiaries in *Cleaner Air* merely passively benefit from injustice and, therefore, would not violate the relevant duty.¹⁵⁸ On the other hand, Pogge suggests that actively benefiting from injustice is sufficient to violate a duty not to profit from injustice without making compensation or reform efforts. He discusses the following case:

Cheap Consumables: Most anything we buy is cheaper than it would be if severe poverty were avoided: If the bottom of the global wage scale were higher than it is today, products containing a poor-country labor component (coffee and textiles, for example) would be more expensive.¹⁵⁹

With respect to this case, Pogge claims that "...by *buying* them at these prices we are actively taking advantage of injustice" and "In actively profiting without adequate

¹⁵⁷ Anwander, "Contributing and Benefiting: Two Grounds for Duties to the Victims of Injustice".

¹⁵⁸ In his words, this is a case which features "certain profitings that cannot be declined by their beneficiaries". See also the further discussion of Anwander's criticisms throughout Thomas Pogge, "Severe Poverty as a Violation of Negative Duties," pp. 70-72.

¹⁵⁹ *Ibid.*, p. 72.

compensation, we are violating a negative duty”.¹⁶⁰ By appealing to this distinction, then, Pogge hopes to consistently endorse a duty not to profit from injustice in *Cheap Consumables* while claiming that some beneficiaries of injustice, for example in the *Cleaner Air* case, do not violate this duty even if they do not make compensation or reform efforts.

What does it mean to actively or passively benefit from injustice? I will consider various interpretations of actively benefiting and examine whether any would render Pogge’s criterion of distinction plausible. The first four of these interpretations incorporate an *attitudinal* component: A beneficiary actively benefited if they (i) intended to benefit from injustice, (ii) foresaw that their benefit derived from injustice, (iii) should have foreseen that their benefit derived from injustice, or (iv) would not have refused the benefit even if they did foresee that their benefit derived from injustice. A final interpretation only requires an *agential* component: A beneficiary actively benefited if they merely (v) put themselves in a position where they stood to benefit from injustice.

The first interpretation holds that a beneficiary actively benefited if they intended to benefit from injustice. One version of this view is discussed by Avia Pasternak, who writes that a beneficiary actively benefits if she “*deliberately* put herself in a position where she stands to profit from wrongdoing”.¹⁶¹ A second version of this view is discussed by Norbert Anwander, who characterises instances of actively benefiting as beneficiaries who are “*seeking to take advantage of*” wrongdoing or injustice.¹⁶² Notice, these two interpretations require that the beneficiary had a particular attitude in order to

¹⁶⁰ Ibid.

¹⁶¹ Emphasis added. Avia Pasternak, "Voluntary Benefits from Wrongdoing," *Journal of Applied Philosophy* 31, no. 4 (2014): p. 379.

¹⁶² Original emphasis. Anwander, "Contributing and Benefiting: Two Grounds for Duties to the Victims of Injustice," p. 43.

count as an active beneficiary: a beneficiary must have *intended* to profit from wrongdoing or injustice in the sense that they deliberately tried to profit or sought to profit from injustice. The important question is whether this interpretation would yield plausible verdicts for Pogge's criterion. Unfortunately, Pogge's criterion, understood in this sense, is problematic. One problem is that this interpretation would not allocate duties in a slightly different version of *Cheap Consumables*:

Gift: Mary is given a birthday gift from a friend, who purchases that gift from a shop at a price made cheaper as a result of severe poverty.

The only difference between this case and *Cheap Consumables* is that the beneficiary receives cheaper goods as a gift, rather than purchasing them herself. Notice, however, that Mary does not *deliberately* put herself in a position where she stands to profit from poverty, nor does she *seek to take advantage* of unjust labour conditions. Put simply, she did not intend to benefit from injustice. She is merely given the gift by her friend. Is it plausible that because Mary received the gift, rather than bought it herself, she should no longer be allocated benefiting-related duties to relinquish her benefits? It is hard to see why it should make this moral difference. *Gift* seems like a paradigmatic case in which Mary should be allocated a benefiting-related duty to relinquish some value of her benefits.

One might respond that even though Mary did not actively benefit from injustice herself, her friend did actively benefit from injustice when he purchased the present from the store at a price made cheaper as a result of poverty. And it might be claimed that this is enough to trigger a duty for Mary to relinquish some value of the gift. All that is needed

is that somewhere between the injustice and the beneficiary's receipt of the benefit *someone* must have actively benefited. But there are two problems with this reply: Firstly, if in order to allocate a beneficiary additional duties it was sufficient merely that someone actively benefited from injustice, then the account's ability to separate cases of benefiting-with-duty and cases of benefiting-without-duty is vulnerable. Presumably (almost) all cases of benefiting will involve someone who has actively benefited from injustice somewhere along the line – injustice is ordinarily committed for a reason, for example, to benefit the perpetrators of the injustice at least. Therefore, the account would allocate duties in (almost) all cases of benefiting. Secondly, this argument would clearly justify why a duty should be allocated to Mary's *friend* since they actively benefited by being able to purchase a cheaper present, but why should we also think that a duty should be allocated to Mary who did not actively benefit herself? We would need some independent reason to think that Mary should also be allocated a duty, even though she did not actively benefit herself.

A second interpretation holds that a beneficiary actively benefits if they foresaw that their benefit derived from injustice. The problem with this interpretation, however, is that this does not seem like a compelling necessary condition to trigger beneficiary pays. For example, suppose Mary did not foresee that she benefited from unjustly cheap labour when she accepted the gift from her friend. Yet even if she did not foresee that accepting the gift would mean that she benefited from injustice, it is still intuitive that she should be allocated a duty to relinquish some portion of the value of the gift. This is also a problem in Pogge's case, *Cheap Consumables*, as well. It is plausible that many consumers do not foresee that they are benefiting from unjustly cheap labour when they shop for items incorporating a poor-country labour component. Some may do so, of

course, but many may not. Nevertheless, it still seems like beneficiary pays should be triggered in *Cheap Consumables*.

A third interpretation holds that a beneficiary actively benefits if they should have foreseen that their benefit derived from injustice. We could then say that the beneficiaries in *Cheap Consumables* should have known that they are likely benefiting from unjustly cheap labour when they go shopping. It would be an incredibly naïve consumer to neglect the possibility that the price and availability of many items such as electronics, coffee, clothing, oil, and so on, are greatly influenced by the extent of severe poverty. However, it is again not clear that it is a necessary condition that a beneficiary should have foreseen that their benefit derived from injustice in order to trigger beneficiary pays. For example, suppose that Mary has good evidence that her friend usually shops in fair-trade stores, or that some of the consumers in *Cheap Consumables* are purchasing from a store that ordinarily sources their goods from companies with just labour conditions. Nevertheless, suppose that, contrary to evidence, the friend in fact did not buy the gift from a fair-trade shop, or that the store that the consumers are shopping at decided on this occasion to source their stock from a company with unjust labour conditions (without telling their customers). These beneficiaries thus had no good reason to think that their benefit derived from injustice and were, therefore, not active beneficiaries according to this interpretation. It does not seem far-fetched, however, that they should nevertheless relinquish some value of their benefits.

A fourth interpretation holds that a beneficiary actively benefits if they would not have refused the benefit if they had foreseen that the benefit derived from injustice. This is similar to Avia Pasternak's discussion of beneficiaries who welcome their benefits. She develops the example of a racist who cannot escape many of the benefits afforded to him

from living in a society that discriminates in favour of whites – he was simply born in the country, and enjoys many benefits of favourable discrimination throughout the time he lives there. He may not even be able to refuse many of these benefits without incurring unreasonable costs (for example, he would have to emigrate from the country in order to prevent receiving some of the benefits).¹⁶³ Nevertheless, suppose that he would not renounce these benefits even if he could without incurring unreasonable costs. It seems fair to say that a welcoming beneficiary actively benefits in a morally relevant sense. And it likewise seems intuitive that such a beneficiary should be allocated duties to relinquish their benefits. For example, if the consumers in *Cheap Consumables* welcomed the fact that they could buy products made cheaper as a result of severe poverty, there is less intuitive resistance against allocating them additional duties. The same applies to Mary in *Gift*: if Mary would not have refused the gift even if she had known that it was made cheaper as a result of injustice, then there is less intuitive resistance against allocating her a duty to provide some value of compensation. The problem for Pogge's account, however, is that this seems like an appropriate sufficient condition but not a necessary condition to trigger beneficiary pays. For example, even if Mary would have refused to accept the gift had she foreseen that it derived from injustice, this does not seem to exonerate her from paying some value of the gift she did in fact receive as a result of injustice. Neither does it seem that the customers in *Cheap Consumables* would be entirely exonerated from additional duties if they would not have bought these items had they been aware that their cheap price owed to severe poverty. They do in fact have these items, and these beneficiaries should relinquish some value of their gains.

¹⁶³ Pasternak, "Voluntary Benefits from Wrongdoing," p. 381.

Each of the first four interpretations of actively benefiting incorporated an attitudinal component. However, none seemed to be necessary to trigger beneficiary pays. A final interpretation of actively benefiting removes the requirement that a beneficiary had a particular attitude in order to count as an active beneficiary. According to this interpretation, all that is required for actively benefiting is that the beneficiary *put* herself in a position where she profits from wrongdoing (irrespective of the attitudinal state she held at the time). Would this interpretation make it plausible that actively benefiting is necessary and sufficient for beneficiary pays to justifiably allocate duties? Well, it would seem to achieve the intuitively right verdict in *Cheap Consumables*: consumers do in fact put themselves in a position where they stand to profit from poverty when they buy items made cheaper as a result of severe poverty—that is, they queue at the store and exchange their money for these items. However, this interpretation seems to achieve the intuitively wrong verdict in *Gift*: Mary does not put herself in any position where she stands to profit from wrongdoing or injustice – she is merely given a gift by her friend – so the account would not allocate her any additional duty.

The upshot is this: If the distinction between actively and passively benefiting is best understood in any of the five ways that I have discussed, then Pogge’s account seems vulnerable to the charge that it cannot yield intuitively appropriate verdicts about when beneficiary pays should allocate duties. If the distinction between actively and passively benefiting is not best understood in any of these ways, then some other interpretation of the distinction is required. However, it is difficult to see what other sense of actively benefiting Pogge could have in mind that would render his criterion of distinction plausible.

Of course, none of this is to deny that there is some moral difference between actively and passively benefiting, depending on how we understand this distinction. For example, it seems intuitive that a *welcoming* beneficiary (recall, a beneficiary who would not have refused the benefits even if they had foreseen that the benefits derived from injustice) should be allocated duties to relinquish their benefits. Furthermore, it seems intuitive that they should be allocated more demanding duties than an *unwelcoming* beneficiary should be (i.e. a beneficiary who would have refused the benefits if they had foreseen that the benefits derived from injustice). Likewise, it seems intuitive that a beneficiary who intends to benefit from injustice should be allocated duties to relinquish their benefits and that they should typically be allocated more stringent and demanding duties than beneficiaries who do not intend to benefit from injustice. The distinction between being an active or passive beneficiary, therefore, plausibly makes a moral difference both to the stringency and demandingness of the duties that they should be allocated, and may be sufficient to allocate duties in the first place. But it is not a plausible necessary condition for allocating duties. In Chapter 5, I argue that my rule-consequentialist account can give a rationale of why being a welcoming or intending beneficiary seems to be morally relevant in these ways.

6. Benefits Necessary for the World to have gone as it Ought.

Holly Lawford-Smith likewise argues that beneficiaries do not incur additional duties in all cases of benefiting, despite claiming that it is impermissible to retain material benefits of the world going other than it ought. In particular, she gives the following example in which a beneficiary should not be allocated any additional duty:

Theatre: the lead in a theatrical performance is mugged shortly before the evening's show, and as a result the understudy is assigned her role.¹⁶⁴

According to Lawford-Smith, "it would be absurd to say that the understudy ought not to retain the benefits. Surely she ought to play the lead, which after all is what the role of understudy is designed for..."¹⁶⁵ Therefore, Lawford-Smith must agree that benefiting is a non-atomic factor. Something additional to benefiting must be satisfied in order for the relevant duty to be generated.

In particular, Lawford-Smith argues for the following claim: "It is impermissible to retain any benefits *necessary* to the world going as it morally ought to have gone".¹⁶⁶ In other words, it is a necessary condition, on her account, that the benefits were *necessary to the world going as it morally ought to have gone* for the beneficiary to be justifiably allocated an additional duty. By 'necessary to the world going as it morally ought to have gone' she means that it would have been impossible for the world to go as it should have *and* the beneficiary retained those benefits.¹⁶⁷ For example, while it is true that the benefit enjoyed by the replacement lead in *Theatre* accrued as a result of injustice, this benefit was not necessary to the world going as it ought to have gone. It would not have been *impossible* for the world to go as it ought (i.e. the initial lead was not stabbed) *and* for the

¹⁶⁴ Holly Lawford-Smith, "Benefiting from Failures to Address Climate Change," p. 397.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.* Lawford-Smith later argues for a fuller articulation of this principle, but the difference is not relevant here. Her modification to this principle is to rule out that beneficiaries may have duties to relinquish gains even when nobody has been harmed as a result of the world going other than it ought to have gone. See, *ibid.*, pp. 399-400.

¹⁶⁷ Consider, for example, how she discusses what benefits states must give up in the case of climate change: "It is not possible that the world went as it ought to have gone, *and* countries failed to make the relevant investments and behavioural changes". *Ibid.*, p. 397.

beneficiary to nevertheless enjoy that benefit (i.e. to become the replacement lead). In the *Theatre* case, Lawford-Smith says, “The lead might simply have come down with the flu...”, in which case the replacement would have enjoyed the lead role anyway.¹⁶⁸ This is clearly possible, even if it is not especially likely, so the replacement lead incurs no additional duty to give up the role.

The main problem for this account is that it seems unable to allocate duties to beneficiaries in many of the cases that it intuitively should. For example, consider *Gift* again:

Gift: Mary is given a birthday gift from a friend, who purchases that gift from a shop at a price made cheaper as a result of severe poverty.

It seems intuitive that Mary should be allocated a benefiting-related duty to relinquish at least some value of the gift she receives. But it is clearly possible that the world could have gone as it ought to have gone (there was no unjustly cheap labour as a result of severe poverty) and Mary could still have enjoyed that benefit (the friend may still have given her the gift), even if this would have been unlikely due to the increased price of the gift. This is possible in just the same way that the world could have gone as it ought to in *Theatre* consistent with the beneficiary still benefiting: the initial lead *could* have come down with the flu (instead of being stabbed) and so the replacement lead could nevertheless enjoy that benefit, even if this outcome would have been unlikely. Therefore, it seems that Lawford-Smith’s account is committed to saying in *Gift* that the benefit was

¹⁶⁸ Ibid.

not necessary to the world going as it ought to have gone and Mary, therefore, should not be allocated any additional duty to relinquish some value of the gift. But if Mary should be allocated this duty, then this demonstrates that it is not a necessary condition for the justifiable allocation of benefiting-related duties that the benefits were necessary to the world going as it ought to have gone.

Perhaps one might disagree that Mary should be allocated a duty in *Gift*, and therefore claim that it is no objection that Mary would not be allocated a duty according to Lawford-Smith's account. The problem, however, is that it will seldom be true in cases of benefiting from injustice that it would have been *impossible* for the beneficiary to enjoy the benefit if the world had gone as it ought. There will almost always be some unlikely way that the beneficiary could have enjoyed those benefits anyway. Notice, for example, that this even seems to be a problem in the case of climate change that is the focus of Lawford-Smith's discussion.¹⁶⁹ In particular, her aim in this paper is to argue that, in the case of climate change, certain material benefits were enjoyed by states as a result of their failing to make stringent emissions reductions. For example, Australian citizens can buy cheaper goods, take cheaper flights, heat their houses more cheaply, than if costly emissions reduction policies had been implemented. The claim is that if Australians had made these stringent cuts (thus the world went as it ought to have gone), then it would have been impossible for them to enjoy those material benefits. According to Lawford-Smith, this is what separates the case of climate change from *Theatre*: in the former case, but not the latter, the benefits were necessary for the world going as it ought to have gone.

¹⁶⁹ Ibid.

However, this seems wrong. It clearly *is* possible that Australians could have enjoyed these material benefits, even if the world had gone as it should have (i.e. Australia made deep emissions reductions). For example, Australia could have implemented stringent emissions cuts *yet* other states *voluntarily* chose to compensate Australia for doing so, thereby maintaining Australians' ability to buy cheap goods, take cheap flights, and heat their houses cheaply. This is extraordinarily unlikely, of course, but it is also unlikely that the lead would come down with the flu allowing the replacement lead to fill that role (instead of being stabbed), and that Mary would be given the birthday present in *Gift* (even if it was far more expensive due to fair labour costs). Insofar as we think Mary should relinquish some portion of the value of the gift (or that the Australians should be allocated duties in the context of climate change, for that matter), then this demonstrates that it is not a necessary condition for the justifiable allocation of benefiting-related duties that the beneficiary enjoys material gains necessary for the world going as it ought to have gone.

7. Sustaining Wrongful Harm

A third criterion of distinction is developed by Christian Barry and David Wiens, who write:

...we deny that the mere reception of benefits from wrongdoing is sufficient to ground special remedial duties to the victims of wrongdoing. Simply put, benefiting from wrongdoing is not a *sui generis* moral category and there are no benefiting-based duties as such. Yet, given some benefiting-with-duty cases, we

acknowledge benefiting-related duties, duties that can be triggered by the fact of benefiting from wrongdoing in certain circumstances without being grounded in the fact of benefiting. We argue that innocent beneficiaries incur benefiting-related duties to the victims of wrongdoing—that is, people benefit-with-duty—if and only if receiving and retaining the benefits sustains wrongful harm.¹⁷⁰

A beneficiary who refuses to relinquish their benefits may sustain wrongful harm in two ways: (i) “the beneficiary receives an item or quantum of value to which the victim of the wrongdoing has a claim *and* the victim’s claim remains unresolved” and (ii) “the beneficiary receives a benefit in violation of the victim’s claim(s) on the wrongful practice or institution *and* the victim’s claim(s) remains unresolved”.¹⁷¹ The basic idea is that beneficiaries should be allocated duties to relinquish their benefits in cases in which their refusal to relinquish benefits would stand as an obstacle to the victim’s claims being reconciled. In cases of benefiting in which retaining the benefit would not sustain wrongful harm, however, the beneficiary should not be allocated any additional benefiting-related duty. In other words, it is a necessary and sufficient condition for the justifiable allocation of benefiting-related duties that retaining the benefits would sustain wrongful harm understood in this sense. Barry and Wiens, therefore, conceive of benefiting as a non-atomic factor. Furthermore, on their account, benefiting is a non-primitive factor because a beneficiary’s duty to relinquish benefits reduces to the wrongness of sustaining wrongful harm, rather than benefiting as such.

¹⁷⁰ Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," pp. 3-4.

¹⁷¹ *Ibid.*, p. 14.

Barry and Wiens's account offers an attractive criterion of distinction to separate many benefiting-with-duty and benefiting-without-duty cases. However, it seems unable to assign duties in all of the cases that it intuitively should. In particular, various theorists have argued that there is a class of cases of benefiting in which there are no victims that can be identified as having claims over the benefits, in which it is still intuitive that the beneficiary has no claim over their benefits either. Recall, the theoretical rationale discussed in Chapter 1 relating to unjust enrichment. Goodin who defends such a view, argues that if wrongdoing or injustice occurs during the chain of transfer of benefits to the beneficiary, their entitlement over those benefits is 'tainted'. They have no justifiable claim to them, and the proper response is to relinquish them. Notice, however, that this argument does not depend on victims of wrongdoing being identifiable, or even still alive. That no present-day persons can be found with entitlements to the benefits does not mean that the beneficiary acquires entitlements to those benefits instead. Goodin's own proposal is that these benefits should be put into a common pool to be used for general distributive justice purposes.¹⁷² Even some theorists who are generally quite sceptical of beneficiary pays seem to agree with this idea. Simon Caney, for example, argues:

...historical injustices have significance in one specific and quite restricted sense, namely that they call into question the legitimacy of the current distribution and hence (some) wealthy people's entitlements to their current holdings. The existence of historical injustices makes it much more difficult for those who are

¹⁷² Goodin, "Disgorging the Fruits of Historical Wrongdoing," pp. 488-89.

currently wealthy to explain why they are entitled to keep the wealth they currently possess and why the poor are not entitled to more.¹⁷³

If this is right, what this argument shows is that sustaining wrongful harm is not necessary for the beneficiary pays principle to justifiably allocate duties to beneficiaries. In cases where victims are dead, for example, the beneficiary's retaining the benefits would not act as an obstacle to the victims' claims being reconciled. The victims' claims will remain unresolved no matter what the beneficiary does, but arguably the beneficiary should still relinquish their gains anyway.

Another class of cases in which Barry and Wiens's account is unable to assign benefiting-related duties are what Bashshar Haydar and Gerhard Øverland have called '*Motivational-Cause*' cases. According to Haydar and Øverland, a beneficiary is a motivational-cause of wrongdoing if the wrongdoing "was done at least partly for the sake of creating the benefits in question".¹⁷⁴ Thus, for beneficiaries to be a motivational-cause of wrongdoing, it must be the case that the perpetrator of wrongdoing *intended* to benefit them. Other theorists likewise find it intuitive that benefiting as a motivational-cause makes a moral difference. Daniel Butt, for example, claims that there is a "category of cases where the purpose behind an act of wrongdoing is the conferral of a benefit on a particular involuntary beneficiary" which may make a moral difference to the beneficiary's duty. In fact, Butt thinks that these are cases in which the beneficiaries should be allocated especially demanding benefiting-related duties.¹⁷⁵

¹⁷³ Caney, "Environmental Degradation, Reparations, and the Moral Significance of History," p. 477.

