

Contribution to Collective Harms and Responsibility¹

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Abstract:

In this paper, I discuss the claim, endorsed by a number of authors, that contributing to a collective harm is the ground for special responsibilities to the victims of that harm.

Contributors should, between them, cover the costs of the harms they have inflicted, at least if those harms would otherwise be rights-violating. I raise some doubts about the generality of this principle before moving on to sketch a framework for thinking about liability for the costs of harms in general. This framework uses a contractualist framework to build an account of how to think about liability for costs on the basis of the presumably attractive thought that individual agents should have as much control over their liabilities as is compatible with others having like control. I then use that framework to suggest that liability on the basis of contribution should be restricted to cases where the contributors could have avoided their contribution relatively costlessly, where meeting the liability is not crippling for them, and where such a liability would not have chilling effects, either on them or on third parties. This account of the grounds for contributory liability also has the advantage of avoiding a number of awkward questions about what counts as a contribution by shifting the issue away from often unanswerable questions about the precise causal genesis of some harm or other. Instead, control over conduct which plausibly has some relation to the harm because crucial. On the basis of this account, I then investigate whether a number of uses of the contributory principle. I argue that contributory liability is not appropriate for cases of collective harms committed by coordinated groups in the way that, for example, Iris Marion Young and Thomas Pogge have suggested and that further investigation of how members of such groups may be liable will be needed.

Keywords:

Contribution; collective harms; responsibility; Thomas Pogge; Iris Marion Young

Introduction

Understanding how and when individuals are responsible for harms brought about by collectives they are members of is an increasingly important topic in political philosophy. Political philosophers have become increasingly sensitive to the ways that even uncoordinated interactions – like those involved in anthropogenic climate change – can combine to deprive others, often themselves entirely uninvolved in those interactions, of the objects of their rights, sometimes basic rights (See for example Ashford 2006; Kutz 2000, especially 166-203; Pogge 2008; Ronzoni 2009; Young 2006). They have therefore wanted to understand who has to bear

the costs of this deprivation. Must those who happen to be at the end of chains of unregulated decisions and bargains simply put up with the costs that others generate for them through those decisions and bargains? Is it on the other hand reasonable to burden those entangled in these causal processes with special responsibility for the suffering of distant others which they individually may have made no difference to and did not intend?

One prominent way of thinking about individual responsibility for meeting the costs of collective harms is to think about in terms of contribution. In the global justice literature, for example, a number of authors have argued that it is because processes we contribute to deprive others of goods they ought to have secure access to that we must ensure they do have such access. As Christian Barry puts it, “agents are responsible for addressing acute deprivations when they have contributed, or are contributing, to bringing them about” (Barry 2005, 103). Although Iris Marion Young and Thomas Pogge are more circumspect and less consistent about relying on the language of contribution, they also both use it. Young describes her ‘Social Connection’ model as holding that “all agents who contribute by their actions to the structural processes that produce injustice have responsibilities to work to remedy these injustices” (Young 2006, 102-103). Pogge on the other hand has defended the claim that we violate negative duties by participating in unjust institutions by saying that “citizens who uphold [such] institutions through their political consent and economic support contribute to the harms [they do]” (Pogge 2008, 141).

Given the significance of those using the idea of contribution in debates to global justice, it seems worthwhile to attempt to understand how contribution might be relevant to any liabilities for collectively-caused harms we may have. In this paper, I explore the contribution model of individual responsibility for collective harms, understanding that model as claiming that contributors have special responsibilities to make good harms they have contributed to.² I offer a framework for understanding responsibility in general and, working within it, argue that while the model is appropriate for some collective harms, it does not have the scope or the content that some of its advocates suppose. The framework builds on the idea that the central question of any distribution of liability for costs is one of control over one’s life and over liability in particular. Discussions of responsibility are often irreducibly pluralist, pointing to the significance of a variety of considerations without being able to explain of how to apply them or weigh them against each other fully (See for example Miller 2007). Different factors undoubtedly do sometimes play competing roles in deciding who is responsible for what and how. However, by seeing responsibility as a comparatively unified practice which aims at providing the space for each to govern their life as they please, I hope to offer a framework to think about and perhaps resolve that conflict.³ In order to do so, I draw on Scanlonian contractualism. By asking what objections distinct individuals have to given distributions of liability, and picking the distribution which minimizes the most serious individual objection, I try to give systematic

weight to the intuitively appealing idea that people ought to have control over their lives generally and, insofar as is possible, their liabilities.