¹⁷⁴ Haydar and Øverland, "The Normative Implications of Benefiting from Injustice," pp. 356-58.

¹⁷⁵ Daniel Butt, "'A Doctrine Quite New and Altogether Untenable': Defending the Beneficiary Pays Principle," *Journal of Applied Philosophy* 31, no. 4 (2014): pp. 344-45.

Barry and Wiens deny that a perpetrator's intention to benefit the beneficiary makes a moral difference to a beneficiary's duties.¹⁷⁶ They thus attempt to give a deflationary explanation of the intuitions reported by theorists like Haydar, Øverland, and Butt who think benefiting-related duties should be allocated in motivational-cause cases. In many cases in which the perpetrator intends to benefit the beneficiary, they say, "we might reasonably assume that the beneficiary has an associative connection with the wrongdoer". Why else would the perpetrator want to benefit them? And if there is an associative connection, this "might be an independently relevant ground for attributing remedial duties".¹⁷⁷ Thus, Barry and Wiens claim that they can explain why theorists like Haydar, Øverland, and Butt think that beneficiaries who are motivational-causes of wrongdoing should be allocated duties, but are nevertheless making a mistake: They are miscategorising the duties that beneficiaries should be allocated as benefiting-related duties, when they are not duties of this kind – rather, they are in fact association-related duties.

Barry and Wiens are, of course, correct to claim that beneficiaries who are motivational-causes of wrongdoing may have independent remedial duties, for example, due to their associative connection with the wrongdoer. But that does not mean benefiting as a motivational-cause of wrongdoing should not *also*, independently, make a moral difference to the beneficiary's duty. Notice, in many other cases of benefiting as a motivational-cause there may be no associative connection. For example, a perpetrator might act wrongly to benefit another whom they are secretly infatuated with, or the perpetrator might merely intend to benefit them to 'add insult' to the victim (suppose that

¹⁷⁶ Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," pp. 17-18.

¹⁷⁷ *Ibid.*, p. 18.

the victim does not like the beneficiary very much and the perpetrator is cognisant of the fact that it would upset the victim to see the beneficiary prosper due to their own suffering). Despite there being no associative connection, shouldn't these beneficiaries who are motivational-causes of wrongdoing nevertheless relinquish their benefits? According to Barry and Wiens, the answer is no: "...in those cases where it is clear that there is no associative connection, and where the beneficiary clearly is not privy to the wrongdoing, intention doesn't seem relevant".¹⁷⁸ They support this claim with an example:

Tennis Rankings: In 1993 a German nationalist named Gunter Parche stabbed Monica Seles in the middle of a tennis match to help Steffi Graf (a German) regain her no.1 ATP ranking.¹⁷⁹

After considering this case, they conclude: "merely being the intended beneficiary does not seem directly relevant" to Graf's duties towards Seles.¹⁸⁰ But is this right? It does not seem far fetched, for example, that Graf should give up the benefit of the no. 1 ranking until Seles was ready for a rematch (initial reports expected that Seles would return to competition within about a month, but it in fact took several years for her to return).

Why might Barry and Wiens be reluctant to allocate Graf with such duties? Their reluctance can be explained by pointing to two peculiar features of this case. For one, Graf's benefit of regaining the no. 1 position is intertwined with her own significant efforts. Presumably in order to compete for the number one position, Graf must have

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

trained very hard and put in a great deal of preparation for the match. It is not clear that she would not have won even if Seles had not been stabbed. Many theorists think that people ordinarily deserve some portion of their achievements that result from hard work – Indeed, this very point is made by Christian Barry (together with Robert Goodin) in another paper on beneficiary pays:

We ordinarily think that people deserve to keep that portion of their wellbeing that is due to their own contributions. ... In such cases at hand, people cannot keep what is rightfully theirs without keeping what they have wrongfully received, and they cannot disgorge what they have wrongfully received without also relinquishing something that is rightfully theirs. Which principle should prevail over the other in such cases is an open question, and one that will presumably at least sometimes be decided in favour of keeping it all rather than relinquishing it all.¹⁸¹

Thus, one reason that Barry and Wiens might be reluctant to allocate Graf any duties in this case is because they are putting greater weight on the principle that people should ordinarily get to keep the portion of their wellbeing that owes to their own contribution than they are on the beneficiary pays principle. And this might result in their mistakenly attributing no normative relevance to benefiting as a motivational-cause.

A second reason that Barry and Wiens might be reluctant to allocate Graf any duties in this case is because of the bizarre nature of Parche's actions. Indeed, according

¹⁸¹ They write: "We ordinarily think that people deserve to keep that portion of their wellbeing that is due to their own contribution". See, Robert E Goodin and Christian Barry, "Benefiting from the Wrongdoing of Others," *Journal of Applied Philosophy* 31, no. 4 (2014): pp. 368-69.

to one newspaper report from the time, German police suggested that Parche “appeared confused and may be mentally disturbed”.¹⁸² As a result of this atypical feature of the case, Barry and Wiens may be more disinclined to attribute any difference in Graf’s duties as a result of benefiting as a motivational-cause of wrongdoing. But consider a similar version of the case in which the wrongdoer was not insane in this way:

Tennis Rankings 2: A professional tennis match is taking place between Sally and Mark. An observer, who holds sexist attitudes, wants to make sure that Mark wins, so stabs Sally. As a result, Mark wins the match and takes the no. 1 position.

In *Tennis Rankings 2* the wrongdoer’s actions are calculated and not insane, unlike Parche’s actions. In this case, it seems clearer that being a motivational-cause of wrongdoing is morally relevant for the duties that the beneficiary should be allocated. Mark should certainly give up the no. 1 position until Sally is ready for a rematch. Furthermore, there are some real world cases that seem especially troubling in this way: for example, consider children who are bestowed unfair advantages by their parents at the expense of other children. Or consider segments of a population who are unjustly benefited by a dictator who is attempting to secure their support at the expense of the rest of the country’s citizens. The wrongful actions in these examples are very deliberate, have significantly bad consequences, and thus seem morally troubling in a way that Parche’s actions were not, despite the latter case being morally troubling in its own different way.

¹⁸² http://news.bbc.co.uk/onthisday/hi/dates/stories/april/30/newsid_2499000/2499161.stm

Thus, for this second reason, too, Barry and Wiens may be mistakenly reluctant to attribute benefiting as a motivational-cause of wrongdoing any moral importance.

Note, while I have claimed that Barry and Wiens are mistaken in this way, I am not suggesting that Graf should be allocated a very demanding duty towards Seles. What seems appropriate is merely that Graf should be allocated a duty to submit to a rematch for the no. 1 position.

8. Transfer of Assets, Motivational-Causes, and Structured Competitions.

A final criterion of distinction has been developed by Bashshar Haydar and Gerhard Øverland, who argue:

...in the process of allocating the burdens of alleviating the harm inflicted on a victim of wrongdoing, a morally significant factor to consider is whether a person has benefited from that wrongdoing. ... However, we argue that a strong requirement to disgorge benefits, which have arisen as a result of wrongdoing, is generated *only if* other (boosting) conditions or factors are satisfied.¹⁸³

Since Haydar and Øverland claim that benefiting from wrongdoing is a morally significant factor, but that additional conditions must be met in order for a strong requirement to relinquish benefits to be generated, their account seems to understand benefiting as a primitive and non-atomic factor.

¹⁸³ Haydar and Øverland, "The Normative Implications of Benefiting from Injustice," p. 349.

What are these conditions that must be satisfied in order to allocate a beneficiary a strong requirement to relinquish their benefits? The first condition is where a beneficiary benefits from wrongdoing which distorts "...a more or less structured and relatively fair competitive procedure for allocating a given benefit or award".¹⁸⁴ The second condition is where a beneficiary benefits as a motivational-cause of wrongdoing, as discussed in the previous section. The third condition is where, as a result of wrongdoing, there is a transfer of assets from the perpetrators of the injustice to the beneficiaries, such as in *Stolen Car*.¹⁸⁵ These constitute sufficient conditions for the justifiable allocation of benefiting-related duties, and it is necessary for a strong requirement to relinquish benefits to be generated that at least one of these factors obtains.

I have no disagreement with Haydar and Øverland that strong duties should be allocated in these cases (Indeed, I will develop an argument for allocating benefiting-related duties in motivational-cause cases in the following chapter). However, I do object that this account is unable, as it stands, to explain why some cases of benefiting from wrongdoing seem to generate more stringent and demanding duties than other cases. Recall when discussing the *Gift* case, I argued that certain attitudes held by the beneficiary may make a moral difference to the duties that they should be allocated to relinquish their benefits. For example, it seems intuitive that a *welcoming* beneficiary (i.e. a beneficiary who would not have refused the benefits even if they had foreseen that the benefits derived from injustice) should be allocated a duty to relinquish their benefits, and that they should be allocated more demanding duties than an *unwelcoming* beneficiary (i.e. a beneficiary who would have refused the benefits if they had foreseen that the benefits

¹⁸⁴ Ibid., p. 354.

¹⁸⁵ Ibid., pp.358-50.

derived from injustice). But none of the three factors which Haydar and Øverland discuss are sensitive to the different attitudes that a beneficiary of injustice may have. If it is true that *welcoming* benefits from wrongdoing is sufficient to justify allocating such beneficiaries relatively demanding duties to relinquish their benefits, then Haydar and Øverland are mistaken to insist that their three ‘boosting’ conditions are necessary after all. Note, I am not claiming that Haydar and Øverland cannot explain differences in the stringency or demandingness of beneficiaries’ duties in any cases. For example, they argue that if several of their boosting conditions are simultaneously satisfied, this may increase the stringency and demandingness of the allocated duty.¹⁸⁶ The point is, rather, that their account is insensitive to some factors that seem to make a moral difference to the duties that should be allocated – for example, whether the beneficiary has a welcoming attitude towards the wrongdoing from which they benefit.

9. Conclusion

In this chapter I examined four (exhaustive) ways that the beneficiary pays principle might be formulated. I argued that a prima facie case could be made in favour of formulating the beneficiary pays principle as understanding benefiting as a non-primitive and non-atomic factor. I then examined – and discussed concerns with – four existing proposals regarding when beneficiary pays is triggered to allocate duties, paving the way for my own positive account in the next chapter.

¹⁸⁶ See, for example, *ibid.*, p. 357.

Chapter 4: Beneficiary Pays and Rule-Consequentialism

In this chapter I defend beneficiary pays by arguing that a morality which incorporates the practice of allocating benefiting-related duties in ways that I specify should, if the wide majority of people tried to internalise the practice, be expected to result in morally better consequences than a morality that does not. In particular, I give a rule-consequentialist argument that benefiting-related duties should be allocated in cases (I call these property-violation and motivational-cause cases) in which this practice, if the wide majority tried to internalise it, should be expected to result in good consequences—and not allocated in cases in which this practice should not. I also demonstrate that rule-consequentialism can justify why beneficiaries should be allocated more stringent and demanding duties in some types of cases than in others. In the following chapter, I extend this rule-consequentialist argument for beneficiary pays to show that it can also justify allocating benefiting-related duties in an additional (although possibly overlapping) class of cases—namely, cases where beneficiaries hold or express a pro-attitude towards wrongdoing or injustice.

1. Beneficiary Pays, Reflective Equilibrium, and Rule-Consequentialism

Much of the literature on beneficiary pays has focused on how this principle makes intuitive sense of how we think we should allocate responsibility between agents in a range of hypothetical and real cases. Indeed, in the previous chapters I have discussed many cases in which I (and other theorists) think that beneficiaries should be allocated additional duties. While these cases give intuitive support for the beneficiary pays

principle, additional support would be provided by developing a theoretical rationale for the principle that can explain and justify our intuitive reactions to these cases. Additionally, a theoretical rationale may be helpful in explaining why, in cases where intuitions are weaker or conflicted, theorists might have reluctance to allocate a beneficiary additional duties. Notice that this process of justifying the beneficiary pays principle employs the methodology of reflective equilibrium as discussed in the introduction. According to this methodology, the aim is to as best we can bring our moral intuitions, principles, and broader theoretical commitments into an acceptable coherence with each other—acceptable, that is, in the sense that mere consistency is not enough. Rather, each should offer explanatory support for the others. If it is correct that *(i)* our intuitions, *(ii)* the beneficiary pays principle, and *(iii)* rule-consequentialist theory all support each other in the way that I suggest, then endorsing rather than rejecting the beneficiary pays principle sits well in reflective equilibrium.

The main aim of this chapter (and, more generally, this thesis) is not to defend rule-consequentialism itself, nor is my aim to defend any particular formulation of rule-consequentialism above others. Instead, my aim is to show that rule-consequentialism, plausibly conceived, provides theoretical support for the beneficiary pays principle and our intuitive allocation of duties in particular cases. This task, I believe, is compatible with various formulations of rule-consequentialism. Nevertheless, to make matters concrete I will briefly outline the formulation of rule-consequentialism that I favour and give some reasons for why I understand the theory in this way. In the final section, I will discuss several objections that rule-consequentialism standardly faces, since these general objections to the theory threaten to become specific objections to the rationale for allocating benefiting-related duties.

I understand rule-consequentialism as a family of views that minimally hold that what makes an action right or wrong is a matter of conforming to a set of rules justified by their consequences. As it is typically understood, rule-consequentialism holds that a set of rules is justified if and only if no other set of rules would result in morally better consequences.¹⁸⁷ As it stands, however, this formulation is imprecise. To make rule-consequentialism precise, I will take a stand on three important difficulties with formulating the theory. The first difficulty is whether we should understand rule-consequentialism as holding that a set of rules is justified by their *actual* or *expected* consequences—and if the latter, the consequences which are expected by whom? The second difficulty is whether the set of rules is justified by the actual or expected consequences they would result in if people were to try to *internalise* or merely *comply with* those rules. The third difficulty is whether the set is justified by the actual or expected consequences they would result in if *all* or merely *some* people were to comply with or try to internalise these rules – and if the latter, how many people should we understand as complying with or trying to internalise these rules?¹⁸⁸ My formulation of rule-consequentialism is greatly informed by Brad Hooker, one of the theory’s most prominent contemporary defenders.¹⁸⁹ I will state the theory in the following way:

¹⁸⁷ This way of putting the point allows that some sets of rules may result in equally good consequences, in which case none are morally preferable to the others. However, there may still be reasons to favour one set than another. Consider an analogy with driving. It is morally important that all drivers stay on one side of the road rather than switching between both sides. But it is not morally important which side of the road we set aside for this purpose. To resolve this problem, we should mandate one of the options despite neither being morally preferable to the other.

¹⁸⁸ Brad Hooker, "Rule Consequentialism," <http://plato.stanford.edu/entries/consequentialism-rule/>.

¹⁸⁹ See, *Ideal Code, Real World: A Rule-Consequentialist Theory of Morality* (Clarendon Press: Oxford University Press, 2003), pp. 72-92; "Rule Consequentialism".

Rule-Consequentialism. An act is morally required (or permissible or impermissible) if it is required (or allowed or forbidden) by the set of rules which should be expected to result in the morally best consequences, if the wide majority tried to internalise them.¹⁹⁰

I have formulated rule-consequentialism in terms of *expected* rather than *actual* consequences. One reason for formulating rule-consequentialism in this way relates to epistemic concerns. It would be very difficult (if not impossible) to determine in advance what the actual consequences of a set of rules will be, and this means that we often will not be in a position to say whether some act would be permissible or not. But it is much more likely that we could determine what the expected consequences of a set of rules would be. Therefore, if rule-consequentialism is formulated in terms of expected consequences, we will more often be in a position to determine whether some act is permissible. This epistemic point partly matters because it has implications for our intuitive practice of allocating blame. It seems intuitive that someone should be blamed for failing to conform to rules that they should expect would result in the best consequences, but counterintuitive that they should be blamed for failing to conform to rules that actually result in the best consequences if (as will sometimes be the case) they cannot know what these rules would be. After all, it seems unfair that we blame someone

¹⁹⁰ There are some significant differences between my formulation and Hooker's own. First, my formulation justifies rules in reference to the counterfactual 'if the wide majority *tried* to internalise them', rather than the counterfactual '*whose internalisation* by the overwhelming majority'. My way of formulating rule-consequentialism allows for the possibility that some people may not be able to internalise particular rules, even while they can try to do so. Second, as will become apparent, I will be explicit on *who* is expecting the rules to have particular consequences. I also leave out some complications that Hooker includes, since many of these complications are not relevant to my argument for beneficiary pays. Hooker's own formulation is found in. *Ideal Code, Real World: A Rule-Consequentialist Theory of Morality*, p. 32.

for something that they did not – and should not – know. The formulation of rule-consequentialism in terms of *expected* consequences thus accords better with widely-held intuitions about blame.

One might claim that even formulating rule-consequentialism in terms of the expected consequences of a set of rules would make it difficult or impossible to determine which set of rules we should endorse. Notice that calculating the expected value of a set of rules involves, amongst other things, multiplying the value of each possible outcome that the set could result in by the probability that each of those outcomes would occur, then summing each of these values together.¹⁹¹ Now, it is true that it is also difficult to determine which set of rules should be expected to have the best consequences, since we will not have very accurate probabilities for the outcomes that could arise from each set. But this lack of precision is not paralysing for the view. As Hooker argues, “...we can reasonably hope to make at least *some* informed judgments about the *likely* consequences of alternative possible rules”.¹⁹² For example, we have good reason to think that a rule prohibiting torture should be expected to result in very good consequences, if a wide majority of people tried to internalise that rule. In this sense, my argument for the beneficiary pays principle should be seen as an attempt to develop an informed judgment that the allocation of benefiting-related duties would be part of the set of rules expected to have the best consequences, but this argument could admittedly be overturned by new evidence that this rule should not be expected to result in those consequences.

¹⁹¹ I say ‘amongst other things’ because a probability weighted sum is not necessarily the whole story of how the expected value of a set of rules is determined. Some versions of rule-consequentialism also build into the calculation distributional preferences—for example, some versions might hold that harms and benefits matter more to the worst-off.

¹⁹² Hooker, “Rule Consequentialism”.

If rule-consequentialism should be formulated in terms of expected rather than actual value, we also need to make precise how the calculation of the expected value of a set of rules should be made. Some ways of calculating the expected value of a set of rules would clearly be inappropriate. For example, some people might assign crazy probability estimates to the outcomes of a set of a rules. And rule-consequentialism should not countenance a set of rules that was expected to result in optimal consequences according to such unreliable probability estimates. Instead, rule-consequentialists can overcome this problem by making explicit that a set of rules is justified if and only if it should be expected to result in morally optimal consequences, according to the probability estimates that an individual *should* assign to the outcomes of a set of rules given their evidence. I am, then, understanding rule-consequentialism as incorporating an evidential-based probability assignment by each individual.¹⁹³

Secondly, I formulate rule-consequentialism in terms of requiring conformity to the set of rules which should be expected to result in best consequences if the wide majority *tried to internalise* them, rather than in terms of the consequences that should be expected if these rules were merely *complied with*. One reason why we should formulate rule-consequentialism in this way is that there are costs involved in accepting that one's own (and others') conduct should be governed by a particular set of rules, and in attempting to internalise those rules.¹⁹⁴ For example, different sets of rules will impose different psychological costs on agents who have to conform to them, and these make a difference to which set of rules should be expected to result in the best consequences. For

¹⁹³ As Hooker argues, "Note that expected good is not to be calculated by employing whatever crazy estimates of probabilities people might assign to possible outcomes. Rather, expected good is calculated by multiplying the value or disvalue of possible outcomes by rational or justified probability estimates". Ibid.

¹⁹⁴ *Ideal Code, Real World: A Rule-Consequentialist Theory of Morality*, pp. 75-80.

example, suppose that we were deciding between two sets of rules. Suppose, additionally, that the first set of rules was vastly more complicated than the second set of rules and, if we only took into account what consequences should be expected if these rules were widely *complied* with, would also have greater expected value than the second set. Notice, however, that this does not include in our calculation how burdensome it would be for people to try to keep these rules in mind when deciding how to act. If we instead calculated the expected value of a set of rules by what consequences they should be expected to result in if the wide majority of people tried to *internalise* them, then we could include in this calculation the costs of trying to keep rules in mind when deciding how to act. This might well mean that the second set of less-complicated rules would result in greater expected value than the first more-complicated rules, which seems like a possibility that rule-consequentialism should be sensitive to. This way of formulating rule-consequentialism therefore puts constraints on how complicated a set of rules can be: in general, the more complicated the set of rules, the costlier it would be to try to internalise them.

Lastly, I formulate rule-consequentialism in terms of the set of rules that should be expected to result in the morally best consequences if the *wide majority* tried to internalise them, rather than if *everyone* tried to internalise them. The main reason for formulating rule-consequentialism in this way is that it can then take into account problems regarding agents who do not act as they are morally required. If we assumed that *everyone* tried to internalise the set of rules, for example, then there would be no need to include, within the set, rules regarding how we should respond to criminal behaviour – presumably criminal behaviour would be forbidden by any set of rules that claimed to be morally optimal, so if *all* agents tried to internalise such a set of rules there would be

no criminal behaviour and thus no need for responding to criminals. But since ours is a world in which criminal behaviour occurs, we clearly want to be able to respond to criminal behaviour in particular ways (for example, we would want to deter it by having a system of punishment). As Hooker argues, “An adequate ethic must provide for situations created by people who are malevolent, dishonest, unfair, or simply misguided. In short, for use in the real world, a moral code needs provisions for dealing with non-compliance”.¹⁹⁵ Therefore, we should formulate rule-consequentialism in terms of the consequences that we should expect to obtain from a set of rules, if the wide majority tried to internalise them, so that we can appropriately respond to those who do not comply with morality.¹⁹⁶ For a similar reason, rule-consequentialism should also be sensitive to the fact that our world includes fallible individuals who might simply make mistakes about what morality requires of them. Formulating rule-consequentialism in terms of the wide majority trying to internalise the rules, rather than everyone trying to internalise them, makes the theory sensitive to this possibility. What really matters is that rule-consequentialism is robust against problems of non-compliance with morality, whether innocent or ill-motivated. Lastly, we should also think of rule-consequentialism as supposing that it is a matter of *common knowledge* that the wide majority of people try to internalise the rules. In that way, people can assume that most other people will be trustworthy to keep promises, not lie or steal, not arbitrarily harm others, and so on.

¹⁹⁵ Ibid., p. 80.

¹⁹⁶ One difficulty with formulating rule-consequentialism is that it is difficult to justify any particular proportion of people that would make a set of rules count as *widely* internalised. For example, would rules be widely internalised if they were accepted by 90% of people, or 91%? And why should we pick one number rather than the other? For a discussion of this point, see: *ibid.*, pp. 83-85.

1. Justifying the Allocation of Benefiting-Related Duties

To pave the way for my argument that rule-consequentialism can justify benefiting-related duties, it is helpful to consider how rule-consequentialism is able to justify other cognate features of our common-sense morality. I will show that rule-consequentialism can give a structurally identical justification for benefiting-related duties as it can give for two of these other features of common-sense morality – in particular, capacity-related duties and contribution-related duties.

Take capacity-related duties first. It is often thought that (typically wealthy) people who are in a good position to help desperately needy others (i.e. those in poverty) have a duty to do so, and that the demandingness of this duty increases proportional to their capacity to help. Rule-consequentialists justify this duty by arguing that including a rule within the set that required some sacrifice on the part of the wealthy to help the poor should be expected to maximise good consequences, if the wide majority tried to internalise this rule. Why might this be? One reason is that according to the law of diminishing marginal returns, we should expect that the wellbeing of a wealthy person would not be reduced nearly so much as the wellbeing of a poor person would be increased, if the former were required to give up some given amount to aid the latter – put simply, \$100 is ordinarily much more valuable for someone who cannot meet their basic needs than it is for someone who makes \$100,000 each year. If a wealthy person gave \$100 to a poor person, the gains to the latter would vastly outweigh the harm to the former. Requiring wealthier people to give up some of their money in order to aid needy others – and requiring them to give up more of their money than less wealthy people – should, therefore, be expected to result in good consequences.

Similarly, consider duties not to contribute to harming innocent people. These contribution-related duties are ordinarily thought to be very stringent and demanding. They are stringent in the sense that one cannot easily appeal to other valuable ends to justify harming others. For example, most people believe I cannot justifiably kill one innocent person in order to save the lives of two others. Furthermore, they are demanding in the sense that one cannot easily appeal to the costs that one would incur in the process of satisfying the duty in order to justify failing to act as the duty requires. For example, I cannot justify killing one innocent person to save myself even from quite considerable harm. Rule-consequentialists justify this duty by pointing out that incorporating a rule forbidding contributing to harming innocent others should be expected to maximise good consequences, if the wide majority tried to internalise that rule. After all, this rule would decrease the number of incidents in which innocent people were harmed and make everyone more secure in living their day-to-day lives, since they would be confident that they cannot be permissibly harmed at any time. Similarly, contribution-related duties are usually understood as also requiring those who have impermissibly harmed others to compensate for having done so. Rule-consequentialists can justify this aspect of contribution-related duties by appeal to considerations regarding deterrence. If those who have impermissibly harmed others are required to compensate for having done so, then there is a significant incentive to avoid harming others in the first place.

If these considerations are correct, then rule-consequentialism has in its favour that it can justify widely-accepted features of morality. I argue that benefiting-related duties can be given a structurally identical rule-consequentialist rationale to these other kinds of duties—in particular, I claim that including in the set a rule which requires beneficiaries to relinquish their benefits in property-violation and motivational-cause

cases should be expected to maximise overall good consequences, if the wide majority tried to internalise this rule. Thus my account attempts to give an explanation of why benefiting-related duties should be allocated in these cases. The reason why we should allocate these duties is because such a rule, if the wide majority tried to internalise it, should be expected to maximise good consequences. I will also demonstrate that my account can explain why in some cases beneficiaries should be allocated with more stringent and demanding duties to relinquish their benefits than in others.

2. Property-Violation Cases

Consider an example of a property-violation case that I have discussed in previous chapters:

Stolen Car: Bill steals John's car and gives it to Susan, who is innocent of any wrongdoing herself. Bill can no longer be found, nor does he leave behind assets that can be seized.¹⁹⁷

A property-violation case is one in which wrongdoing or injustice results in a beneficiary possessing property that she has no entitlement to, where the victim (who initially had an entitlement to that property) may or may not still retain that entitlement. For example, in *Stolen Car*, Susan has no entitlement to the car, but John does. As I observed in Chapter 1, several theorists have argued that, in cases of property-violation, the beneficiary's duty

¹⁹⁷ Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," p. 3.

to relinquish their benefits is justified by the fact that their claim over those benefits has been “tainted”.¹⁹⁸ Somewhere along the line, rights have been violated making the transfer of the benefit to the beneficiary unjust. For example, Robert Goodin argues:

Disgorgement can be analysed in precisely the same manner that Nozick’s logic would have us analyse rectification in general. In the process of original acquisition and the subsequent transfer, one seriously wrong step anywhere along the line prevents the process from being ‘justice preserving’. One seriously wrong step anywhere along the line suffices to taint the holder’s title to the object. ... What happens to titles that are tainted? They are extinguished; they are rendered void. If your title to an object is tainted, then the object is not rightfully yours. You have no legitimate claim to it, and you may properly be required to relinquish it.¹⁹⁹

Supposing the rule-consequentialist rationale that I am developing can justify rules requiring the respect of a qualified scheme of property-entitlements, then it can justify beneficiaries being required to relinquish their benefits in property-violation cases like *Stolen Car*. Now, many rule-consequentialists have argued precisely that a rule requiring the respect of a qualified scheme of property-entitlements would be justified according to this theory.²⁰⁰ How does this argument work? Like Goodin’s account, and unlike Robert Nozick’s account,²⁰¹ the rule-consequentialist argument I am developing endorses an

¹⁹⁸ Goodin, "Disgorging the Fruits of Historical Wrongdoing."

¹⁹⁹ *Ibid.*, p. 487.

²⁰⁰ For example, see the list of theorists given in Hooker, *Ideal Code, Real World: A Rule-Consequentialist Theory of Morality*, pp. 126-27, footnote 2.

²⁰¹ See Nozick, *Anarchy, State, and Utopia*, pp. 149-231.

account of property entitlements for derivative rather than foundational reasons. That is, according to rule-consequentialism, an appropriate scheme of property entitlements is justified by appeal to the expected consequences of a rule that required respect for that scheme, if the wide majority of people tried to internalise that rule.

Why should we expect that rules requiring respect for a scheme of property, if the wide majority tried to internalise them, would result in good consequences? Property entitlements are partly important because of the satisfaction individuals derive from having robust protection of their possessions. But they are also important because of the incentives that they establish: linking hard work to (a qualified) scheme of property-entitlements creates an incentive for productivity, and individuals may be willing to make costly investments due to the prospect of greater rewards.²⁰² Incentives relating to property-entitlements (more precisely the good consequences that these entitlements should be expected to result in) can therefore justify benefiting-related duties in property-violation cases. A rule that allowed even innocent beneficiaries to keep property wrongfully taken from victims would weaken these incentives, since individuals would then run the risk in making costly investments that their property might be unrecoverable if an innocent beneficiary came to possess it. These incentives would be strengthened, therefore, by a rule that required even innocent beneficiaries to relinquish property stolen from others.

²⁰² The qualification indicated above is that individuals should only have entitlements to what property remains after whatever level of redistribution should take place has occurred. By this I mean that redistributive schemes *set* the scope of individual entitlements, rather than taking things that are antecedently the property of people. Insofar as productivity and investment should be expected to result in good consequences, however, there are good rule-consequentialist reasons to endorse some scheme of entitlements.

One might object that these incentive-related considerations only justify why a victim of property-violation should be provided compensation and that such compensation could be provided in various ways. Why not require, for example, society in general to compensate victims of property-violation, rather than the beneficiary in particular? Presumably, the objection goes, that would retain the incentive to make costly investments at the prospect of gaining greater rewards as these would be protected by a scheme of social compensation. However, there are two good incentive-related reasons for requiring the beneficiary, in particular, to relinquish property stolen from others rather than society in general. Firstly, victims will at least sometimes have an attachment to a particular item of property – John might reasonably value *his* car in particular, especially if he has spent time and resources improving the car – and will thus have an interest in the beneficiary relinquishing that item of property, rather than being given an equivalent value of compensation by society in general. A rule which allows victims to recover particular objects stolen from them (at least where this is possible), then, should be expected to establish stronger incentives for productivity. Secondly, the practice of requiring society to compensate the victim would in fact weaken incentives for productivity in society more generally: each of us would be aware that we could be required to give up some of our assets to compensate victims of injustice, even when the stolen assets could be reclaimed from the beneficiary. If so, then society in general has an interest in making beneficiaries relinquish stolen assets (rather than taking on costs themselves).

Of course, some real world property-violation cases will be more complicated than the example I have discussed in this chapter (i.e. *Stolen Car*). One complicating factor is that the material object that the beneficiary gains as a result of wrongdoing or

injustice may not be identical to the object that was taken from the beneficiary. Imagine that instead of giving John's stolen car to Susan, Bill keeps that car for himself. Instead, he gives his (i.e. Bill's) old car to Susan, and would not have done so had he not stolen John's car. In this case, Susan benefits from wrongdoing in the form of property-violation but does not possess a physical object that was taken from the victim. In other cases, the object taken from the victim and transferred to the beneficiary might have been the same, but the beneficiary later sold it and gained some other object in its place before the situation became transparent. For example, Susan might have been given John's car by Bill, but sold the car before she became aware that it was stolen.

These complications do not present an in-principle problem for the rule-consequentialist rationale in cases of property-violation. In cases where the object gained by the beneficiary is not the same as what was taken from the victim, the beneficiary pays principle can target *the value of the object* initially taken, if it is has changed into other forms of value. Christian Barry and David Wiens liken this to the common law notion of 'tracing' which "...is the exercise of identifying an asset that ought to be treated as 'standing in' for some other item to which a person has a claim".²⁰³ Similarly, Goodin argues: "...the duty to give it back or give it up does not necessarily lapse when 'it'—the original physical object—is no longer available to be given back or given up. The same duty extends to whatever can be shown (through some suitable procedure tracing the substitution of one thing for another) to have taken the place of the original. [...] What we are tracing is the value that is embodied in the one thing, which is exchanged for the value embodied in another".²⁰⁴ While beneficiaries in these cases do not possess the

²⁰³ Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," p. 7.

²⁰⁴ Goodin, "Disgorging the Fruits of Historical Wrongdoing," pp. 486-87.

material object taken from the victim of wrongdoing or injustice, they have nevertheless benefited from property-violation in the form of possessing something of value that can be traced to the object wrongfully taken from the victim. Since they have no entitlement to this value, the rule-consequentialist account holds that they have a duty to relinquish their gains. This practice of tracing can be endorsed by rule-consequentialists because some of the good consequences of a scheme of property-entitlements discussed above would otherwise be undermined. People would not feel very secure in their investments if they had no recompense for objects stolen from them that were exchanged for other forms of value. In other words, requiring that the value of the object taken from the victim be restored to them, if the physical object is no longer around, strengthens the incentives to make costly investments in the first place. And the practice of requiring the beneficiary to relinquish the value of the property seems preferable to making society in general bear greater costs, since society in general has a strong interest in not paying the costs of injustice when these costs could instead be recovered from beneficiaries who possess value traced from that injustice.

Another complicating factor in some real world cases is that the victims who initially had an entitlement to that property may no longer be around. As I mentioned in the previous chapter, in the case of benefiting from past injustice, the victims may have died during the intervening years. Alternatively, the wrongdoing or injustice may have been partly constituted by the killing of the victims. Some might think that beneficiaries in these types of historical violation cases should not be subject to a rule requiring them to relinquish their benefits. After all, if people have held onto property for long periods of time, their wellbeing will likely be increasingly reliant on the continued possession of

that property. A rule requiring beneficiaries in such cases to relinquish property tainted by historical violations, therefore, have some significant damaging consequences.

But there is another rule-consequentialist consideration relating to historical violations of property entitlements that must be taken into account: if becoming reliant on property is counted as a consideration in favour of a beneficiary's being permitted to continue possession of that property, then this creates a strong incentive for individuals to make themselves reliant on tainted property. An individual could therefore strengthen their case for continued possession by holding onto tainted property for longer, or by bequeathing it to their children. This creates a harmful incentive to delay returning stolen goods to the victims they were taken from. Thus, there is good reason to think that the rule-consequentialist account would still hold that beneficiaries should be allocated a duty to relinquish their benefits in cases of historical violations of property. Who should beneficiaries relinquish tainted property to when the victims are no longer around and there are no descendants who have inherited entitlements over the benefits? Goodin advocates a plausible proposal that the benefits should be put into a common pool to be used for general distributive justice purposes.²⁰⁵ According to my argument, these general distributive justice purposes should be interpreted as rule-consequentialist purposes.

A third complicating factor in many real world cases is that the nature of property-violation may be mediated through other agents, markets, and global institutions, rather than a simple transfer of a stolen object from a victim to a beneficiary as in *Stolen Car*. In recent work, Thomas Pogge and Leif Wenar, for example, have developed a powerful moral analysis of the fact that many developing states face a "resource curse", an umbrella

²⁰⁵ Ibid., pp. 488-89.

term for a series of interrelated curses that have been identified by political economists in which having an abundance of resources is positively correlated with authoritarianism, civil conflict, and lower rates of economic growth.²⁰⁶ According to Pogge and Wenar, these interrelated resource curses are engendered by an “international resource privilege” which confers upon any group controlling a preponderance of the means of coercion within a country the power to effect legally valid transfers of ownership rights over that country’s natural resources—that is, even without the consent of its people.²⁰⁷ The international resource privilege does this by incentivising coup attempts, using sales to bolster internal support (often with military), and generally encouraging funds gained from sales of resources to be put towards economically unproductive uses.²⁰⁸ The relevant point for the present discussion is that, according to Wenar, this international resource privilege engenders the widespread violation of property rights—that is, the *theft* of natural resources from the citizens of developing states and the *trafficking* of these resources into developed states. As he argues, “The idea that the natural resources of a country belong to the people of that country is so intuitive that most will need no more proof than its statement”.²⁰⁹ And, therefore, the people must give valid consent to the sale and transfer of their country’s resources. Since these resources are traded on international markets without the consent of the population from whom they are taken, consumers who buy products at cheaper prices as a result of components sourced from these resources

²⁰⁶ Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, esp. pp. 119-21; 68-73. Leif Wenar, "Property Rights and the Resource Curse," *Philosophy & Public Affairs* 36, no. 1 (2008).

²⁰⁷ Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, pp. 118-19.

²⁰⁸ Would-be rulers know that if they can successfully maintain de facto authority over the state, they will be conferred the legal standing to sell a lucrative supply of the state’s natural resources on international markets. And they know that they can divert the wealth generated by the sale of resources to maintain internal support, for example amongst the military.

²⁰⁹ Wenar, "Property Rights and the Resource Curse," p. 10.

should be understood as possessing stolen assets.²¹⁰ Would rule-consequentialism also vest the people of a country with property entitlements over the natural resources found within that country? One reason to think so would be that vesting entitlements to the resources of a country in its people generally encourages the productive use (to improve their lives) and good management (to avoid despoiling their local environment) of those resources. But I need not commit to this particular answer for the property-violation argument to work. While there might be various plausible ways that rule-consequentialists would treat entitlements to natural resources, it is implausible that rules could be justified that would permit seizing natural resources by force and selling them on international markets without any sincere attempt at providing a moral claim to that property. If this practice engenders severely bad consequences, as many political economists claim, then no plausible formulation of rule-consequentialism would license the practice.

I have been considering ways in which property-violation cases may be more complicated than simple cases like *Stolen Car* and I have claimed that these complications do not present an in-principle problem for allocating beneficiaries in these cases with duties to relinquish their gains on a rule-consequentialist basis. Understanding that cases can be complicated in these ways is important because theorists of beneficiary pays are

²¹⁰ Some theorists believe that the natural resources of a country do not belong exclusively to its people, but to all of humankind in common. For example, many left libertarians will endorse some version of this view. See, Peter Vallentyne, Hillel Steiner, and Michael Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried," *Philosophy & Public Affairs* .33, no. 2 (2005). Other philosophers have argued that all of humankind should enjoy at least a "minority stake" in all natural resources, and that the extraction and sale of these resources can be justified by paying a tax that can be used to benefit those who are thereby excluded from these resources. For example, see: Thomas Pogge, "An Egalitarian Law of Peoples," *Philosophy & Public Affairs* 23, no. 3 (1994): pp. 199-205. However, this view would hardly undermine Wenar's general argument that seizing natural resources by force and selling them on international markets without any sincere attempt at providing a moral justification would constitute a violation of property rights (in this case, from all humankind in common).

ultimately interested in the implications of this principle for real-world cases. However, understanding these complications is also important because they help explain why my rule-consequentialist account can adequately respond to cases that I have discussed in previous chapters, in which I suggested that beneficiaries should relinquish their gains. For example, consider:

Gift: Mary is given a birthday gift from a friend, who purchases that gift from a shop at a price made cheaper as a result of severe poverty.

I can now claim that if the gift that Mary receives incorporates resources sourced from countries suffering the resource curse, then my argument can justify allocating Mary with a duty to relinquish some portion of the value of the gift she received. Since rule-consequentialism can justify allocating benefiting-related duties in cases of property-violation, then it can justify allocating Mary a duty if the gift she received amounts to her possessing stolen assets. And even if the gift Mary receives does not incorporate resources extracted from states without the consent of their population, we might still be able to count this as a case of property-violation. Recently, Todd Calder has argued that people who benefit in the form of buying cheap goods sourced through sweatshop labour should properly be counted as being unjustly enriched, in the same way that a recipient of stolen goods should be counted as being unjustly enriched.²¹¹ The rule-consequentialist rationale for this would be similar to the justification for the practice of tracing discussed above: what matters is not so much the physical object that has transferred from victim to

²¹¹ Calder, "Shared Responsibility, Global Structural Injustice, and Restitution."

beneficiary, but the value of that object. If people are confident in the knowledge that the value of their property will be returned (even by innocent beneficiaries) should it be stolen, this strengthens incentives for making costly investments in the first place. Similarly, if beneficiaries are required to relinquish property where the workers' remuneration is less than the fair value of their labour, then this strengthens incentives not to unfairly remunerate labour in the first place. If one was required to relinquish such products, why would anyone purchase them in the first place (or give them as gifts to friends)?

In a recent sceptical paper, Carl Knight has objected to arguments for beneficiary pays which are premised on Nozickian theories of property entitlements. He objects that Nozick's historic entitlement theory is generally problematic, so offers a poor justification for beneficiary pays: "Were this the only way in which the benefiting view could be defended, most political philosophers would take that as a *reductio* of the view".²¹² Whether or not this is true, the objection is irrelevant. The view I am defending here is not foundationally Nozickian, but based on the moral importance of incentives. And it is eminently plausible – something I suspect most political philosophers would agree with – that some scheme of property-entitlements or another is perfectly justifiable. In particular, since my account endorses property-entitlements in a derivative way that allows for redistribution, it is likely a much more palatable view for many political theorists than full-fledged Nozickian property-rights. Without some further argument that shows why no scheme of entitlements is justified in terms of their good consequences, Knight's objection can be safely dismissed.

²¹² Carl Knight, "Benefiting from Injustice and Brute Luck," *ibid.* 39, no. 4 (2013): p. 591.

3. Motivational-Cause Cases

I have argued that rule-consequentialism justifies the practice of allocating benefiting-related duties in property-violation cases in a two-step fashion: The first step is to defend the claim that rule-consequentialism would include a rule requiring respect for a scheme of property-entitlements. The second step is to show that some cases of benefiting from wrongdoing or injustice are cases in which a scheme of property-entitlements is violated. Thus, in these cases, beneficiaries are required to relinquish their benefits that they have no entitlement to and return them to those who do have an entitlement (or, if nobody is now alive with an entitlement to those benefits, other responses may be justifiable such as putting the benefits into a common pool). In this section, I argue that rule-consequentialism can justify the practice of allocating benefiting-related duties in motivational-cause cases in a much more direct way. Motivational-cause cases are those in which the reason why someone acts wrongly is precisely in order to benefit the beneficiary. In the previous chapter, I discussed a case introduced by Christian Barry and David Wiens:

Tennis Rankings: In 1993 a German nationalist named Gunter Parche stabbed Monica Seles in the middle of a tennis match to help Steffi Graf (a German) regain her no.1 ATP ranking.²¹³

²¹³ Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," p. 18.