I begin by elaborating and providing the beginnings of a defence for that framework before moving on, in the second half of the paper, to suggest that the way it encourages us to understand liability on the basis of contribution gives that kind of liability a comparatively restricted scope. In particular, I argue that it gives us reason to understand individual liability for collectively-caused harms in terms of contribution primarily in cases where the agents whose acts came together to produce the harms acted voluntarily and without coordination. Contribution is an appropriate ground for liability when it is voluntary and when it can also serve as the metric for liability, which becomes difficult and seems inappropriate in cases involving mutually interdependent actors. The first section of the paper lays out and explains the general framework for thinking about responsibility as well as making some general points about the relationship between contribution and responsibility, and wrongdoing and responsibility. The next section then analyses when agents can be held responsible for their contribution in terms of that framework, arguing that it makes comparatively costless control over their contribution crucial to holding them responsible for it. The third section draws out a further implication of the account of responsibility for contribution I provide. The centrality of control over contributions means that detailed causal analysis of what exactly happened is only indirectly relevant to contributory responsibility and that contributors should be liable in proportion to their contribution, whatever we understand that as being, if at all possible. The fourth and final section uses the analysis of contributory responsibility in the rest of the paper to argue when that kind of responsibility is appropriate. In particular, it suggests that both Iris Marion Young and Thomas Pogge have used the idea of contributory responsibility a little more broadly than is really warranted. I then conclude, summarising the arguments of the paper.

A Framework for Responsibility

In trying to understand contributory responsibility, it makes sense to locate it in our understanding of responsibility in general and in particular to see where and why it may not be appropriate. Consider a case where having contributed to a process which ends up leaving someone badly off does not seem to generate any special responsibilities. Imagine there is a neighbourhood where a new supermarket opens. Because it is able to undercut existing retailers and offers a wider range of products, many people in the neighbourhood soon switch to buying their weekly shop there rather than at the various businesses they used before its arrival. As a consequence of that, these businesses, unable to take advantage of the economies of scale available to the supermarket, become increasingly less profitable and eventually cannot cover their costs and shut down. This is a serious economic consequence for their owners. They have

lost their livelihood. In a society without a social safety net of some sort or other, they may well fall into poverty, even perhaps absolute poverty. Insofar as we think that people have basic rights against being exposed to the risks of exploitation and humiliation, disease, and hunger associated with absolute poverty, the former shopkeepers may have been deprived of an object of one of their basic rights.

That loss has occurred through a process which relied on the contributions of the various individuals who changed their shopping habits in response to the opening of the new supermarket. All those decisions aggregated to fairly directly and straightforwardly cause the shopkeepers to go out of business. Because of that, those decisions contributed to a serious collectively-caused harm. If contribution is generally a criterion for liability for the costs of what it contributes to, then all those who contributed to the shopkeepers going out of business should be liable in virtue of their contribution. That does not seem to be the case though. What seems to be required in this case is a social safety net, ideally provided by the state, so that no-one whose business collapses in the face of legitimate competition faces a serious risk of being driven into penury as a result. It is not just the people who stopped buying their groceries from the shopkeepers who must work together to provide this kind of protection for them. All the members of their society must. They must pool their risks so as to provide an environment which reduces them for all of them and mitigates their consequences. No special responsibilities are generated simply by the fact of contribution in this case.⁴ Since contribution is not then always a ground of liability for collectively-caused harms, we need to be able to explain when, if ever, it is.