Since she benefits as a motivational-cause of wrongdoing, I previously suggested (contrary to Barry and Wiens) that Graf should be allocated additional duties in this case – in particular, I claimed that Graf should be willing to submit to a rematch for the no. 1 position. However, I also claimed that Graf should not be allocated very demanding duties and that some theorists’ reluctance to agree that additional duties should be allocated to Graf might be explained by the fact that there are other factors in this case that militate against allocating very demanding duties.

I will start by showing how rule-consequentialism can justify the allocation of duties in motivational-cause cases, then show why in some cases (like *Tennis Rankings*) the beneficiary should be allocated a much less demanding duty than in other cases. If my argument is to succeed, what must be shown is that a rule requiring beneficiaries who are motivational-causes of wrongdoing to relinquish their benefits should be expected to maximise good consequences, if the wide majority tried to internalise this rule. I must then show why a rule-consequentialist would agree that there are some factors, present in *Tennis Rankings* but absent in other cases, which explain why Graf should not be allocated very demanding duties.

The basic argument in support of allocating duties in motivational-cause cases is that a morality which incorporated rules requiring this practice should be expected to maximise overall good consequences, if the wide majority tried to internalise them. Notice that if we allocated duties to beneficiaries who are motivational causes of wrongdoing to give up their benefits, then this removes the motivation for wrongdoing in the first place—namely, to benefit the beneficiary. After all, if a wide majority of people tried to internalise a rule requiring a beneficiary who is a motivational-cause of wrongdoing to relinquish their benefits, then the beneficiary will be likely to relinquish

their benefit. And if this is right, why would a wrongdoer attempt to benefit them in the first place? Of course, there may be many several reasons why a wrongdoer may be motivated to act wrongly at play in a single case. That is, benefiting the beneficiary might only provide some motivation for their wrongful action. However, the argument from incentives does not depend on the wrongdoing being performed only to benefit the beneficiary. It is still important to undermine incentives for wrongdoing, even if this does not fully undermine the wrongdoer's motivation for acting wrongly. Since undermining incentives for wrongdoing should be expected to reduce the number of incidents of wrongdoing, and since reducing the number of incidents of wrongdoing should be expected to result in morally good consequences, then rule-consequentialism should include a rule into the set which undermines such incentives. It should therefore endorse benefiting-related duties in motivational-cause cases.

4. Stringency and Demandingness.

The rule-consequentialist rationale for beneficiary pays is also able to explain why it seems that beneficiaries in some cases should be allocated more stringent and demanding duties than in other cases. For example, I claimed that in *Tennis Rankings* Graf should be allocated quite undemanding duties to, at most, submit to a rematch for the no. 1 ranking if and when Seles recovered from the stabbing. One of the factors that I previously suggested could explain why Graf should not be allocated a demanding duty was that the benefits were intertwined with her own efforts. Presumably in order to compete for the number one position, Graf must have trained very hard and put in a great deal of preparation for the match. It is unclear that she would not have won even if Seles had not

been stabbed. And, I noted, many theorists think that people ordinarily deserve some portion of their achievements that result from hard work, and that this might explain the reluctance of some theorists to allocate Graf with any additional duties.

A second factor, present in *Tennis Rankings*, that I suggested should make the duties allocated to Graf undemanding concerned the fact that Parche, the wrongdoer, was insane. According to a newspaper report from the time, German police suggested that Parche “appeared confused and may be mentally disturbed”.²¹⁴ And I noted that there were some real world cases, in which some people benefit as a motivational-cause of wrongdoing where the wrongdoer is not insane, which seem especially problematic: for example, consider children who are bestowed unfair advantages by their parents at the expense of other children. Or consider segments of a population who are unjustly benefited by a dictator who is attempting to secure their support at the expense of the rest of the country’s citizens. The fact that the wrongdoers in these cases are not typically insane might explain why it seems the beneficiaries should be allocated more demanding duties than in *Tennis Rankings*.

Rule-consequentialism can give a structural identical treatment to these factors that it gives in justifying other features of common-sense morality (i.e. capacity-related and contribution-related duties). One powerful reason why we should allow people to ordinarily keep benefits owing to their own contributions is because this creates a strong incentive for productivity, just as property-entitlements do. People may be willing to make costly efforts in order to reap the benefits of their own efforts. Rule-consequentialists, therefore, would endorse a rule which ordinarily allowed people to

²¹⁴ http://news.bbc.co.uk/onthisday/hi/dates/stories/april/30/newsid_2499000/2499161.stm

keep benefits owing to their own contributions because it should be expected to result in morally good consequences, if the wide majority of people tried to internalise this rule. Similarly, one powerful reason why the wrongdoer's insanity should make a difference to the demandingness of the duties allocated in motivational-cause cases is that a rule requiring beneficiaries to relinquish their benefits would be a less effective incentive for regulating an insane person's behaviour. And the purpose of allocating duties in motivational-cause cases was that it undermines an incentive for wrongdoing, since if the wide majority tried to internalise a rule requiring beneficiaries who are motivational-causes to relinquish their gains, there would be no point attempting to benefit them – they would be likely to give up their benefits.

The rule-consequentialist rationale can also justify why duties in some cases – for example, property-violation cases – seem especially stringent and demanding. We generally think that people's entitlement to property places stringent and demanding constraints on other agents. It is particularly important that people are able to plan their economic investments in the belief that nobody will deprive them of their property. And it is also important to encourage innovation and economic productivity by incentivising people to take on reasonable risks at the prospect of gaining greater rewards (in the form of protected property). Therefore, in general, beneficiaries in property-violation cases should be allocated quite stringent and demanding duties to relinquish their benefits.

Lastly, various theorists have distinguished between different ways benefits may accrue to a beneficiary. These ways of benefiting seem to make a difference to the stringency and demandingness of the duties which should be allocated. In the previous chapter, I noted that Thomas Pogge explicitly distinguishes between “merely passive” or

“actively” profiting from injustice.²¹⁵ While I claimed that ‘actively benefiting’ is unable to provide a convincing necessary condition for the justifiable allocation of benefiting-related duties, I suggested that this distinction (on some interpretations of actively and passively benefiting) might make an important moral difference to stringency and demandingness of beneficiaries’ duties. For example, it seems plausible that a beneficiary who deliberately puts herself in a position where she profits from wrongdoing or injustice, or a beneficiary who seeks to take advantage of injustice, should be allocated more stringent and demanding duties to relinquish the value of their benefits than beneficiaries who do not. Similarly, Avia Pasternak distinguishes between voluntary and involuntary beneficiaries. She defines a voluntary beneficiary as someone “who could avoid receiving the tainted benefit”. If wrongdoing was transparent to the beneficiary, and if they could have avoided benefiting, then this might also make a difference to the stringency and demandingness of a beneficiary’s duties. Rule-consequentialism can justify why these different ways of benefiting might make a moral difference to the duties that should be allocated to beneficiaries. Consider a slightly altered version of the *Stolen Car* case. Suppose now that Susan was *aware* that the car was stolen when she benefited from it, and could have avoided benefiting by giving the car to John. If we incorporated a rule that issued a stringent and demanding duty for such beneficiaries to relinquish their benefits, and if this rule was widely internalised, then we should expect the instances in which victims are deprived of their goods to be reduced (since beneficiaries will not seek to take these goods, or will take these goods but return them to the victim instead).²¹⁶

²¹⁵ Pogge, "Severe Poverty as a Violation of Negative Duties," p. 72.

²¹⁶ One might think that rule-consequentialism should require people to seek out stolen benefits in order to return them to their rightful owner. However, in this case these people would not be beneficiaries, since they are merely seeking stolen goods in order to return them, rather than enjoy these goods themselves.

5. Objections

I have argued that rule-consequentialism is able to provide a theoretical rationale for the beneficiary pays principle. And since this rationale gives explanatory support for our intuitive allocation of responsibility in cases of benefiting from wrongdoing and injustice, the beneficiary pays principle sits well in reflective equilibrium. While rule-consequentialism thus adds justificatory support for the beneficiary pays principle, it also makes this principle vulnerable to objections against rule-consequentialist theory more generally. In this section, I discuss several objections that beneficiary pays must now face due to its rule-consequentialist rationale. I conclude that the rule-consequentialist rationale can be sustained in the face of these fresh objections.²¹⁷ Of course, there are other objections against the beneficiary pays principle that do not relate to its rule-consequentialist foundation. Chapter 2, recall, has already defended the beneficiary pays principle against independent objections that have been developed in the literature.

The most prominent objection to rule-consequentialist theory alleges that there is nothing in favour of conforming to a set of rules in a particular case if an agent knows (or should expect) that violating these rules instead would maximise good consequences on that particular occasion. For example, suppose that in *Stolen Car*, the car that Bill steals from John and gives to Susan completes her private collection of cars, something that she

²¹⁷ This is by no means a full treatment of the objections to the formulation of rule-consequentialism that I have borrowed from the work of Brad Hooker. For a critical evaluation of this view, see: Richard J. Arneson, "Sophisticated Rule Consequentialism: Some Simple Objections," *Philosophical Issues* 15, no. 1 (2005); Alison McIntyre, "The Perils of Holism: Brad Hooker's Ideal Code, Real World," *Philosophical Issues* 15, no. 1 (2005). For a response to these criticisms, see: Brad Hooker, "Reply to Arneson and McIntyre," *Philosophical Issues* 15, no. 1 (2005).

has been attempting to do for most of her adult life. Suppose that Susan would be so ecstatic as a result of completing her collection that relinquishing the car should be expected to result in morally worse consequences than if she kept it. Since I have argued rule-consequentialists should accept a rule requiring beneficiaries to relinquish their benefits in property-violation cases, this amounts to advocating a rule that should not be expected to result in the morally best consequences in some cases. This puts pressure on my argument to revise the rule relating to beneficiaries in property-violation cases: The rule-consequentialist should instead endorse a rule requiring beneficiaries to relinquish their benefits in property-violation cases *except when retaining the benefits should be expected to maximise good consequences*. And, indeed, this rule in turn could be safely discarded in favour of a rule that simply required all individuals to act so as to maximise good consequences. If this is right, however, the rule-consequentialist rationale for beneficiary pays has given way to an act-consequentialist theory. As it is typically understood, act-consequentialism is the view that an act is morally required if and only if it should be expected to result in morally optimal consequences. More importantly, for my argument, it means that the case in favour for allocating benefiting-related duties in property-violation cases does not succeed. We should instead favour the rule that individuals should act so as to maximise good consequences.

A rule-consequentialist should respond to this argument by pointing out that their theory need not collapse into act-consequentialism.²¹⁸ Recall that according to the formulation of rule-consequentialism that I am employing, a set of rules is justified if and only if it should be expected to result in morally optimal consequences, if the wide

²¹⁸ *Ideal Code, Real World: A Rule-Consequentialist Theory of Morality*, pp. 93-99.

majority of people tried to internalise those rules. And there are several reasons why rule-consequentialism, formulated in this way, would not endorse a rule that requires each person to act in such a way that they should expect to maximise good consequences. In other words, there are several reasons why rule-consequentialists would not endorse a rule requiring that we acted according to act-consequentialist theory.

One reason is apparent in my previous discussion of why we should endorse a qualified scheme of property-entitlements. I claimed that the wide-spread attempted internalisation of a rule requiring a respect for property should be expected to result in maximally good consequences because individuals would feel secure knowing that they are not vulnerable to being permissibly deprived of their assets. They would be willing to take on risks and costs due to the prospect of gaining greater rewards in the form of protected property. A rule requiring respect for property is also important because individuals could build stable life-plans, secure in the knowledge that their assets will not be taken from them. On the other hand, a rule that required people to steal others property whenever doing so would maximise good consequences, if the wide majority tried to internalise that rule, should be expected to weaken incentives for productivity and economic growth. People would be more wary of taking on risks and costs in order to reap greater rewards in the form of property. Such a rule should also be expected to make everyone more worried that their property could be permissibly taken at any time. This rule should not be expected to maximise overall good consequences. Therefore, a rule-consequentialist should favour a rule that required respect for a qualified scheme of property, rather than a rule requiring individuals to steal property whenever they could maximise the good on a given occasion.

Put in general terms, then, the idea is that there is a general class of cases in which people have an interest in being able to confidently know what to expect others will do. And those interests can be secured only if others internalise rules of a fairly general form. We all have an interest in confidently knowing that others will honour contracts with us, not lie to us, nor kill us, and so on, without worrying that some exceptional circumstance would justify them deviating from these rules. As Brad Hooker argues, a rule requiring people to act as act-consequentialism prescribes would “undermine people’s ability to rely confidently on others to behave in agreed-upon ways. Trust would break down. In short, terrible consequences would result from the public expectation that this rule would prescribe killing, stealing, and so on when such acts would maximise the good”.²¹⁹

Act-consequentialists might object that their theory is not committed to the view that individuals should, in every circumstance, try and determine which available action should be expected to produce the most good. If it is true that terrible consequences would result from individuals always trying to perform particular actions which produce the most good, then an act-consequentialist can claim that individuals should act according to a rule-consequentialist decision procedure while maintaining that the moral status of an action is nevertheless determined by whether it would result in morally optimal consequences. According to this view, an individual should ordinarily act according to plausible rules such as ‘do not harm innocent people without their consent’, even though on at least some occasions this will mean that they, in fact, will act wrongly because they will not perform the action which has morally optimal consequences. By distinguishing between the appropriate decision procedure to take when deciding how to act, on the one

²¹⁹ Ibid., p. 94.

hand, and the moral status of actions, on the other hand, an act consequentialist is therefore not committed to a theory that would result in the terrible consequences that I have just described.

I accept this argument. Note, my aim in this section is not to undermine act-consequentialism as a moral theory, but to defend the rule-consequentialist rationale for benefiting-related duties against a common objection from act-consequentialists. I accept that act-consequentialists can reject the claim that their theory is committed to terrible consequences resulting from individuals performing particular actions that would produce the most good. But by endorsing a rule-consequentialist decision procedure, in turn, the act-consequentialist must abandon the claim that a rule-consequentialist allocation of benefiting-related duties is undermined because it does not require individuals to always perform the particular action which would produce the most good. After all, both the rule-consequentialist and amended act-consequentialist view share a rule-consequentialist decision procedure. There remains an important question about whether we should now prefer rule or act-consequentialism overall, if they have the same decision procedures, but that is a question beyond the scope of this chapter and thesis.

A second objection claims that there is problem with this response—in particular, since I have argued that rule-consequentialists should favour a rule that requires beneficiaries to relinquish their benefits even in particular cases where an individual could produce more good by violating such a requirement, my rule-consequentialist argument has wildly implausible commitments in some particular cases. Surely there is some limit to how much good a person should be willing to sacrifice in order to conform to a rule which, if the wide majority tried to internalise it, should be expected to maximise the good. Surely, that is, a beneficiary should refuse to relinquish their benefits if in some

case, by doing so, she could produce an enormous amount of good. And if beneficiaries should refuse to relinquish their benefits in cases where they would otherwise sacrifice an enormous amount of good, then the requirement to relinquish benefits in property-violation and motivational-cause cases is undermined.

In response, the rule-consequentialist commitments that I have been arguing for are more complicated than this objection envisages. I have argued that rule-consequentialism is committed to several of the same rules that are also endorsed by common-sense morality: for example, a rule-consequentialist should endorse capacity-related and contribution-related duties in addition to benefiting-related duties (not because these duties are features of common-sense morality, but because these duties are isomorphic with rules independently justified according to rule-consequentialism). I have also argued that the rule-consequentialist holds that each of these duties have a particular stringency and demandingness, and these must be weighed against each other to determine what an agent all-things-considered has a duty to do (in the terms I put it in introduction, this would be how we determine an agent's moral responsibility). According to my argument, for example, while it is true that a wealthy person has a duty to aid the poor (typically by donating to aid agencies), they should not donate in some cases in which they should expect this donation to also contribute to harm (for example, if there is reason to expect that a large portion of the donation would be squandered by corrupt officials, despite expecting that the remainder of the donation would help the poor). This does not mean that contribution-related duties always outweigh capacity-related duties. In some cases, a wealthy person should proceed with the donation anyway knowing that this will make them complicit with corruption, since the donation should nevertheless be

expected to result in enough good to justify their complicity.²²⁰ Similarly, it is true that beneficiaries should be allocated duties to relinquish their benefits in property-violation and motivational-cause cases, but that these duties should be understood to have a certain stringency and demandingness. The beneficiary's duty to relinquish their benefits will, in some cases, be outweighed by other duties that they have (for example, plausibly, duties to perform actions that have very good consequences). What the relative weighting of different duties (or rules) should be is a difficult question, but the fact that they should have such different weightings is a widely accepted view. Therefore, my argument is not undermined by the fact that in some cases in which refusing to relinquish benefits would produce an enormous amount of good, the beneficiary should not relinquish their benefits. This will simply mean that their duty to do so was outweighed by another duty.

According to a final pair of related objections, while I have shown that rule-consequentialism (if we accept it) can give a rationale for the beneficiary pays principle, if we have little reason to adopt rule-consequentialism in the first place then I have not shown why we should affirm the beneficiary pays principle. In response, while the aim of this thesis is not to give a definitive case for rule-consequentialism, I have raised some important considerations that count in favour of accepting this moral theory: I have shown that rule-consequentialism gives a good accounting of various features of intuitive morality, including the allocation of duties to beneficiaries of injustice in some types of cases, and this itself counts as evidence in favour of rule-consequentialism. Put differently, that rule-consequentialism sits well in reflective equilibrium is itself a reason to accept this moral theory.

²²⁰ For a good discussion of this problem, see: Chiara Lepora and Robert E Goodin, *On Complicity and Compromise* (Oxford: Oxford University Press, 2013).

One who rejects rule-consequentialism might relatedly object that while I have shown that the practice of allocating duties to beneficiaries in some types of cases should be expected to result in good consequences if the wide majority tried to internalise this practice, I have not shown that allocating such duties is morally required. Put simply, I have shown that it is good to treat the beneficiary pays principle as if it matters (because of its good consequences), but I have not shown that it actually morally matters. In response, while I do not aim to make a full defence of rule-consequentialism in this thesis, I nevertheless have suggested that there is evidence to think that rejecting rule-consequentialism is a mistake, since this theory sits well in reflective equilibrium. If rule-consequentialism is correct, however, then the distinction appealed to in the objection (between a practice that would have optimally good consequences and what practices morality really requires) does not make sense. In other words, according to rule-consequentialism, the morality we should affirm just is one in which its practices, if the wide majority tried to internalise them, should be expected to result in optimally good consequences.

6. Conclusion

In this chapter, I have developed a positive defence of beneficiary pays. I defended beneficiary pays by arguing that a morality which incorporates the practice of allocating benefiting-related duties in some types of cases should be expected to result in morally better consequences than a morality that does not. In particular, I argued that benefiting-related duties should be allocated in property-violation and motivational-cause cases. On my account, the only reason why we should allocate these duties is because of the

expected effects that such a practice would have, if the wide majority tried to internalise the rules that governed this practice. This chapter thus has important upshots both for theorists who are interested in how we should allocate responsibility between agents in particular scenarios in which people benefit from wrongdoing or injustice and for theorists who are independently interested in rule-consequentialist theory. The important upshot for the former is that a convincing rationale can be developed for the claim that the beneficiary pays principle plays an important role in allocating responsibility to address harm in some cases. The important upshot for the latter is that rule-consequentialists are committed to applications of their theory that they may not have been aware of. In the following chapter, I extend this argument for beneficiary pays to show it can justify allocating benefiting-related duties in an additional class of cases—namely, cases where beneficiaries hold or express a pro-attitude towards wrongdoing or injustice.

Chapter 5: Beneficiary Pays and Pro-Attitude Cases

I have proposed that benefiting-related duties should be allocated in cases in which this practice, if the wide majority tried to internalise it, should be expected to result in good consequences. In particular, I have claimed that the allocation of benefiting-related duties is justified in property-violation and motivational-cause cases. This chapter examines whether and how beneficiaries' attitudes might make a moral difference to the duties that they should be allocated. I argue that the same rule-consequentialist rationale for beneficiary pays that I have already developed in the previous chapter is, without modification, also able to justify why a beneficiary's holding or expressing *pro-attitudes* towards wrongdoing is itself wrong, and why such beneficiaries in turn should be allocated duties to relinquish their benefits. Rule-consequentialism can also justify why some attitudes are more relevant than others, in the sense that they more greatly increase the stringency and demandingness of the duty that the beneficiary should be allocated to relinquish their benefits than other attitudes.

1. Risking Wrongs

I will begin by examining two existing accounts which argue that a beneficiary's attitude towards wrongdoing may itself be wrongful when it increases the risk of wrongdoing. In a recent argument, Ronald Green has suggested that benefiting from wrongdoing is *prima facie* wrong when failure to refuse the benefit would *encourage* the wrongdoing to be

repeated.²²¹ He distinguishes between three different kinds of encouragement. The first kind of encouragement is “direct encouragement through agency”, in which the beneficiary does not want to perform the wrongful act herself and so asks someone else to do it instead. As Green notes, this type of encouragement is in reality a “major cause” of the wrongdoing. No wrongdoing has yet occurred, and it is the beneficiary who attempts to initiate the wrongdoing. A second kind of encouragement is “direct encouragement through the acceptance of benefit”, in which a beneficiary’s mere acceptance of the benefit encourages repetition of the wrongdoing. Consider the following example adapted from his discussion:

Supervisor: A rogue employee secretly engages in insider trading and thereby increases the company’s profits. His supervisor receives a commission of these profits, so benefits from the insider trading.²²²

As Green points out, were the supervisor to accept such benefits (while knowing that they are sourced in wrongdoing), she would encourage the repetition of the rogue employee’s actions. Green argues that such an agent “...condones such [wrongful] behaviour and encourages its repetition in the future”. And the reason why direct encouragement through the acceptance of benefit—why condoning wrongful behaviour—is itself wrongful, Green says, is because “it provides a powerful *incentive* for misconduct”.²²³ A final form of encouragement is “indirect encouragement through the legitimisation of a practice”, in which mere acceptance of the benefit impacts upon public norms of conduct, thereby

²²¹ Green, "Benefiting from Evil: An Incipient Moral Problem in Human Stem Cell Research," p. 544.

²²² Ibid., p. 549.

²²³ Ibid., pp. 549-50.

contributing to the general legitimisation the wrongdoing.²²⁴ Each of these forms of encouraging have in common that they increase the risk that wrongdoing will occur.

In a similar treatment, Robert Goodin and Avia Pasternak have argued that a beneficiary who *intends* wrongdoing for the sake of the benefits, despite not themselves performing the wrongful action, can be wrong in itself. They develop the following case which I have adapted here:

Vice President: The Vice President intends to assassinate the President so that she can take the position. However, a different agent performs the assassination first.

The Vice-President benefits by being made the President.²²⁵

The core of their argument is that when we are evaluating the actions that agents performed at a particular time (i.e. we are assigning praise, blame, responsibility, and so on), we should include in our evaluation what the agent should have expected would result from their actions, at the time that they acted. This is because a paradigmatic task of morality is to be action guiding, yielding verdicts about what agents ought to do given the available evidence they have at the time they must act. Therefore, in retrospect, we can morally evaluate an agent's failure to do what they ought (prospectively, given their available evidence) to have done at that time. Likewise, we can blame them for acting as they should not have done at the time even if, against the odds, nothing bad ended up occurring as a consequence of their actions.

²²⁴ Ibid., pp. 548-51.

²²⁵ Robert E Goodin and Avia Pasternak, "Intending to Benefit from Wrongdoing," *Forthcoming* (2015).

A beneficiary who intends to do wrong in order to reap the benefits may be pre-empted from doing so, but she could not be certain of this at the time of acting – for example, the Vice President cannot be certain that the other assassin will succeed. All she can do is assign a probability to the various outcomes that might occur. Surely, then, she should assign some non-zero probability that her intended wrongful action will not be pre-empted (and that she will not change her mind), in which case she will perform the assassination instead. Given her beliefs and the evidence at the time, then, her forming the intention to perform the assassination increases the probability that the assassination will occur. And it is because her intention increases the risk of a wrong occurring that it is, itself, a wrongful attitude. This is true even if she does not end up, in retrospect, performing the assassination. As Goodin and Pasternak say,

Depending on the probability of that (and of course on how bad the outcome would be), we might judge her to have run an unacceptable risk of becoming causally, and hence morally, implicated in a bad outcome. Forming an intention positively related to wrongdoing might, depending on that calculation, count as wrong in just that way.²²⁶

To be sure, our assessment of an agent who merely intends to do wrong should be different from another agent who both intends to do wrong and has taken further steps to performing the wrong. Nevertheless, the agent who merely intends to do wrong herself

²²⁶ Ibid., p. 18.

will, in fact, do wrong when she poses an “unacceptable risk the wrongdoing will ensue as a result”.²²⁷

Notice that a beneficiary’s attitude towards wrongdoing might risk wrongdoing when it is expressed (the attitude is acknowledged by others) and/or when it is private (the attitude is held by the beneficiary, and may or may not also be expressed). In the *Supervisor* example, it is because the employees acknowledge the condoning attitude of the supervisor that they are tempted to engage in repeated acts of insider trading. In this case, it is the supervisor’s expressed attitude that is morally relevant because it increases the risk of future wrongdoing. In the *Vice President* example, it is because the Vice President has the intention to perform the assassination that the risk of wrongdoing is increased, and this does not depend on others acknowledging the attitude of the Vice President towards wrongdoing, or being aware of it at all. Therefore, in this case, it is a private intention to do wrong that is morally relevant because it increases the risk of future wrongdoing.

There is another way of understanding what makes these attitudes towards wrongdoing problematic—namely, these attitudes make wrongful outcomes more modally robust, in a sense described by Philip Pettit.²²⁸ According to Pettit, some goods are modally demanding in the sense that their instantiation does not only depend on what actually happens, but what would happen in a range of counterfactual scenarios. Famously, for example, Pettit argues that freedom is a modally demanding good. Suppose that another agent was in a position to interfere with my choice between two options, *a* or *b*. Now, suppose that I had two tactics to avoid my choice being interfered with by the

²²⁷ Ibid., p. 20.

²²⁸ Philip Pettit, "Freedom and Probability: A Comment on Goodin and Jackson," *Philosophy & Public Affairs* 36, no. 2 (2008).

other agent. First, I could adapt my preferences to choose whatever the other agent would wish I choose. Second, I could attempt to ingratiate myself with the other agent such that they are inclined to allow me to choose however I wish. Pettit's point is that it would not be enough for me to be free that I was successful in either (or both) of these tactics, such that the other agent does not actually interfere with my choice. Rather, my freedom depends on whether the other agent would be able to interfere with my choice in the (counterfactual) event that my attempt to ingratiate myself with them did not succeed, or they simply changed their mind and decided not to allow me a choice between *a* or *b*. Since the other agent is in a position to monitor my choices, and interfere if and whenever they so desire, my ability to choose *a* or *b* is not modally robust. Now, my suggestion is that we can also employ this concept of modal robustness to understand what is wrong with intending to do wrong or encouraging wrongdoing. It is true that the Vice President does not actually assassinate the President, but her intention to do so makes the outcome that the President will be assassinated more modally robust. In the (counterfactual) event that the other assassin failed, the Vice President is ready to step in and perform the assassination instead. Since the wrongful action occurs in a greater range of possible scenarios due to the Vice President's intention, this attitude makes wrongdoing more modally robust.

2. Rule-Consequentialism and Risky Attitudes

So far I have examined arguments that claim particular attitudes a beneficiary may hold or express are wrongful if they increase the risk of wrongdoing. But why should rule-

consequentialists accept this argument? In the previous chapter, I understood rule-consequentialism as making the following claim:

Rule-Consequentialism. An act is morally required (or permissible or impermissible) if it is required (or allowed or forbidden) by the set of rules which should be expected to result in the morally best consequences, if the wide majority tried to internalise them.

Based on this understanding, I argued that rule-consequentialism can provide a rationale for why duties should be allocated to beneficiaries of wrongdoing and injustice in cases in which a rule requiring them to relinquish their benefits should, if widely internalised, be expected to result in good consequences. Recall, in property-violation cases, allocating a beneficiary with a duty to relinquish their benefits is justified by appeal to property-entitlements which, in turn, are grounded on the good consequences that should be expected would obtain if a rule requiring a respect for a qualified scheme of property entitlements was widely internalised. In motivational-cause cases, allocating a beneficiary with a duty to relinquish their benefits is justified by appeal to desirable incentives. If a rule requiring beneficiaries to relinquish their benefits when they are a motivational-cause of wrongdoing was widely internalised, then this would (partly) undermine the motivation for some to do wrong to benefit others in the first place.

In the same way that rule-consequentialism is able to justify the allocation of duties to beneficiaries in property-violation and motivational-cause cases, I argue that rule-consequentialism can also justify why holding or expressing an attitude that increases the risk of wrongdoing is itself wrong. For example, if intending or encouraging

wrongdoing characteristically increases the risk of wrongdoing occurring, then part of the optimal set of rules would presumably be an injunction against intending or encouraging wrongdoing, since this rule should be expected, if widely internalised, to result in good consequences. If this rule were widely internalised, then there would be fewer instances of people intending or encouraging wrongdoing, and so the risk of wrongdoing occurring would be decreased.

Notice, also, that this rule-consequentialist argument is able to generalise to a range of pro-attitudes towards wrongdoing that a beneficiary might have. In other words, the moral relevance of beneficiaries' attitudes are not exclusive to intending or encouraging wrongdoing alone. Any pro-attitude towards wrongdoing characteristically increases the risk that wrongdoing will occur, albeit to different degrees, so these rule-consequentialist considerations extend to the range of pro-attitudes towards wrongdoing that a beneficiary might hold or express. This is important, because various theorists have recently suggested a range of attitudes that may be morally relevant to the duties that beneficiaries should be allocated. For example, Daniel Butt has claimed that "The individual's duty not to benefit [...] stems from one's moral *condemnation* of the unjust act itself" and that we ought to "hold a genuine *aversion* to injustice and its lasting effects".²²⁹ Edward Page claims that failing to disgorge a fair share of benefits associated with climate change "would put [affluent] states in the position of *condoning* the setbacks of interest [to developing states] to which their affluence is historically linked".²³⁰ Clare Heyward writes: "If an agent benefits from another knowingly acting unjustly, then the

²²⁹ Butt, "On Benefiting from Injustice." Emphasis has been added to the references through to the end of this paragraph.

²³⁰ Page, 'Give It up for Climate Change: A Defence of the Beneficiary Pays Principle', p. 315

beneficiary might be accused of *condoning* the action if she keeps the benefits”.²³¹ Avia Pasternak argues “...even though *welcoming* beneficiaries cannot refuse the wrongful benefit, the fact that they *welcome* it [i.e. the wrongdoing] implicates them too, at least in some sense, in wrongdoing, and could therefore ground further duties towards its victims”.²³² Ronald Green insists that “Everyone has a stake in opposing forms of benefiting from evil that *encourage* the further commission of evil deeds”.²³³ Lastly, Robert Goodin and Avia Pasternak argue that a beneficiary’s “forming an *intention* positively related to wrongdoing” might count as wrong, depending on whether it increased the risk of wrongdoing.²³⁴

Rule-consequentialism can explain not only why people should not hold pro-attitudes towards wrongdoing, but also why they should hold con-attitudes towards wrongdoing—in other words, why they should be regretful of and adverse to wrongdoing. A rule requiring people to be regretful of or adverse to wrongdoing should, if the wide majority tried to internalise this rule, be expected to decrease the risk of wrongdoing occurring.

Lastly, rule-consequentialism can also explain why some attitudes seem more morally problematic than others. For example, it seems plausible that intending wrongdoing is worse than encouraging it, which is worse than welcoming it, which is worse than being indifferent to it, and so on. The natural explanation for this ordering is that intending wrongdoing characteristically increases the risk of wrongdoing occurring

²³¹ Heyward, "Benefiting from Climate Geoengineering and Corresponding Remedial Duties: The Case of Unforeseeable Harms," p. 410.

²³² Avia Pasternak, "Voluntary Benefits from Wrongdoing," *Journal of Applied Philosophy* 31, no. 4 (2014): p. 378.

²³³ Green, "Benefiting from Evil: An Incipient Moral Problem in Human Stem Cell Research," p. 548.

²³⁴ Goodin and Pasternak, "Intending to Benefit from Wrongdoing," p. 18.

the most, then encouraging, welcoming, condoning, and finally being indifferent to wrongdoing. Recall my argument that an agent's intending wrongdoing makes the occurrence of wrongdoing more modally robust, in the sense that in a greater range of possible scenarios the wrongdoing will occur due to the agent's having that attitude. Arguably, intending wrongdoing makes the occurrence of wrongdoing *more* modally robust than being indifferent to it. It is true that an agent's being indifferent to wrongdoing increases the possible scenarios in which wrongdoing will occur. For example, consider a scenario in which another agent would act wrongly unless he believed that someone would reproach him for doing so. In such a scenario, another agent's indifference to wrongdoing may fail to prevent the occurrence of wrongdoing. But those who intend to do wrongdoing would themselves attempt to make wrongdoing occur, rather than merely failing to prevent others' attempts at wrongdoing. Rule-consequentialism can justify why, intuitively, some attitudes are more morally problematic than others to the extent that they increase the risk of wrongdoing to different degrees or make wrongdoing more modally robust.

In short, rule-consequentialism can justify why a great many attitudes that beneficiaries might hold or express are morally relevant, and why some are more morally problematic than others. Rule-consequentialists should forbid agents from holding or expressing attitudes that characteristically increase the risk of wrongdoing, since a rule forbidding these attitudes should, if the wide majority tried to internalise it, be expected to result in good consequences. Furthermore, rule-consequentialists would find attitudes more wrongful the greater the risk of wrongdoing they should be expected to characteristically result in.

3. Attitudes and Actions

I have now given a rule-consequentialist argument that holding or expressing pro-attitudes towards wrongdoing is itself wrongful. But I have not shown how this claim about wrongful *attitudes* connects with a claim about *actions*. In other words, I have not shown why a beneficiary who holds or expresses a pro-attitude towards wrongdoing should take the action of relinquishing their benefits from wrongdoing.

There are two ways in which a rule-consequentialist could justify why beneficiaries who held or expressed a pro-attitude towards wrongdoing should be allocated duties to relinquish their benefits from wrongdoing, depending on whether the pro-attitude was *privately held* or *publically expressed*. Let us start with beneficiaries who express pro-attitudes towards wrongdoing, since this is the more straightforward case. Recall the *Supervisor* example. By retaining the benefits from their employee's insider trading, the Supervisor expresses towards that employee a condoning attitude regarding their wrongdoing. And this increases the risk that the employee will engage in further instances of insider trading. So, here, it is the fact that retaining the benefits risks further wrongdoing (via their condoning attitude) that explains why the Supervisor should be allocated a duty to relinquish them. It is important to emphasise that, according to this argument, the beneficiary has a duty to relinquish their benefits not because of the attitude they actually hold, but because, were they to fail to disgorge the benefits, it would *express* a pro-attitude regarding wrongdoing to others, who thereby are incentivised to perform further wrongs. Put simply, if agents have a duty not to express a pro-attitude towards wrongdoing (in light of these attitudes characteristically increasing the risk of wrongdoing), and retaining benefits in some cases would express a pro-attitude towards

wrongdoing, then in these cases the beneficiaries should be allocated a duty to relinquish their benefits.

This argument has important implications for real-world cases that interest proponents of benefiting-related duties. The real-world case that it most clearly applies to is exploitative labour. While it doesn't seem plausible to think that most citizens of affluent countries who benefit from exploitative labour (by being able to purchase cheap products) welcome, intend, or encourage wrongdoing, it is very plausible that many are indifferent to, or even condone, the exploitative labour from which they benefit. Factories which engage in exploitative labour are set up because they are profitable. And they are profitable because a great many consumers are willing to buy their products at cheap prices, and unwilling to sanction companies that engage in these wrongful practices. Neither do these consumers, by and large, switch to alternative products which may be less harmful. The expressed attitudes of a great many consumers towards wrongdoing really do risk further wrongdoing, by incentivising exploitative labour. If this is correct, then my argument explains a central case that motivates interest in benefiting-related duties to address harm. Beneficiaries of exploitative labour should be allocated a duty to relinquish their benefits because such a practice, if the wide majority tried to internalise it, should be expected to result in good consequences (by removing incentives for exploitative labour).

How does the rule-consequentialist argument justify the allocation of duties in cases in which the beneficiary privately holds but does not publically express a pro-attitude towards wrongdoing? Consider the *Vice President* case. The Vice President holds an intention to assassinate the President but does not express this intention (since another agent pre-empts their attempt, leaving them with nothing to do). I have shown why a rule-

consequentialist should claim that holding this intention was wrongful, because they should accept a rule forbidding people from holding attitudes which characteristically increase the risk of wrongs. But why should we think that this means beneficiaries who privately held a wrongful attitude should relinquish their benefits? The reasoning is similar to motivational-cause cases. A rule which required beneficiaries who held a pro-attitude towards wrongdoing to relinquish their benefits should, if the wide majority tried to internalise it, be expected to undermine a motivation for these beneficiaries to do wrong in the first place. If we required the Vice President to forgo the office of President due to her intention to assassinate the President, then there would be no reason for her to intend to assassinate the President in the first place. The main difference between this case and motivational-cause cases is that in the latter, wrongdoing is performed by a third party with the aim of benefiting the beneficiary, who may be entirely innocent of wrongdoing. In the *Vice President* case, however, wrongdoing is performed by the beneficiary with the aim of benefiting herself. In such pro-attitude cases, then, the beneficiary is not innocent but should nevertheless be allocated a duty to relinquish the benefits.

4. Two Objections

I have now argued that rule-consequentialism can justify the allocation of duties in pro-attitude cases in a two-step fashion. The first step was to demonstrate that rule-consequentialists should accept a rule that forbade holding or expressing a pro-attitude towards wrongdoing. They should accept this rule because these pro-attitudes towards wrongdoing characteristically increase the risk of wrongdoing—therefore, a rule which forbade these attitudes should, if the wide majority tried to internalise it, be expected to

reduce the overall occurrence of wrongdoing (resulting in good consequences). The second step was to demonstrate why this argument would have the upshot that beneficiaries in pro-attitude cases should be allocated duties to relinquish their benefits. I argued that if agents have a requirement not to *express* a pro-attitude towards wrongdoing (because these attitudes characteristically increase the risk of wrongdoing), and retaining benefits in some cases (like the *Supervisor* case) would express a pro-attitude towards wrongdoing, then in these cases the beneficiaries should be allocated a duty to relinquish their benefits. And a rule which required beneficiaries who privately *held* a pro-attitude towards wrongdoing to relinquish their benefits should, if the wide majority tried to internalise it, be expected to undermine a motivation for these beneficiaries to do wrong in the first place. I will now consider some objections to this argument.

A first objection is that some other straightforward explanation can be given for why the beneficiaries should be allocated duties to relinquish their benefits in the pro-attitude cases I have discussed. For example, a plausible explanation of why we should prohibit the Vice President from gaining the office of President is because it would be disastrous to allow someone who attempted assassinating a government official to be President. Similarly, a plausible explanation of why the supervisor should be required to relinquish their benefits is because they failed to satisfy their responsibility to make sure their employees are abiding by the law. Therefore, we need not appeal to the attitudes these beneficiaries had to justify why they should be required to relinquish the benefits they received. In response, a rule-consequentialist should accept that these do provide good explanations of why the respective beneficiaries should be required to relinquish their benefits. Clearly, a rule forbidding those who attempt to assassinate government officials from taking political office themselves should, if the wide majority tried to

internalise it, be expected to maximise good consequences (since it would prevent unscrupulous people from becoming politicians). However, these explanations are compatible with the argument that such beneficiaries should be allocated a duty to relinquish their benefits because they held or expressed a pro-attitude towards wrongdoing. In other words, it is compatible that the supervisor acts wrongly both by expressing an attitude that increases the risk of wrongdoing and because they did not exercise due oversight of their employees actions, as their professional responsibility demanded. It will often be true in cases where a beneficiary holds a pro-attitude towards wrongdoing that they act wrongly in some other way, and that this may also justify why they should be allocated a duty to relinquish their benefits. But this does not mean we should reject the moral relevance of pro-attitudes towards wrongdoing.

A second objection is that the rule-consequentialist account that I have developed does not offer a uniquely compelling explanation of the morally significant attitudes. In particular, one might suggest a candidate attitude-type that seems wrongful but does not characteristically increase the risk of wrongdoing. If the wrongness of this candidate attitude-type can be explained on other non-rule-consequentialist grounds, then the objector may argue that their account offers a better analysis of wrongful attitudes. For example, consider a beneficiary who merely privately wishes that wrongdoing occurs so that they may reap the benefits, despite not performing the wrongdoing themselves. Insofar as ‘private wishings’ are not publically expressed (so nobody else is incentivised to perform wrong) and do not constitute intentions to do wrong (so the wish does not increase the risk of themselves performing wrongdoing), it seems that the rule-consequentialist account I have offered is unable to explain the wrongness of holding this attitude.

This objection is not particularly damaging unless an alternative explanation is offered. However, one might argue that virtue ethics does, in fact, offer a more compelling explanation of wrongful attitudes than rule-consequentialism can. The focus of the virtue ethicist's moral evaluation, after all, is on the virtues that make up an agent's moral character: kindness, generosity, tolerance, forgivingness, and so on; and also on the vices: jealousy, vindictiveness, greediness, and so on. The virtue ethicist understands these character traits as including "...emotions and emotional reactions, choices, values, desires, perceptions, attitudes, interests, expectations and sensibilities".²³⁵ According to virtue ethicists, an agent should hold whichever attitude towards wrongdoing that would be virtuous. And a virtuous agent, plausibly, would not condone, encourage, welcome, or intend wrongdoing. Neither would they privately wish it to occur.