One explanation would be to insist that it is only when contribution to some process which results in a harm is itself wrongful that we have responsibility to those whom the process harms.⁵ This would tie two senses of responsibility, responsibility as the actor who brought something about and responsibility as a duty to cover its costs, together. However, it is certainly not the case that in general we are only liable when we have wronged someone. That would require that wrongfully harming someone is both necessary and sufficient for liability for the costs of that harm, neither of which is the case. It is not necessary to have wronged someone to be liable for the costs of a harm they have suffered. It is not wrong to keep a pet dog. Nor is it wrong to leave a pet dog in the back garden while you go out for an hour or so. However, if the dog jumps over or digs under the fence while you are out and tears down and destroys the washing your neighbour has left out to dry, you are duty-bound to cover the cost of what your dog did. You are liable even though you have done nothing wrong.⁶ Having wronged someone is not sufficient to be liable for the costs of that wrongdoing either. This is because the costs of the liability may be higher than it is appropriate to ask the wrongdoer to bear. For example, if I wrongfully destroy your extremely expensive art collection, it could be inappropriate to hold me

liable for the full costs of my wrongdoing if doing so is so crippling that it ends up depriving me of basic rights like those to subsistence or freedom of occupational choice.

Questions of wrongdoing and liability are then separate. An account of wrongdoing alone cannot tell us who is liable for what costs, and so does not tell us when, if ever, contributions to a collectively-caused harm make us liable for some of that harm's costs. What we may be blamed for and what we should pay for are different issues, just as what others are entitled make us pay for and how they may do so also are. It therefore follows, for example, that if negligence is a wrong, negligence cannot be the only relevant standard for assessing who must bear the costs of a collective harm. This is true even if it is the appropriate standard for answering the different question of legal liability, that of whom we may permissibly legally coercively extract the costs of such harms from. We need to draw on other resources to answer the question of when those whose acts somehow combine to cause a harm are specially liable for the costs of that harm and when they are not. One starting point for developing an answer to that question concerns some features of liability itself. What is at issue in questions of liability is who should pay for what. Given that, what we need is an account of what kind of objections agents may have to particular principles distributing the costs of particular events. We can then compare the objections different agents may make to principles and then, on that basis, adopt the principle which has the least powerful objection to it.⁷

The first sort of objection to a particular distribution of costs is simply that such costs can be unreasonably directly and personally burdensome. For example, if a particular distribution of costs would be cripplingly high for a given individual, it will often be inappropriate to require them to bear them, even when they acted riskily, carelessly or wrongly. This was the point of the example of the person who destroys the very expensive art collection, and can only pay for it at the expense of her basic rights. Of course, it was presumably relatively costless for them to avoid destroying the art collection and so they are under a duty not too, but that does not mean that it is relatively costless for them to pay to replace it.⁸ Similarly, people who render themselves wheelchair-bound playing football in the park do not have significantly different entitlements to support from those born in a similar condition. Very few costs have their initial location wholly dictated by natural factors, and even when costs are in this sense natural, it is well within our powers to reduce or redistribute them.⁹ Since alternative distributions of costs often avoid imposing comparable costs on anyone else, in many cases it would be unreasonable to require people who recklessly injure themselves or others, or seriously damage another's property to bear the full costs of what they have done.

A second reason why individuals may not be liable for the full costs of risks they have chosen to run eventuating is not the cripplingly high costs of the risk eventuating, but rather the cost of

avoiding that risk. For example, agents could have the decisive objection to being held liable for self-inflicted harms that being held liable in that way would generate unreasonably costly avoidance strategies. To see this, imagine a regime where only emergency medical treatment was subsidized. Treatment for any self-inflicted injury which was not urgent would have to be borne by the agent. A predictable and reasonable response to this is to behave very conservatively in various ways, so as to avoid incurring costs for medical treatment or losing the resources to cover the costs of that treatment. Here there could be a complaint based on the cost of reasonable avoidance strategies quite apart from the cost of actually having to pay for treatment. Ensuring that one does not end up in the position where one has to choose between treatment for a chronic health problem and other important ends is itself costly, because it means not taking certain risks. Expecting people to avoid taking such risks may be unreasonable if, as I would argue it does in this case, it closes off too many valuable opportunities and choices.