In response, I agree that privately wishing wrongdoing seems morally dubious. But if the virtue ethicist is to appeal to this attitude to undermine the rule-consequentialist account, they need to provide some principled explanation of why it would not be virtuous to privately wish wrongdoing occur. And their account must not explain the vice of the attitude 'privately wishing wrongdoing to occur' by pointing out that it characteristically increases the risk of wrongdoing, since that would then prove too much: this is the precise answer the rule-consequentialist who accepts my argument would offer. Furthermore, as I argued above, there is a rank-ordering of how bad pro-attitudes towards wrongdoing are according to how greatly they characteristically increase the risk of wrongdoing. I suggested, for example, that intending wrongdoing was morally worse than encouraging it, which was worse than being indifferent to others' wrongdoing. The rule-

²³⁵ Rosalind Hursthouse, "Virtue Ethics," <http://plato.stanford.edu/entries/ethics-virtue/>.

consequentialist can explain this rank-ordering by pointing to the characteristic risks associated with each type of attitude. Intending characteristically increases the risk of wrongdoing much more than indifference, for example. However, it is much harder to see how the virtue ethicist could explain this phenomenon, and why we should think that pro-attitudes towards wrongdoing constitute vices without resort to the characteristic consequences of these attitudes.

5. Conclusion

I have argued that the attitudes beneficiaries take towards wrongdoing are themselves wrongful when they characteristically increase the risk of wrongdoing, since a rule forbidding people to hold or express attitudes that characteristically increase the risk of wrongdoing should, if the wide majority tried to internalise it, be expected to result in good consequences. If my argument has been successful, then there are various substantive upshots: First, there are a great many other attitudes that are morally relevant than has so far been suggested in the literature. Second, the moral relevance of these attitudes can be given a unified explanation: a beneficiary's attitude towards wrongdoing may itself be wrong when it increases the risk of wrongdoing. Third, if (as I have already argued in Chapter 4), this rule-consequentialist account also does well in justifying duties in property-violation and motivational-cause cases, it offers a good overall account of why we should allocate beneficiaries with duties in a central range of cases.

Part III: Application

Chapter 6: Applying Beneficiary Pays to Climate Change

In the previous two chapters, I defended beneficiary pays by arguing that a morality which incorporates the practice of allocating benefiting-related duties should, if the wide majority tried to internalise it, be expected to result in morally better consequences than a morality that does not. In particular, I developed a rule-consequentialist argument that benefiting-related duties should be allocated in cases (I called these property-violation, motivational-cause, and pro-attitude cases) in which this practice, if the wide majority tried to internalise it, should be expected to result in good consequences—and not allocated in cases in which this practice would not.

Part III of this thesis, comprised of this chapter alone, justifies the application of the beneficiary pays principle to climate change by assimilating climate change to these cases. I will argue, first, that climate change constitutes a property-violation case since many citizens of developed states have violated property entitlements that others have to particular shares of the atmosphere's safe absorptive capacity. In particular, I argue that all individuals have entitlements to an *equal share* of the atmosphere's safe absorptive capacity, and that the citizens of developed states have wrongfully appropriated others' shares by exceeding an equal allocation of emissions. I argue, second, that climate change constitutes a motivational-cause case since decision-makers within developed states fail to appropriately limit their states' overall emissions, partly because they intend to benefit their citizens whom they depend on for election (and are thus not willing to undermine their high-consumption life-styles). I argue, third, that climate change constitutes a pro-attitude case, since many citizens are indifferent to the harms expected from climate change. Therefore, beneficiary pays justifiably allocates such citizens pro-tanto duties to

bear costs of addressing climate change (corresponding to the value of the benefits that they enjoy).

If climate change can be assimilated to these other cases as I suggest, this completes my argument that the beneficiary pays principle plays an important role in determining how the costs of addressing climate change should be allocated. But while it plays an important role, other principles of responsibility are also relevant. For example, I have argued that the ability to pay principle and the contributor pays principle are also compelling and play a significant role, and that each of these principles can also be given a rule-consequentialist rationale. A complete account of how we should allocate the costs of addressing climate change, therefore, would take into consideration these other principles, weighing all the relevant pro-tanto duties agents have against each other. Each person's all-things-considered towards addressing climate change is whatever duty emerges from this weighing.

1. Benefiting from Property-Violation in Climate Change

I have argued that a rule-consequentialist commitment to property-entitlements can justify the allocation of benefiting-related duties in property-violation cases. According to this account, beneficiaries may come to hold material objects which they have no title over, where the victim may or may not retain an entitlement to those objects.²³⁶ This argument runs on the same logic as Nozick's account of rectification.²³⁷ Somewhere along

²³⁶ Goodin, "Disgorging the Fruits of Historical Wrongdoing." Other accounts along the lines of unjust enrichment have been developed in Page, "Give It up for Climate Change: A Defence of the Beneficiary Pays Principle." and Calder, "Shared Responsibility, Global Structural Injustice, and Restitution."

²³⁷ Goodin, "Disgorging the Fruits of Historical Wrongdoing," p. 487.

the line, rights have been violated making the transfer of the benefit to the beneficiary unjust. If the victim is still alive and able to be identified, the proper response on the part of the beneficiary is to give back the (value of the) object that they wrongfully possess. In typical cases, the victim does, and the beneficiary does not, have entitlements to those objects. If victims are not alive, or cannot be identified, other responses may be justifiable: for example, beneficiaries may be required to relinquish their benefits into a common pool to be used for general distributive justice purposes. Unlike Nozick's account, however, in which entitlements to property are foundational and absolute, on my account property rights are derivatively justified because they should be expected to have good consequences, if the wide majority of people tried to internalise them. Property entitlements incentivise technological innovation and economic growth, since individuals are more likely to make risky investments due to the prospect of greater rewards. Individuals are also likely to feel secure in the knowledge that their property cannot be permissibly taken from them.²³⁸

In this section, I will justify benefiting-related duties in the case of climate change by assimilating it to a property-violation case. That is, I will argue that the beneficiaries of climate change possess 'tainted' holdings as a result of the violation of others' rights, and therefore these beneficiaries have been unjustly enriched. The proper response to this situation is for them to relinquish (the value of) these benefits. In practice, this may take the form of being allocated costs by their government as part of an appropriate state-based

²³⁸ It is worth briefly noting that this argument need not deny that desert plays any role in a justifiable scheme of property entitlements, as some theorists think it should. Rule-consequentialists can incorporate considerations of desert by incorporating it into their account of the good. If it is good that people get what they deserve, then a rule which ordinarily protected people's claims over property which they deserve should, if the wide majority tried to internalise it, be expected to maximise overall good consequences. While my argument need not reject the role of desert in a justifiable scheme of property-entitlements, neither is it committed to desert having that role.

response to climate change. I cover this argument in the most detail, for two reasons: First, it is complicated, raising important and controversial issues about individuals' entitlements to a fair share of emissions. Second, I have argued that benefiting-related duties in property-violation cases are typically very stringent and demanding, since we ordinarily think that entitlements to property are quite constraining: we cannot easily override property entitlements even in order to secure other morally desirable ends.

The first step of this argument is to identify what the relevant holdings are that I am suggesting beneficiaries of climate change wrongfully possess. Recall, from Chapter 1, that in order to avoid unacceptably dangerous climate change, many scientists and policymakers claim that we should limit global warming to 2°C above 1861-1880 levels.²³⁹ And since the largest contribution to global warming is human induced by greenhouse gas emissions (the most important being carbon dioxide),²⁴⁰ this entails that we must limit the total amount of emissions in the atmosphere. Put precisely, to have a reasonable probability of staying within the 2°C limit will require stabilising total carbon dioxide emissions up to about 1000 GtC. And since we had already emitted over half this amount by 2011, we are already far along the path towards greater global warming.²⁴¹ The imposition of a limit on total emissions means that the absorptive capacity of the atmosphere within safe limits is a scarce resource. This raises a distributive problem. Since we must collectively constrain our emissions, we must allocate entitlements to emit

²³⁹ For example, *The Stern Review* states that “The risks of the worst impacts of climate change can be substantially reduced if greenhouse gas levels in the atmosphere can be stabilised between 450 and 550ppm CO₂ equivalent (CO₂e)”. And the figure 550ppm corresponds to “at least a 77% chance – and perhaps up to a 99% chance, depending on the climate model used – of a global average temperature rise exceeding 2°C”. Stern, *The Economics of Climate Change: The Stern Review*, p. vii and iii.

²⁴⁰ IPCC, "Summary for Policymakers," p. 13.

²⁴¹ *Ibid.*, p. 27.

amongst the various agents with an interest in being able to do so. If some emit more, others must emit less. Put simply, the relevant holdings are the entitlements to emit.

However, there is a qualification to this claim. Emissions entitlements are not intrinsically valuable in the sense that it is not, in itself, better have more emissions entitlements rather than less. Rather, our interest in emitting is so that we can obtain particular goods that we need or desire. In some cases, the relevant holdings will no longer be the emissions entitlements to be allocated, since they will already have been depleted. Rather, in this case the relevant holdings are the value of the goods that the emissions were turned into. As I previously observed, some advocates of beneficiary pays claim that we need not merely focus on the particular items that have been taken from victims and transferred to the beneficiary.²⁴² As Robert Goodin argues: "...the duty to give it back or give it up does not necessarily lapse when 'it'—the original physical object—is no longer available to be given back or given up. The same duty extends to whatever can be shown (through some suitable procedure tracing the substitution of one thing for another) to have taken the place of the original. [...] What we are tracing is the value that is embodied in the one thing, which is exchanged for the value embodied in another".²⁴³

But what, precisely, constitutes each person's entitlement to emit? Some allocation of emissions entitlements or another must be defended. Thus, the second step in the argument is to take a stance on this question. I will argue that distributing entitlements to emit equally is the morally best policy. I will refer to this view as 'emissions egalitarianism' for short, borrowing this term from the literature.²⁴⁴

²⁴² See Barry and Wiens, "Benefiting from Wrongdoing and Sustaining Wrongful Harm," p. 7.

²⁴³ Goodin, "Disgorging the Fruits of Historical Wrongdoing," pp. 486-87.

²⁴⁴ Christian Baatz and Konrad Ott, "In Defense of Emissions Egalitarianism?," in *Climate Justice and Historical Emissions*, ed. Lukas H Meyer and Pranay Sanklecha (Cambridge University Press, Forthcoming).

Why should we accept emissions egalitarianism? Some theorists suggest that an equal distribution of emissions entitlements is simply obviously just. Peter Singer, for example, writes:

If we begin by asking, ‘Why should anyone have a greater claim to part of the global atmospheric sink than any other?’ then the first and simplest response is ‘No reason at all’. In other words, everyone has the same claim to part of the atmospheric sink as everyone else. This kind of equality seems self-evidently fair...²⁴⁵

The intuition behind this claim is that the distribution of emissions entitlements is like the distribution of cake slices at a birthday party.²⁴⁶ Intuitively, there is no reason why anyone should be allocated a smaller slice of cake than anyone else, at least assuming that each of the party-goers are similarly situated (i.e. they are equally hungry, none have already had a slice, and so on). As with cake, so with emissions entitlements, it would be unjust to allocate any similarly situated individual an inferior share.

A second argument for emissions egalitarianism appeals to considerations regarding *sufficiency*. According to one articulation of this position, we should distinguish between “subsistence” and “luxury” emissions. Subsistence emissions are those that are necessary for survival, or to meet other basic needs (roughly, the conditions of a life worth living). Luxury emissions are those that are emitted to attain goods that are not basic needs. Of course, it is somewhat misleading to say that all emissions above those that are

²⁴⁵ Singer, *One World: The Ethics of Globalisation*.

²⁴⁶ Derek Bell, "Carbon Justice? The Case against a Universal Right to Equal Carbon Emissions," in *Seeking Environmental Justice*, ed. Sarah Wilks (Amsterdam: Rodopi, 2008), p. 241.

necessary to meet basic needs are luxury emissions: for example, heating one's house to a comfortable level is not as much of a luxury compared with going for a lavish holiday on a cruise-liner, yet it is more of a luxury than using emissions in order to cook food. Arguably, then, we should have different responses to degrees of luxury emissions. Even still, the basic point remains that all persons should at least have an equal right to emissions necessary for their survival. Now, this argument clearly allows that some might be entitled to more emissions than others, so long as everyone has emissions necessary for their survival. Therefore, it does not count as an in-principle commitment to emissions egalitarianism. Nevertheless, it might (given certain empirical assumptions) contingently result in emissions egalitarianism in practice. After all, the proposal holds that when we must collectively constrain our emissions in order to stay within a particular target of global warming (e.g. 2°C), luxury emissions ought to be cut in priority to subsistence emissions.²⁴⁷ Now, it may be true that once everyone is allocated their allowance of subsistence emissions, there will be no further luxury emissions left to distribute, since we will collectively have run up against the collective emissions limits for staying within a justifiable degree of warming. In this case, everyone will contingently have equal emissions entitlements. The success of this argument depends on various other factors. For example, we would need to know how much each person must emit in order to meet their basic needs. And we would also need to know how high the threshold of sufficiency should be set.²⁴⁸

A third justification for emissions egalitarianism claims that the atmosphere is a commonly owned natural resource by all the world's people. As a consequence, all

²⁴⁷ Henry Shue, "Subsistence Emissions and Luxury Emissions," *Law & Policy* 15, no. 1 (1993).

²⁴⁸ Simon Caney, "Just Emissions," *Philosophy & Public Affairs* 40, no. 4 (2012): pp. 263-64.

persons have a *presumptively* equal claim to emissions entitlements.²⁴⁹ Peter Singer, for example, talks of the “global atmospheric sink”, which he says, has “for all of human history, belonged to human beings in common”.²⁵⁰ Paul Baer, likewise, has claimed that “The central argument for equal per capita rights is that the atmosphere is a global commons, whose use and preservation are essential to human well being”.²⁵¹ Indeed, the global atmosphere’s safe absorptive capacity does seem to qualify as a commons: it is rivalrous, in the sense that one person’s emitting more entails that others must emit less. And it is, to a large degree, non-excludable, in the sense that it is difficult to stop anyone from emitting more. Global regulation (for example, under a cap-and-trade system) is, then, an attempt to ‘dismantle’ the commons—it aims to make the global atmosphere’s safe absorptive capacity excludable, by setting enforceable limits on how much each person can emit.

Granting that the atmosphere’s safe absorptive capacity is a global commons, what could upset the presumption of an equal claim for all? There would have to be good reasons for allowing some to appropriate more of the atmosphere’s safe absorptive capacity than others. Are there any such reasons?

A first line of argument for deviating from the presumption of equality invokes a Lockean account of appropriation. John Locke’s account of property entitlements famously tells a story about how they arose in a state of nature in which God gave the entire world to mankind in common, while also giving them reason and authority to make

²⁴⁹ Singer, *One World: The Ethics of Globalisation*, pp. 30-38; Paul Baer, "Equity, Greenhouse Gas Emissions, and Global Common Resources," in *Climate Change Policy: A Survey*, ed. Stephen H. Schneider, Armin Rosencranz, and John O. Niles (Washington: Island Press, 2002). Steve Vanderheiden, likewise, endorses an “equal shares approach” in Steve Vanderheiden, *Atmospheric Justice: A Political Theory of Climate Change* (New York: Oxford University Press, 2008), 226.

²⁵⁰ Singer, *One World: The Ethics of Globalisation*, pp. 32-35.

²⁵¹ Baer, "Equity, Greenhouse Gas Emissions, and Global Common Resources," p. 401.

use of the world to satisfy their wants and needs.²⁵² But there was one exception to this initial state of common ownership. Each person had property in their self and their labour but no one else's. To justify why commonly owned parts of the world could become private-property, Locke argued that a person need only mix their labour (which they own) with some unappropriated thing and they would gain an entitlement over it. The acquisition of property, however, is subject to the proviso that it must leave "enough, and as good, for others".²⁵³ One who invoked this reasoning to justify abandoning emissions egalitarianism would need to show that some peoples' appropriating a greater than equal share of the atmosphere's safe absorptive capacity would leave enough and as good for others.

However, granted the facts of climate change that I have already cited in this chapter, this argument is flawed: we have already emitted over half the allowance of increased emissions compatible with having a reasonable chance of staying under 2°C of warming. For some to emit more means that others must emit less, and this would in reality mean that poorer countries must sacrifice development. As Edward Page has argued, "...states located in the developing world, face a tragic dilemma between using less greenhouse gas than they planned (in order to increase the probability of meeting the 2°C objective ...) or using the same amount of greenhouse gas as they planned (in order to achieve something approaching the economic progress enjoyed by developed states

²⁵² John Locke, *Two Treatises of Government* (London: Baldwin, 1824 [1690]), pp. 144-50.

²⁵³ Locke provides a nice summary of this argument in the following passage: "Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this nobody has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others". *Ibid.*, pp. 145-46.

before the climate problem was discovered".²⁵⁴ In reality, the appropriation of a greater than equal share on behalf of developed states has not left enough and as good for others. Furthermore, a second problem with the Lockean rationale is that Locke's account of appropriation seems especially ill-suited to justifying 'atmospheric appropriation': in what sense do we mix our labour with the atmosphere? The claim that we gain emissions entitlements by mixing our labour with the atmosphere is jarring in a way that claiming we get an entitlement to a house by building it, for example, is not.²⁵⁵

A second line of argument to overturn the presumption of equality does not depend on the same interpretation of 'enough and as good' just discussed. According to another interpretation of the Lockean proviso, to justify a departure from equality it is sufficient that allocating a greater share of emissions to some (i.e. developed states, or their citizens) would make everyone better-off. But better off than what? We might invoke the following baseline comparison, asking: 'Are all individuals better-off given a greater share of emissions entitlements to developed states than they would have been had *nobody* emitted at all'. Plausibly we are all better off in this sense, since *everyone* requires at least some emissions in order to live a life worth living. But employing this baseline is morally implausible in a similar way that it would be morally implausible to justify the appropriation of indigenous people's land during colonisation by pointing out that indigenous people are better-off today than they would have been had their land not been forcibly taken. Even if the claim about their wellbeing were true, these baselines are unduly favourable to the appropriators' claims. Instead, as Daniel Butt has argued, we should compare how well-off indigenous people are today against how well-off they

²⁵⁴ Page, "Give It up for Climate Change: A Defence of the Beneficiary Pays Principle," p. 315.

²⁵⁵ Baatz and Ott, "In Defense of Emissions Egalitarianism?," pp. 15-16.

would have been had the history of interaction between them and colonists proceeded on consensual and non-exploitative terms – i.e. supposing that colonists had peacefully struck a fair deal with indigenous people and shared land peacefully over time.²⁵⁶

Therefore, according to a more plausible baseline, we might ask: ‘Are all individuals better-off given a greater share of emissions entitlements to some than they would have been had all individuals emitted an equal share within safe limits’. But in this case, it no longer seems clear that everyone has been made better-off in this sense. While it is true that citizens of developing states enjoy some (even large) benefits of industrialisation, these benefits have also come at large costs. As Henry Shue writes: “Whatever benefits LDCs [less developed countries] have received, they have mostly been charged for. No doubt some improvements have been widespread. Yet, except for a trickle of aid, all transfers have been charged to the recipients, who have in fact been left with an enormous burden of debt, much of it incurred precisely in the effort to purchase the good things produced by industrialization”.²⁵⁷ Furthermore, even if industrialisation on the part of developed states has benefited many who are *now* alive, others most certainly have been made worse-off in that climate change has already been reported to have resulted in premature deaths. A widely quoted World Health Organisation (WHO) quantitative assessment “concluded that the effects of the climate change that has occurred since the mid-1970s may have caused over 150,000 deaths in 2000”.²⁵⁸ Furthermore, climate change is expected to result in much greater harm into the future. At least *some* of these people would surely be right to argue that they are not made better-

²⁵⁶ Butt, *Rectifying International Injustice: Principles of Compensation and Restitution between Nations*, pp. 102-11.

²⁵⁷ Shue, "Global Environment and International Inequality," p. 535.

²⁵⁸ World Health Organisation, "Climate Change and Human Health".

off as a result of the over-appropriation of the atmosphere's absorptive capacity on the part of developed states, than they would have been had they (or their states) emitted an equal (and collectively lower) share.²⁵⁹ So one cannot appeal to the claim that everyone has been made better-off by the greater than equal emissions of developed states (and their citizens) to overturn the presumption for emissions egalitarianism.

So far, in this discussion, I have simply been assuming that there has been a greater than equal appropriation of the atmosphere's safe absorptive capacity by developed states (and their citizens). But has there? To justify this assumption we must know, firstly, what constitutes the atmosphere's safe absorptive capacity. And, second, we must know whether developed states (and each of their citizens, in per capita terms) have exceeded this limit. Answering the first question, Peter Singer suggests the figure of 1 tonne per person annually, somewhat arbitrarily chosen to stabilise emissions at their 2002 levels.²⁶⁰ This figure will do, since any plausible estimation of an equal share (within safe limits) will yield the same problematic conclusion. A report from the World Resources Institute cites data that "Country-level estimates of CO₂ emissions from fossil fuels go back as far as 1850. Based on that record, the United States ranks first and the EU second in cumulative emissions. Together, the 25 major emitters today account for 83 percent of

²⁵⁹ Notice, this phrasing is consistent with taking the non-identity problem seriously, as discussed in Chapter 2. Simon Caney objects that present-day persons have not been made better-off by industrialisation since without industrialisation they would not exist. Since I am only claiming here that it is plausible for some people to make the claim that they have not been made better off, the non-identity problem is not a problem for this argument. In fact, the non-identity problem *supports* my claim, since it suggests another reason why present-day persons have not been made better off as a result of unequal emissions appropriation.