We should also notice that an objection based on the costs of reasonable avoidance strategies does not have to come from the potentially liable agent. Consider a regime under which doctors were fully liable for the full costs of medical mistakes they made. Doctors would reasonably refuse to perform more risky procedures or prescribe more risky drugs. They would become inefficiently careful. Patients who could no longer benefit from less well-established procedures and drugs and whose conditions deteriorated because doctors were wasting time reducing other patients' risks to nothing would have a powerful complaint. Those patients could reasonably complain that doctors' reasonable strategies for avoiding becoming liable for the costs of their mistakes were unreasonably burdening them. An objection to a particular distribution of liability neither has to be about the cost of meeting the liability itself, nor from the agent who would have the liability. It is important to minimize the chilling effects of making particular agents liable for certain costs, both for those agents themselves and for other agents who might suffer if they limit what they are prepared to do.

The key point here is that people have powerful interests in controlling their liabilities. Being held liable means using resources, of time, money and energy, to meet the liability rather than to pursue some other goal. Insofar as it is possible, people should be able to use their resources as they please. Hence, they have interests not only in not being held liable, but also in *controlling* when they are liable and in that process itself being as costless as possible. There are then two sorts of objection individuals can raise to a given distribution of liability. First, they can complain about having to bear a particular set of costs at all. Sometimes, where those costs are particularly high and considerations of the second sort do not tell against doing so, this will mean that spreading the costs of a given harm across a larger group is the most appropriate way of dealing with it. Second, holding those who create costs liable for them creates costs, both for them and for others, through their reasonable attempts to control when they become liable. This

will tell against pooling risk when doing so is likely to lead to reckless behaviour but in favour of it when exposure to risk would be too confining.

This can be put in another sense. The constraints distributions of liability must respect are provided by what we could call the objective conditions of agency. Individual human adults are typically agents with entitlements to govern their lives as they please insofar as that is compatible with others doing likewise. This means ensuring they have access to certain goods without which their ability to structure their lives according to their understanding of what matters about them would be compromised. If I lack freedom of occupational choice, I may find that I am compelled to work doing something I hate. This is true whether my labour is directed by a particular individual or by the threat of starvation. We can call the set of goods individuals need access to in order to have a secure capacity to direct their own lives the objective conditions of agency. Both cripplingly high costs, like the loss of effective freedom of occupational choice, and the confining threat of being made liable, like that hanging over us when only emergency medical treatment is subsidised, can deprive us of the objective conditions of agency. One of the resources included in the objective conditions of agency is a wide space of relatively free action, free from threats of the loss of other objective conditions of agency.

Obviously, this is all rather schematic. Although the framework operates through the contractualist mechanism of evaluating the objections to principles and then picking the principle which has the least powerful individual objection to it,¹⁰ I have not filled in very much of the detail of how to assess the significance of different individual complaints.¹¹ At least two important sets of considerations are missing and would need to be provided in order to explain how to distribute liability in specific areas. First, we need a full account of agency and the importance of various different goods to it. If the idea is to compare and contrast different threats to and protections of agency, then we need a basis on which that can be done. Only a theory of agency, or at least of the sort of agency bound up in the distribution of the relevant sort of liability, could provide that basis. Without one, we could not be sure that we were assessing the significance of different threats to and protections of agency in an appropriate, perhaps even coherent, way. Second, we need a solid enough understanding of human behaviour to be able to work out what costs and benefits particular distributions of liability will bring. Being able to weigh particular costs against each other will not tell us how to distribute liability unless we know which costs attach to which distributions. Since that is a matter of how those living under those rules respond to them, we need to be able to predict their responses.

Nor have I explored challenges to my account in much detail. Obviously, there are any number of competing accounts of how to understand responsibility, either as a practice or as a number of plural and often conflicting imperatives. For example, a consequentialist, concerned to maximize

desirable effects across the whole population and only interested in distribution insofar as it makes a difference to how much good there is overall, would reject my contractualist emphasis on minimizing individual objections to principles. However, defending my claims about how we should understand responsibility in general would take me too far from my interest in this paper, which is specifically in contributory responsibility. In laying my account out, though, I hope to have given it some appeal, both as coherent with what seem to me a set of appealing judgments about when various actors are responsible and as derived from a consideration, individual agency, of relatively uncontested moral significance. To add to that appeal, it may be worth noting that understanding when we are liable in this way offers an explanation of the connection between wrongdoing and liability.

After all, when we wrong someone, we usually impose costs on them in ways it would be comparatively costless for us to avoid in terms of losses of the objective conditions of agency. On an account which makes control over our liabilities central to when we have them, it is easy to see why wrongdoing will often end with the wrongdoer being liable for its costs. If I decide to break into your house and smash all your crockery, then I owe you a new set of crockery, at least assuming your crockery is not prohibitively expensive. Anyone else we might hold liable would be able to complain that their exposure to that liability was not under their control while I decided to create those costs and so expose myself to the risk of that liability. Nor can I or anyone else plausibly claim that being made liable for damage I do when I break into someone's house is an unreasonable restriction on the choices available to me.

Unlike the case of minimal medical insurance, where various valuable options become prohibitively expensive, I am not overly confined by restrictions on the arbitrary use we can make of each other's personal property. In fact, not having such restrictions would be overly confining since granting a general permission to use other's property would seriously undermine our ability to rely on it as we need to if we are to securely pursue our ends. The predictability which property rules generate is central to being able to plan and making all of the resources anyone has vulnerable to being used by others would seriously undermine that, not just for the person whose resources are used but for others who may have been relying on them using them. While there surely are cases where the duty to respect others' property lapses because of necessity, the importance of a stable set of rules acts as an important constraint on how often the needy will be entitled to others' property, at least if there are adequate protections against becoming needy in place. Although wrongs may often be more costly to abstain from than to bear for individuals, an environment in which theft was not a wrong would, unless material scarcity had been overcome, be one in which we lacked the objective conditions of agency. Since wrongs are usually only under the control of the wrongdoer and will usually

involve depriving victims of protections they ought to have, wrongdoers will typically be liable for at least some of the costs of their wrong.¹²

Despite not having provided a full defence of it, I hope that what I say here is nonetheless plausible. A framework can be useful even if schematic, and I hope that what I go on to say can be vindicated without having to develop a full-blown theory of agency or to provide a systematic and detailed empirical account of human motivation and interaction. What I hope to do with the framework is to show in what sort of cases distributions of liability on the basis of contribution are appropriate, as well as how those distributions ought to be structured. This can be done, I think, at a general level. I do not hope to describe in exactly which cases a distribution of liability on the basis of and according to contribution is appropriate, since that would require the kinds of details which I do not provide in this paper. Showing what we need to be looking for, how to identify a good case for a specific distribution of liability on the basis of and according to contribution, though, does not need those details.

Contributory Responsibility

We can see how the framework operates in cases of contribution by applying it to the example of the shopkeepers our discussion began with. The first relevant consideration it identifies is that there is, presumably, a shared regulatory framework able to alleviate the plight of those whose businesses cease to be economically viable, and to do so at relatively low cost to any given agent. Spreading the costs over the community as a whole is consequently feasible and efficient. Equally, in order to avoid contributing to the grocers being driven out of business, individual consumers would have to coordinate their everyday consumption decisions with the policies adopted by and through their shared regulatory framework in a highly sophisticated and both personally and socially costly way. Assigning the costs of dealing with the harm to the individuals who contributed to it would burden them with very high costs for avoiding liability. In order to avoid becoming specially liable for the fate of those who suffer, potentially rather seriously, as a result of aggregated but unconnected economic decisions, we would have to monitor and control the effects our decisions had to a very high degree. This would be too much to ask individuals and is anyway highly inefficient when there is a comparatively much less costly way of dealing with the problem (Rawls 2005, 257-288). Instead, the cost of the harm should be spread across all those individuals who share the relevant regulatory framework through the provision of a safety net of sorts.