²⁶⁰ This is not entirely arbitrary, in light of when Singer wrote this argument. However, even then, he could have chosen various other baseline emissions levels. Singer, *One World: The Ethics of Globalisation*, p. 39.

current global emissions and 90 percent of cumulative global emissions”.²⁶¹ This figure is supported by independent analyses.²⁶² Not only have developed states emitted more cumulatively than developing states, but this inequality corresponds to a large *per capita* difference in emissions between developed and developing countries. In 2012, for example, Australians on average consumed roughly 18 tonnes, Americans 16 tonnes, and Brits 8 tonnes of CO₂ emissions. During the same time, the figures were roughly 6 tonnes for Chinese, 1.5 tonnes for Indians, and 0.5 tonnes of CO₂ for Bangladeshis.²⁶³ On any plausible measure, each of the developed states (and, put in per capita terms, each of their citizens) contributed vastly more emissions to the atmosphere than developing states. It is clear, then, that they have appropriated a greater than equal share.

So, it is true that developed states (and their citizens, in per capita terms) have used more of the atmosphere’s safe absorptive capacity than emissions egalitarianism would allow. But how does this link up with a claim about property-violation? The final step in the argument is this: Since the absorptive capacity of the atmosphere within safe limits constitutes a commonly owned natural resource by all the world’s people, the appropriation of a larger than equal share on the part of developed states, therefore, constitutes theft of the share owned by some of the world’s poorest people. As Singer has argued,

²⁶¹ Baumert, Herzog, and Pershing, "Navigating the Numbers: Greenhouse Gas Data and International Climate Policy." They cite this data from Marland, Boden, and Andres, "Global, Regional, and National Fossil Fuel CO₂ Emissions."

²⁶² For example, another report, by the Netherlands Environmental Assessment Agency, gives supportive data for 2011: "The top 6 emitting countries and regions ... produce 70% of total global emissions, whereas the top 25 emitting countries are responsible for more than 80% of total emissions". See Olivier, Janssens-Maenhout, and Peters, "Trends in Global CO₂ Emissions: 2012 Report."

²⁶³ I have calculated these figures from the U.S. Energy Information Administration in U.S. Energy Information Administration, "International Energy Statistics".

...since the wealth of the developed nations is inextricably tied to their prodigious use of carbon fuels (a use that began more than 200 years ago and continues unchecked today), it is a small step from here to the conclusion that the present global distribution of wealth is the result of the *wrongful expropriation* by a small fraction of the world's population of a resource that belongs to all human beings".²⁶⁴

Since these citizens are in possession of benefits that they have no entitlement to, they have been unjustly enriched. They therefore have a pro-tanto duty to relinquish them (or their value) towards those from whom their over-appropriation of the atmosphere has been at the expense of—namely, the victims of climate change. In practice, this means that they have a pro-tanto duty to bear costs of addressing climate change proportional to the benefits that they enjoy as a result of property-violation. This duty is ultimately justified because a rule requiring the respect of a scheme of property-entitlements, if the wide majority tried to internalise it, should be expected to have morally good consequences.

2. Scepticism about Emissions Egalitarianism.

My argument so far has been that benefiting-related duties are justified in the case of climate change because climate change can be assimilated to a property-violation case. In turn, this argument is premised on the claim that all agents have equal entitlements to

²⁶⁴ Emphasis added. Singer, *One World: The Ethics of Globalisation*, p. 35.

emit. At first glance, this would seem a secure premise. After all, it is widely accepted within climate ethics literature and has been recognised as “the dominant view among environmental philosophers and activists”.²⁶⁵ It is also influential in policy circles, often discussed under the name of a ‘contraction and convergence’ policy: Contraction, in that we must limit the amount of overall greenhouse gases being emitted into the atmosphere; Convergence, in that we should move to a scheme upon which all persons have an equal allocation of emissions entitlements. However, some moral theorists are sceptical that this premise is sound. Derek Bell, for example, claims that it is an “attractive but ultimately indefensible idea”.²⁶⁶ Simon Caney, likewise, claims that “we have no reason to accept the claim that greenhouse gas emissions should be distributed on an equal per capita basis”.²⁶⁷

These sceptics’ main worry is that an equal allocation of emissions entitlements unduly focuses on merely one aspect of what morally matters for persons.²⁶⁸ What matters, they claim, are the fundamental interests that are impacted by climate change, not that everyone has an equal share of emissions entitlements. As Caney says, “If distributive justice is concerned with the fair share of a “total package” of goods, then we have *no* reason to endorse a principle that applies solely to one particular item, such as greenhouse gas emissions. If this is right then ... it does not make sense to refer to *the* fair distribution of greenhouse gases”.²⁶⁹ Similarly, Bell argues that it is because of its effects on important human goods and interests that climate change constitutes a morally

²⁶⁵ Caney, "Just Emissions," p. 260.

²⁶⁶ Bell, "Carbon Justice? The Case against a Universal Right to Equal Carbon Emissions," p. 239.

²⁶⁷ Caney, "Just Emissions," pp. 299-300.

²⁶⁸ See: Bell, "Carbon Justice? The Case against a Universal Right to Equal Carbon Emissions." See also, Simon Caney, "Justice and the Distribution of Greenhouse Gas Emissions," *Journal of Global Ethics* 5, no. 2 (2009): pp. 130-33. Lastly, see: "Just Emissions."

²⁶⁹ Original emphasis: "Just Emissions," p. 271.

important problem. Bell writes “If we focus on the effects of climate change on humans, we need to begin from an account of human goods or human interests that we should protect”.²⁷⁰ The idea is that our primary focus is on these goods and our concern about climate change (and the distribution of emissions permits) is secondary: we care about climate change only because and insofar as it affects these goods. And a focus on the best total package will often require trade-offs between the constituents of that package, such as between emissions entitlements and other resources. Why endorse equal shares of emissions entitlements when persons often have greatly unequal emission needs? Should we really limit a person’s emissions to an equal share if, say, because of their geographical location or having an intensive disability, an equal share is inadequate for subsistence or drastically lowers their quality of life?²⁷¹ And even if it is adequate for subsistence, why not permit some persons to have less emissions entitlements than others if they have been adequately compensated by a greater share of other goods? To be clear, this does not constitute a reason to abandon egalitarian commitments in general since one may still be committed to equality (of whichever kind is relevant) at the level of the total package of goods. The important point is that inequality between the subsets will often yield a better total package which, in turn, can be the focus of an egalitarian distribution.

A related objection to emissions egalitarianism seeks to undermine its ‘global commons’ justification which I appealed to. In particular, Bell objects that if we understand the atmosphere as a global commons that each person has an equal claim to, then we should also think that all persons have an equal claim to many other natural resources that make up the global commons – for example, land, oil, seabeds, fish stocks,

²⁷⁰ Bell, "Carbon Justice? The Case against a Universal Right to Equal Carbon Emissions," p. 242.

²⁷¹ Ibid., pp. 248-51. See also, Caney, "Justice and the Distribution of Greenhouse Gas Emissions," pp. 130-33.

geostationary orbits, the electromagnetic spectrum, and so on.²⁷² The advocate of the global commons argument, of course, may accept this. The problem with accepting this argument, however, is that we are then led back to the claim that what matters is overall equality of goods (in the case, all natural resources) and these can be traded-off against each other.²⁷³ As Caney argues, “Someone who is committed to equality of commonly held natural resources should embrace a principle granting everyone an equal share of the total value of all these global resources combined”, rather than granting a principle that requires equality of emissions entitlements alone.²⁷⁴

One response is that, contrary to these objections, an equal allocation of emissions entitlements can, in fact, be justified. One way of supporting this claim would be to show that there is some special feature of a policy of equal emissions entitlements that allows (or requires) us to consider them in isolation from broader concerns about the best total package of goods. The most promising feature, I think, is that a policy of emissions egalitarianism is especially practical or realistic, compared to the alternative of institutionalising the best total package of goods for all individuals.²⁷⁵ While it is true that any reasonable distribution of emissions entitlements will be controversial, it seems much more realistic to support equal emissions entitlements than ensuring the best total package of goods for all. Recall, for example, that the policy of equal emissions entitlements already enjoys support amongst theorists and policymakers. Indeed, some of these

²⁷² "Just Emissions," pp. 268-71.

²⁷³ Bell, "Carbon Justice? The Case against a Universal Right to Equal Carbon Emissions," p. 252.

²⁷⁴ Caney, "Just Emissions," p. 271.

²⁷⁵ Of course, there are other alternatives to both emissions egalitarianism and institutionalising the best total package of goods for all individuals. Caney's own pragmatic proposal is that a global scheme of emissions should be based on a 'minimal' theory of justice, which does not require policy-makers to agree to contentious substantive moral commitments. See, *ibid.*, pp. 291-99. For an argument that emissions egalitarianism offers the better pragmatic approach than Caney's alternative, see: Baatz and Ott, "In Defense of Emissions Egalitarianism?."

theorists endorse an equal shares approach *because* it offers a pragmatic compromise. Singer writes: “I propose, both because of its simplicity, and hence its suitability as a political compromise, and because it seems likely to increase global welfare, that we support the ... equal per capita future entitlements to a share of the capacity of the atmospheric sink...”²⁷⁶ And others have likewise argued that equal emissions entitlements should be endorsed on practical, if not principled grounds.²⁷⁷ Furthermore, one major advantage of emissions egalitarianism is that it can plausibly play a role in, what Rawls called, a public conception of justice. Rawls argued that when a conception of justice is publically known to be satisfied for a period of time, people subject to the requirements of that conception “tend to develop a desire to act in accordance with these principles and to do their part in institutions which exemplify them”.²⁷⁸ Furthermore, he argued, “...a strong point in favour of a conception of justice is that it generates its own support”.²⁷⁹ Emissions egalitarianism is likely to generate its own support, not only because it is already widely accepted by theorists of climate change, but because it provides a relatively straightforward measure that different states (and their citizens) can employ to check whether other agents are playing their part in constraining their emissions. In this sense, a point in favour of emissions egalitarianism is that it can play this public role. It is much harder to see how an institutional alternative that mandated the best total package of goods for all (allowing trade-offs between different constituents of this package) could play a role as a public conception of justice, in this sense.

²⁷⁶ Singer, *One World: The Ethics of Globalisation*, p. 43.

²⁷⁷ See Baatz and Ott, "In Defense of Emissions Egalitarianism?," pp. 18-26.

²⁷⁸ Rawls, *A Theory of Justice: Revised Edition*, p. 154.

²⁷⁹ *Ibid.* See also, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2003), p. 8.

One might counter that even if there were pragmatic considerations in favour of emissions egalitarianism, this proposal would still be objectionable on moral grounds, since some who need a greater share of emissions entitlements to have a reasonable quality of life (for example, because they have an intensive disability) would still be disadvantaged by this policy. But starting by giving everyone equal emissions entitlements does not mean that everyone must end with equal emissions: those who need more emissions entitlements could buy entitlements off others who need them less (for example, in a cap and trade system). And if they are unfairly badly-off to begin with, others may be morally required to bear the costs of purchasing their additional emissions entitlements (for example, due to their greater ability to pay, or because they are somehow related to the disadvantage the badly-off person suffers). Emissions egalitarianism is, therefore, not committed to the view that the badly off must suffer with insufficient emissions entitlements to meet their basic needs (and even to have a better quality of life beyond this).

To expand on this point, it is important to note that a defence of emissions egalitarianism does not mean that we should neglect that different agents may be liable to bear different costs of addressing climate change due to their differing relationships to it. For example, endorsing equal emissions entitlements does not require abandoning principles of responsibility such as contributor-pays, beneficiary-pays, or the ability to pay principle. It is compatible, for instance, that everyone has an equal emissions entitlement but that those who have benefited from (or contributed to, or have a greater ability to pay for addressing) climate change should bear greater costs associated with reducing emissions below the appropriate limit. Plausibly, that is, they should pay the costs of the victims of climate change having to reduce (or limit) their own emissions so

that they stay within an equal share. On the view I have outlined here, an equal allocation of emissions entitlements is the morally best *policy* for distributing emissions, but how the *costs* of enacting this policy should be distributed is an open question. And the answer to this question may certainly appeal to broader concerns about agents' differential relationships to climate change and broader considerations of distributive justice. Indeed, the point of this thesis is to defend the claim that the beneficiary pays principle should play a part in determining how the costs of addressing climate change should be distributed. Once the distinction between a *policy* of distributing emissions entitlements and the *costs* associated with this policy is recognised, it is apparent that there need be no ultimate conflict between emissions egalitarianism and a concern with the best total package of goods. Emissions entitlements should be allocated equally, but the costs associated with this policy should take into account wider concerns with distributive justice.

A second response to these objections is that, even if emissions egalitarianism cannot be defended by pragmatic considerations, this does not mean that climate change cannot be treated as a case of property-violation—we would just need to understand entitlements in a different way. Suppose, then, that we accept that what really matters for individuals is the best total package of goods and that this may allow unequal emissions entitlements, and that we should accept a policy guided by these considerations. This would just mean that those who possess tainted holdings in general (that is, a greater *total package* of goods than they are entitled to) would have a duty to relinquish these tainted holdings. In other words, the beneficiary pays principle would allocate duties to beneficiaries who were unjustly enriched by enjoying a greater total package of goods than they are entitled to. Furthermore, it would still be true that there must be *some*

allocation of emissions entitlements or another if we are to limit global emissions to a safe level, even if these are unequal. In principle, a given individual could exceed their emissions entitlements – whatever amount of emissions they are allocated by the best overall distribution of goods – and they would then have a duty to give up the value of the benefits associated with this. Even at its most damaging, then, the objection does not undermine the application of beneficiary pays to climate change as a property-violation case. Rather, it just makes a difference to how we should determine what *amount* of appropriation of the atmosphere’s absorptive capacity would be counted as ‘tainted’, for any given beneficiary.

3. Benefiting as a Motivational-Cause of Climate Change

A second way in which benefiting-related duties can be justified in climate change is by assimilating climate change to a motivational-cause case. I have argued that benefiting-related duties establish important incentives in motivational-cause cases in the following way: if beneficiaries were allocated duties to relinquish their benefits that they receive as a result of wrongdoing, and if the wide majority tried to internalise this practice, then perpetrators who commit wrongdoing in order to benefit beneficiaries would no longer have that reason to do so. After all, why perform wrongdoing to benefit another, if they will be allocated duties to relinquish the benefits? And since these duties undermine incentives for wrongdoing, if the wide majority tried to internalise a practice of allocating them, they should be expected to have morally good consequences.

How might climate change be assimilated to a motivational-cause case? One would need to show, first, that some agents act wrongly with respect to climate change

and, second, that they act in this wrongful way in order to benefit others. I will argue that both of these conditions can be met. In particular, I will argue that decision-makers in wealthy democratic societies act wrongly in the sense that they fail to introduce or endorse policies that constrain their citizens' emissions to an equal share of the global atmosphere's safe absorptive capacity. Furthermore, they act wrongly in this way in order to benefit their citizens.

To support the first claim, I have already cited evidence in this chapter that developed states (and their citizens, in per capita terms) have appropriated a much larger share of the atmosphere's safe absorptive capacity than emissions egalitarianism would allow, whatever quantity of emissions precisely constitutes this equal share. The citizens who emit these exorbitant amount of emissions are not acting illegally by their domestic laws – the governments and legislature of their countries simply do not require their citizens to drastically cut their emissions. For example, there are no policies that require Australians to cut their emissions by 17 tonnes, Americans by 15 tonnes, and Brits by 7 tonnes, in order to limit their emissions to an equal share of 1 tonne per annum. Decision-makers, by failing to constrain their citizens' emissions to an equal share, act wrongly with respect to climate change.

But do decision-makers *really* act wrongly by not constraining their citizens' emissions? One reason for thinking not is that it would be unacceptably demanding on the citizens of developed states to reduce their emissions by as much as I have suggested. This level of reduction would be greatly dislocating, requiring huge changes and sacrifices regarding their lifestyles. Therefore, decision-makers do not act wrongly by failing to constrain their citizens' emissions even though these emissions vastly exceed what emissions egalitarianism allows. After all, demandingness is often invoked in the

case of global poverty as a way of limiting the costs that affluent persons can be required to bear in order to address the suffering of others. Plausibly, for example, I am not morally required to donate so much of my money to aid organisations such that any greater donation would result in my being worse-off than those I aim to aid. That would be too demanding.²⁸⁰

But this argument is problematic in the present case for three reasons. First, when we consider a complaint that a duty is overly demanding on the person who is assigned that duty, we should also consider how demanding it would be on others were that duty not to be assigned in this manner. For example, a duty may be demanding for me if it requires that I miss an important job interview in order to save the life of someone I pass on my way to that interview. But it would be more demanding on that person were I not to be assigned this duty. My point here is not that there are *no* limits on how demanding a duty can be.²⁸¹ Rather, my claim is that it is a plausible feature of morality that the more demanding it is on others if I am not assigned a duty, the weaker my appeal to demandingness becomes.

It is this relationship between what is at stake for the potential duty-bearer and potential rights-bearers that makes the appeal to demandingness to undermine emissions egalitarianism implausible. Failure to constrain our collective emissions below a reasonably safe limit is expected to cause severe climate-related harms for present and, more intensely, future people. Furthermore, these harms will be iterated as each new generation comes into existence and confronts a world characterised by insufficiently

²⁸⁰ Note, some philosophers are sceptical of appeals to demandingness in the first place. See Robert E Goodin, "Demandingness as a Virtue," *The Journal of Ethics* 13, no. 1 (2009).

²⁸¹ Indeed, I previously argued that rule-consequentialists would endorse limits on how demanding duties can be and that this provides a reason to reject a rule requiring each individual to act according to act-consequentialism—that is, maximise overall good consequences.

unmitigated global warming. Due to this ‘iteration across future generations’ feature, appeals to demandingness in the case of climate change seem weaker than appeals to demandingness with respect to duties to our contemporaries. So much is at stake in the future, if affluent persons do not constrain their emissions to an equal share now. In a recent paper, Brian Berkey argues that both future climate change and contemporary global poverty may entail that affluent citizens’ appeals to demandingness are weak: “...there does not seem to be any principled reason to think that we can be obligated to make very large sacrifices in order to prevent, say, *many billions* of people from facing these ills [as in the case of climate change]..., but not in order to prevent *merely several billion* from facing similar ills [as in the case of contemporary global poverty]...”.²⁸² I do not take a stand on this claim. My point is only that we have greater reason to prevent the suffering of many billions of people, than we do of many billions fewer, so the appeal to demandingness is *weaker* in the former than the latter case, even *if* it is weak in both cases.

Second, it is often claimed that there is a significant moral difference between doing and allowing harm. Insofar as we can make sense of the claim that a failure to limit emissions to an equal share would do harm to contemporary and/or future persons, then the appeal to demandingness seems weaker than if our failure to reduce emissions merely constitutes allowing harm. Suppose that it would be very demanding on us if we were unable to dam a river to increase our own water supply, where the consequence of damming the river would be that many people downstream died of thirst. Suppose that we could survive without damming the river, but that it would mean that we would have

²⁸² Brian Berkey, "Climate Change, Moral Intuitions, and Moral Demandingness," *Philosophy and Public Issues* 4, no. 2 (2014): p. 180.

to reign-in our high-consumption lifestyles. In the same way that appealing to demandingness to justify damming the river is implausible in this case because of the harm that it would cause, it is similarly implausible that we can appeal to demandingness to avoid cutting our emissions severely in the case of climate change.

However, one might worry that it is impossible to make sense of the claim that a failure to limit emissions to an equal share would do harm to future persons, due to the non-identity problem. And since this failure does not harm future persons, I cannot appeal to the distinction between doing and allowing harm to defeat an appeal to demandingness. After all, the future persons who will exist if we do not constrain our emissions are not worse-off than they would be if we limited our emissions to an equal share, since they would then not come into existence. But there are two problems with this objection. The first is that a failure to constrain emissions to an equal share harms our contemporaries, even if it does not harm future persons. The second problem is that we may appeal to a distinct concept of harm, as argued in Chapter 2. According to a non-comparative account of harm,²⁸³ future persons that are brought into existence by our failure to constrain emissions to an equal share may be caused to be in a bad state, even if they are not made worse-off. And this is enough to say that they have been harmed by our emissions. Lastly, some counterfactual accounts of harming may evade the non-identity problem anyway, such as the account appealed to by Daniel Butt discussed in Chapter 2.²⁸⁴

Third, recall my earlier claim that emissions egalitarianism only requires that all persons *begin* from a position of equal emissions entitlements. Again, this does not mean

²⁸³ As developed by Shiffrin, "Wrongful Life, Procreative Responsibility, and the Significance of Harm."; "Harm and Its Moral Significance," *Legal Theory* 18, no. 03 (2012); Harman, "Can We Harm and Benefit in Creating?."; "Harming as Causing Harm."

²⁸⁴ Butt, *Rectifying International Injustice*, p. 105.

that everyone must end with equal emissions: those who need more emissions entitlements could buy entitlements off others who need them less (for example, in a cap and trade system). Therefore, limiting affluent citizens' emissions to an equal share need not be as demanding as it initially appeared – if these affluent citizens are willing to pay the market price, they can keep their current level of emissions. It would still be demanding, of course, that they may be required to pay extra market costs to keep their current level of emissions. But it does not seem unfairly demanding in a way that would justify not constraining our collective emissions.

Note, this argument also offers an effective response to an independent objection that the hardships imposed on citizens of affluent states under emissions egalitarianism would render this scheme infeasible, since few affluent citizens would be willing to drastically cut their high-consumption lifestyle. Under a cap and trade system, *starting* from a position of emissions egalitarianism, the rich could maintain their high-consumption life-style if they offered adequate compensation to poorer states – in other words, they would need to pay the market price for others reducing their emissions below an equal share.

So far, I have been examining whether decision-makers in wealthy-democratic states could appeal to demandingness to refute the claim that they act wrongly by failing to constrain their citizens' emissions. I have argued that appeals to demandingness in this case are implausible because (i) there is vastly more at stake for successive future generations if present-day people do not constrain their emissions than there is at stake for present-day people if they do constrain their emissions, (ii) appeals to demandingness are not ordinarily able to justify violating a duty not to do harm to others, as our emissions

are expected to do, and (iii) there are mechanisms (such as cap-and-trade) that would make constraining emissions much less (and not unduly) demanding.

However, there is a separate objection to the claim that decision-makers in wealthy democratic societies act wrongly in failing to introduce or endorse policies that constrain their citizens' emissions to an equal share. This objection claims that only those decision-makers who failed to introduce or endorse appropriate climate policies *after* some relevant point in time in which the problem climate change was relatively well established should be considered to have acted wrongly, since decision-makers before this time could (and should) not have been aware of the impacts of their policies on climate change. Therefore, only beneficiaries who enjoyed benefits from emissions policies after this time should be considered motivational-causes of wrongdoing. This argument succeeds in demonstrating that only some of the benefits enjoyed by beneficiaries can be assimilated to a motivational-cause case. Nevertheless, it is significant that benefits enjoyed after the time in which decision-makers should have been aware of the impacts of their policies on climate change can trigger beneficiary pays.

The second part of the argument that climate change constitutes a motivational-cause case was to show that the decision-makers, who act wrongly by failing to constrain their citizens' emissions, do so in order to benefit these citizens. Support for this claim comes from literature that claims democracies possess particular features that make it *harder* to implement meaningful emissions reductions policies. It has been noted by various authors that democracies suffer from what has been called 'short-termism'.²⁸⁵ According to David Held and Angus Hervey, for example, "The electoral cycles tends to

²⁸⁵ David Held and Angus Hervey, "Democracy, Climate Change and Global Governance: Democratic Agency and the Policy Menu Ahead," in *The Governance of Climate Change: Science, Economics, Politics & Ethics*, ed. David Held, Angus Hervey, and Marika Theros (Cambridge: Polity, 2011), p. 90.

focus policy debate on short-term political gains and satisfying the median voter". The problem with this is that politicians may be unwilling to implement important but unpopular policy decisions out of concern for their own re-election. Holly Lawford-Smith similarly criticises "elected representatives' prioritising of re-election over environmental protection" and "governments' failure to lead social change by attempting to introduce new policy without mandate".²⁸⁶ This problem is particularly pernicious in the case of climate change, since the obvious demographic that would be opposed to a government's failure to implement stringent climate change policies – i.e. those who will bear the preponderance of the costs of failure – are future generations who, clearly, have no influence over the present-day electoral cycle.²⁸⁷ The problem is also exacerbated because there are many present people with a vested interest in maintaining the status quo and passing the costs of inaction on climate change onto future people.²⁸⁸

The point here is not that democracies are worse at implementing stringent environmental policies than other (authoritarian) systems of government – the evidence regarding that claim is mixed.²⁸⁹ And, in any case, authoritarian government should obviously be avoided for other decisive reasons. Rather, the point is that even *if* democracies were better, in general, than other forms of government at implementing

²⁸⁶ Lawford-Smith, "Benefiting from Failures to Address Climate Change."

²⁸⁷ Held and Hervey, "Democracy, Climate Change and Global Governance: Democratic Agency and the Policy Menu Ahead," p. 90.

²⁸⁸ Consider, for example, the public relation campaigns and lobbying efforts on behalf of companies who would lose out as a result of stringent action on climate change. A striking example was the multi-million dollar 'Let's cut emissions, not jobs' campaign against the 2007 Australian government's attempt to introduce an emissions trading scheme. The *Sydney Morning Herald* reported, at the time, "Many of the biggest emitting companies, either through their executives, lobbyists or industry lobbies, have got assistance and exemptions from the emissions trading scheme". Marian Wilkinson, Ben Cubby, and Flint Duxfield, "Ad Campaign Aims to Crush Emissions Trading Plan," *The Sydney Morning Herald*, <http://www.smh.com.au/environment/ad-campaign-aims-to-crush-emissions-trading-plan-20091106-i24t.html>. The government's emissions trading scheme was later dismantled.

²⁸⁹ See the evidence surveyed in Held and Hervey, "Democracy, Climate Change and Global Governance: Democratic Agency and the Policy Menu Ahead."

stringent environmental policies, structural features may nevertheless make them unlikely to achieve the drastic emissions reductions needed to limit warming to a reasonable level.

To summarise, my claim is that governments of developed states endorse over-appropriation of the atmosphere's absorptive capacity at least partly *because* it benefits their citizens by maintaining their high-emissions dependent lifestyles. They endorse these policies at least partly *because* they expect their citizens, on balance, to support them since they are beneficial. The hypothesis is that serious reductions in emissions is unlikely because governments believe they would be voted out (or not voted in) were they to drastically lower their citizen's lifestyles. Therefore, governments' failure to constrain their citizens' emissions, itself, constitutes a motivational-cause case: they are perpetrating an injustice intended to benefit their citizens. Since benefiting-related duties can be justified in property-violation and motivational-cause cases, beneficiary pays can justify pro-tanto duties in the case of climate change.

One might object that there are various methods, other than allocating benefiting-related duties in motivational-cause cases, of undermining incentives for governments to prioritise re-election at the expense of stringent climate change policies. For example, we might alternatively attempt to undermine incentives for climate policy failure by improving citizens' preferences and reactions to governments' attempts to introduce strong climate policy. Held and Hervey, for example, argue that moving from conventional styles of representative democracy to a new model of 'deliberative democracy' "...can, in principle, increase the quality, legitimacy and therefore the sustainability of environmental policy decisions".²⁹⁰ This is because, they say,

²⁹⁰ Ibid., pp. 94-95.

deliberative democracy involves increased public deliberation, discussion, and defence of values and preferences amongst equal citizens. And empirical work does support the claim that citizens do change their preferences when confronted with new information, evidence, and debate.²⁹¹ If we can improve citizens' political preferences, then we could establish incentives for governments to introduce stringent action on climate change.

However, the problem with this objection is that, rather than providing a reason to reject beneficiary pays, it offers a reason to *also* accept other measures that reduce incentives for wrongdoing. In arguing that deliberative democracy would incentivise better political decision-making, the objection grants the importance of such incentives. Why not endorse both benefiting-related duties in motivational-cause cases *and* deliberative democracy, if the empirical case holds for both? A second worry with this objection is that it makes a problem of regress likely: perhaps there are good reasons to transition to a democratic system, i.e. deliberative democracy, in which only citizens' better-informed values and preferences count. But in order to convince citizens to permit their representatives to fundamentally change the democratic system may, itself, require that they are better-informed, since they may be unwilling to depart from conventional representative democracy (I note that theorists disagree on the form that deliberative democracy should take, and this worry may not apply to less radical departures from conventional representative democracy). The regress problem, in other words, is that we already need better-informed citizens to enable a transition to a democratic system that makes them better-informed so that they then demand strong action on climate change

²⁹¹ David Held, *Models of Democracy*, 3rd ed. (Cambridge: Polity, 2006), pp. 247-55.

from their governments, but what gives them the better-informed values and preferences to begin with?

Another worry about the argument I have presented is that by supporting political parties that do not implement appropriate climate change policies citizens may also be *contributors* to the injustice. Therefore, they are not merely innocent beneficiaries of others' injustice. In other words, just as we may criticise decision-makers' failure to introduce legislation that constrains their citizens' emissions due to their concern for re-election, we can likewise criticise citizens for failure to take their own climate-related duties seriously. For example, Holly Lawford-Smith argues that many individual citizens are morally culpable for "selective attention with respect to the scientific facts about climate change" and also for "failure to put pressure on their elected representatives to introduce new (or better) emissions-reduction policy".²⁹² If citizens are culpable of failures to pressure their representatives, they are *contributors* to the problem and not merely *beneficiaries*. In this case, we can appeal to other principles of responsibility – namely, the contributor pays principle – to assign duties to citizens of affluent states. However, nothing I have said in this thesis requires that beneficiary pays is incompatible with contributor pays. In fact, I have argued that *both* principles play an important role in determining our responsibilities towards addressing climate change. The justification I have developed for allocating benefiting-related duties in motivational-cause cases – i.e. in terms of the expected effects this practice would have, if the wide majority tried to internalise it – can assign duties to innocent beneficiaries, but it need not rely on the fact that they are innocent. In other words, my argument for beneficiary pays can likewise

²⁹² Lawford-Smith, "Benefiting from Failures to Address Climate Change," p. 393.

justify duties for individuals who are both contributors to and beneficiaries of injustice. These people would then have contribution-related and benefiting-related duties to take on costs to address the harms of climate change. If this is right, then they should be allocated more stringent and demanding duties than if they had merely innocently benefited from others' injustice.

4. Benefiting and Pro-Attitudes towards Climate Change

In the previous chapter, I also argued that rule-consequentialism can justify the allocation of benefiting-related duties in pro-attitude cases since in these cases, by retaining benefits, a beneficiary either holds or expresses an attitude towards wrongdoing that characteristically risks further wrongdoing. When I made this argument in Chapter 5, I discussed the example:

Supervisor: A rogue employee secretly engages in insider trading and thereby increases the company's profits. His supervisor receives a commission of these profits, so benefits from the insider trading.²⁹³

I argued that it is the fact that retaining the benefits risks further wrongdoing that explains why the supervisor has a duty to relinquish them (and I acknowledged there might be other reasons why the supervisor should do so too). In this case, the beneficiary has a duty to relinquish their benefits not because of the attitude they actually hold, but because,

²⁹³ Green, "Benefiting from Evil: An Incipient Moral Problem in Human Stem Cell Research," p. 549.

were they to fail to relinquish the benefits, it would *express* a pro-attitude towards wrongdoing to others, which characteristically incentivises further wrongs.

I also claimed that this argument had implications for real-life cases, and I cited exploitative labour as an obvious example. I claimed that while it doesn't seem plausible to think that most citizens of affluent countries who benefit from exploitative labour (by being able to purchase cheap products) welcome, intend, or encourage wrongdoing, it is very plausible that they are *indifferent* to, or even *condone*, the exploitative labour from which they benefit. Factories which engage in exploitative labour are set up because they are profitable. And they are profitable because a great many consumers are willing to buy their products and are unwilling to sanction companies that engage in these wrongful practices. These consumers do not, by and large, switch to alternative products which may be less harmful. The attitudes of a great many consumers towards wrongdoing really do risk further wrongdoing, by incentivising exploitative labour.

My argument now is that climate change can be assimilated to a pro-attitude case since an analogous argument can be given for many beneficiaries of climate change. Recall, in the previous section I argued that decision-makers in wealthy states fail to introduce or endorse policies that constrain their citizens' emissions by the appropriate amount and that (at least part of) the explanation for this failure is that politicians prioritise re-election over stringent climate change policies. If this is right, then it must be the case that politicians believe that their citizens would be unwilling to support stringent cuts to their own emissions, undermining their high consumption lifestyles. Indeed, as Lawford-Smith argued, many citizens are culpable in failing to pressure their representatives to support such policies. It must be the case, then, that enough citizens express an attitude (whether overtly, by protesting attempts to cut emissions or less overtly, or tacitly, by

giving votes to governments even when they fail to cut emissions) that encourage their representatives not to take strong action on climate change. Many of these citizens may not welcome or intend their government to fail to legislate emissions reductions (though there are plenty of people who are outright hostile to action on climate change, whose attitudes would properly be characterised in this way), it is very plausible that many citizens are indifferent to the harms that climate change is expected to cause. What else could explain why governments who fail to drastically cut their citizens emissions keep getting re-elected? If this is correct, then climate change can be assimilated to a pro-attitude case, in which benefiting-related duties can be justified.

5. Conclusion

This chapter concludes my argument that beneficiary pays applies in the case of climate change, allocating pro-tanto duties for beneficiaries to bear costs associated with addressing its associated harms. The argument that I have developed is consistently based on the claim that a rule requiring the allocation of benefiting-related duties in some cases – namely, property-violation, motivational-cause, and pro-attitude cases – should, if the wide majority of people tried to internalise it, be expected to result in morally good consequences. Since climate change can be assimilated to each of these cases, beneficiary pays plays an important role in the allocation of duties to address climate change.

Chapter 7: General Conclusion

In this thesis, I have defended beneficiary pays as a principle of responsibility for allocating the costs of addressing climate change. In this general conclusion, I retrace the substantive argument that I developed over the course of the thesis. I then discuss some remaining questions for future research, indicating how the positive defence of beneficiary pays that I developed in this thesis may guide some of that future research.

In Chapter 1, I surveyed recent empirical literature and argued that climate change raises an important moral problem: who should bear the costs of addressing its associated harms? I argued that the answer to this question involves weighing the duties assigned by various compelling principles of responsibility: namely, the ability to pay principle, the contributor pays principle, and the beneficiary pays principle. I then discussed various motivations for the beneficiary pays principle that have been developed in recent literature.

In Chapter 2, co-authored with Christian Barry, we examined what we take to be the most challenging objections that have been presented to the beneficiary-pays principle. While we did not attempt to develop a positive argument for beneficiary pays, we suggested various ways in which the principle might be plausibly interpreted so that it can avoid these objections. Beneficiary pays remains a principle of moral and potentially practical importance for allocating the costs of addressing human-induced climate change. A major innovation of this chapter is our account of how the concept of benefiting should be understood in order to trigger beneficiary pays. We argue that we should be pluralists regarding the concept of benefiting, endorsing a ‘non-comparative’ test as a sufficient condition to trigger beneficiary pays while at the same time accepting

that particular ‘counterfactual’ tests may constitute other, independent, sufficient conditions.

In Chapter 3, I examined four possible (and exhaustive) ways of formulating beneficiary pays and gave a prima facie case that the most plausible interpretation of this principle would hold that the moral relevance of benefiting reduces to some other factor, and that duties should only be allocated in the presence of some other factor. The final section of this chapter examined – and rejected – four existing proposals regarding when beneficiary pays is triggered to allocate duties, paving the way for my own positive account in the next chapter.

In Chapter 4, I developed a positive defence of the beneficiary pays principle. I defended beneficiary pays by arguing that a morality which incorporates the practice of allocating benefiting-related duties in some kinds of cases, if the wide majority of people tried to internalise it, should be expected to result in morally better consequences than a morality that does not. In particular, I argued that benefiting-related duties should be allocated in property-violation and motivational-cause cases. On my account, the only reason *why* we should allocate these duties is because of the expected effects that such a practice would have, if the wide majority tried to internalise it. This chapter thus had important upshots both for theorists who are interested in how we should allocate responsibility between agents in particular scenarios in which people benefit from wrongdoing or injustice and for theorists who are independently interested in rule-consequentialist theory. The important upshot for the former is that a convincing rationale can be developed for the claim that the beneficiary pays principle plays an important role in allocating responsibility to address harm in some types of cases. The important upshot

for the latter is that rule-consequentialists are committed to applications of their theory that they may not have been aware of.

In Chapter 5, I examined whether, and how, beneficiaries' attitudes might make a moral difference to the duties that they should be allocated. I argued that the same rule-consequentialist rationale for beneficiary pays that I have already developed in the previous chapter is, without modification, also able to justify why a beneficiary's holding or expressing pro-attitudes towards wrongdoing is itself wrong, and why such beneficiaries in turn should be allocated duties to relinquish their benefits. Rule-consequentialism can also justify why some attitudes are more relevant than others, in the sense that they more greatly increase the stringency and demandingness of the duty that the beneficiary should be allocated than other attitudes.

In Chapter 6, I argued that climate change should be assimilated to a property-violation, motivational-cause, and pro-attitude case. I argued that climate change is a property-violation case because affluent states (and their citizens, in per capita terms) have wrongfully appropriated a greater share of the atmosphere's safe absorptive capacity than a fair distribution would allow. Climate change is a motivational-cause case since decision-makers in democratic states are motivated to fail to enact morally defensible climate change policies in order to benefit their citizens, out of a concern for re-election. Lastly, climate change is a pro-attitude case because many citizens either hold or express attitudes that display indifference towards the harms of climate change from which their benefits derive (for example, citizens routinely fail to vote against parties that do not enact morally defensible climate change policies, and vote for these parties instead). And since I argued in Chapters 4 and 5 that beneficiary pays can be justified in these cases, I claim

that the beneficiary pays principle is justified as playing an important role in allocating the costs of addressing climate change.

In short, I have argued that the beneficiary pays principle plays an important role in determining how the costs of addressing climate change should be allocated between various agents. Having justified this claim, the central aim of the thesis has been satisfied. However, there are important questions that remain for further research. I will finish this thesis by pointing to some of these questions, and noting how my rule-consequentialist rationale for beneficiary pays may help in answering them.

A first question for remaining research is whether my rule-consequentialist rationale for allocating benefiting-related duties can be extended to any other types of cases besides property-violation, motivational-cause, and pro-attitude cases. After all, my argument is committed to the claim that whenever the practice of allocating beneficiaries duties to relinquish their benefits should, if the wide majority of people tried to internalise it, be expected to result in optimally good consequences, then that allocation of duties will be justified. While the types of cases I have discussed are of central concern, there may be other important types of cases in which benefiting-related duties should also be allocated. My rule-consequentialist rationale is helpful in determining whether there are any additional relevant types of cases: We need only determine whether, in some new type of case, the practice of allocating duties should be expected, if the wide majority of people tried to internalise it, to result in optimally good consequences.

A second question for remaining research is whether there are other practical issues additional to climate change that can be assimilated to property-violation, motivational-cause, and pro-attitude cases. After all, it is an implication of my argument that the beneficiary pays principle would be triggered in any such cases, justifying the

allocation of pro-tanto duties to beneficiaries to relinquish their gains. Some practical issues naturally come to mind: for example, it is plausible that some (perhaps many) persons have been unjustly enriched by colonialism, that they were the intended beneficiaries of its associated wrongs and injustices, and that at least some people have attitudes of indifference to those wrongs by which they benefit. If so, beneficiary pays should be extended to that case according to my argument. Further research should be done on the precise details of this extension and what other cases my argument for beneficiary pays would apply to.

A third question for remaining research concerns who it is that beneficiaries (who have been allocated duties to relinquish their benefits) should be required to relinquish their benefits to. In property-violation, there seems to be an obvious answer. In these cases, the duty to relinquish benefits is explained via entitlements to property. The beneficiary should, if they can, return the (value of the) benefits to victims who retain an entitlement to that property. Of course, various factors may complicate this response: the victim may be dead, it may be unclear who the victim is, or it may be for pragmatic reasons infeasible to return the benefits. If so, the obvious answer will not apply. And then other responses might be justifiable: For example, Robert Goodin advocates a plausible proposal that the benefits should be put into a common pool to be used for general distributive justice purposes.²⁹⁴ But how should we understand what these general distributive justice purposes are? Ultimately, on my view, benefiting-related duties are justified on rule-consequentialist grounds. Therefore, benefits should be relinquished according to whatever rule should be expected to have the best consequences, if the wide

²⁹⁴ Goodin, "Disgorging the Fruits of Historical Wrongdoing," pp. 488-89.

majority of people tried to internalise it. There are various plausible options that may align with this rationale: it might be best, as a general rule, to relinquish benefits towards worse-off rather than better-off victims, since the law of diminishing marginal returns suggests these benefits would be more valuable to worse-off rather than better-off victims. Distributing in this way, therefore, should be expected to result in the best consequences.

A fourth remaining question for future research concerns the non-comparative account of benefiting that was developed in Chapter 2. We argued, “We can similarly say that an agent is benefited if they are caused to be in a particular kind of good state—for example, if they are caused to be in pleasure, in mental or physical comfort, to be alive, and so on”. And we then appealed to this account to justify the claim that present people enjoy various benefits produced by a history of industrialisation, even if they are not better off than they would have been had industrialisation not occurred in the manner it historically did. While these examples we picked clearly have intuitive appeal – and mirror the examples that Elizabeth Harman puts on her list of bad states when discussing non-comparative harms – it would be helpful to develop a principled explanation of what is it, precisely, that makes the relevant examples good states? Harman’s account of non-comparative harms does not help answer this question, since she does not provide any further explanation of what constitutes the relevant bad states on her list. Further research must be done, therefore, on how we should precisely understand what constitutes being in a good state, which any non-comparative account of benefiting must take a stand on. One potential direction for this research would be to appeal to Seana Shiffrin’s account of non-comparative harms. On her account, the relevant bad states are constituted by a “significant chasm, conflict, or other form of significant disconnect between one’s will

and one's life".²⁹⁵ For example, this account can explain why I have been harmed if I broke my finger, even if I would have been worse-off had I not broken my finger (since, suppose, I would then have broken my leg instead). After all, there is a significant chasm between my will (I presumably did not want to break my finger or my leg) and my life (I did, in fact, break my finger). It remains to be seen whether something similar could be plausibly said regarding non-comparative benefiting, and how the details of this account should be filled in.

²⁹⁵ Shiffrin, "Harm and Its Moral Significance," p. 384.

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