Alternatively, consider a case involving pollution, where various factories independently discharge effluent into a river and so together inflict serious harm on communities downriver.¹³ This is the sort of case that where contributory responsibility seems most appealing. The idea that pollution is something the polluters should pay for is intuitive. In this case, my framework

suggests the following considerations. First, assuming that the harms are rights-denying, it is unlikely to be reasonable to expect those they have been imposed on to bear their costs. If the harms are rights-denying, then they are presumably the sorts of harms we need protection against to have the objective conditions of agency. Second, the costs of the contributors exercising control over the way they expose others to risk of harm is not as high as in the shopkeeper case. It is possible to exercise control over how you dispose of waste, just as producers can choose between different production processes which produce different amounts of waste. Equally, owning a factory usually means having access to large amounts of capital and so various exit options which further reduce the cost of exercising control over liability.¹⁴ Nor is the cost of meeting the liability likely to be as high as in a case like that of the shopkeepers, both because factories have greater resources than standard individuals and because they are better placed to deal with costs they have imposed than most individuals. They can hire contractors to clean the river whereas it is not clear how disparate individuals are supposed to deal with the disappearance of several different people's livelihoods. Even if the costs would be high in financial terms, they need not be in terms of the owners' agency because of the wide range of options available to them.

Thirdly, passing the cost onto an alternative third party like the public at large would be unreasonably burdensome for them. Since the factories can exercise control over whether and the extent to which they pollute, they are presumably polluting because doing so is beneficial to them. They do not store or treat the waste, or use another production process because doing so would be costly for them. They instead externalize those costs. Requiring others to bear those costs encourages them to continue to create them and so exposes whoever had to bear them to the likelihood that they will continue indefinitely. It is unacceptable to assign liability for harms to third parties, if the creators of the harms can control their contribution at relatively low costs, and if that contribution furthermore benefits them. It makes the third parties liable for costs they have no way of controlling and can expect to rise, and so they have powerful complaints on the ground of their interests in avoiding liabilities and controlling those they have.

In general, this shows us that liability on grounds of contribution is then appropriate when the harm is significant, and the contribution is under the control of contributors who have the capacity to meet it without bearing unreasonable costs. In such situations, because the harm is significant, it is not appropriate to ask those who suffer it to bear its costs themselves. Nor it is appropriate to pass that burden to third parties. The contributors can control their contribution and so others do not. Equally, by requiring them to meet the liability, we do not strip them or anyone else of more of the objective conditions of agency than any alternative arrangement would. Holding them responsible for what they control does not diminish anyone's capacity to govern their lives as they please more than alternative distributions of the liability would.

This has implications for how liability for a collectively-caused harm on grounds of contribution to it ought to be distributed amongst contributors. Where it is at all possible, liability for such contribution ought to be distributed amongst the contributors in proportion to their contribution. This is because the same rationale that picks out contributors as those who ought to pay also dictates that those who contributed more uniformly ought to pay more. In isolating contributors and holding them liable for a harm resulting from a process they have been causally involved in, we rely on the control contributors have exercised over their involvement in that process. It is because they could control whether they contributed to that process at comparatively low cost that it is appropriate to hold them liable for its results. The significance of control comes from the importance of agents being able to avoid liabilities. We cannot go round imposing costs, including the costs of liabilities, on agents as we please. We have to do so in a way which respects and protects their agency. This is as relevant a consideration when we are distributing the costs of some harm amongst those we have decided are liable for it as when we are deciding who is liable at all. The distribution of costs among those liable has to be sensitive to their control over their liabilities in the same way as selecting those whom the costs will be distributed among must be.

Since contributors are in control of their contribution, that means that their individual liabilities should be set in proportion to their share of the contributions. Otherwise, those who contributed less would be able to make the same complaint about the distribution of liability as non-contributors would about being included in that distribution. They, like non-contributors, would be being exposed to liabilities which were not under their control and which others had incentives to increase. Thus, in the factory case, if one factory generated 20 per cent of the effluent which caused the pollution and the other generated 80 per cent, the first factory ought to cover 20 per cent of the liability costs and the second one the rest. Not doing so would violate the underlying normative rationale of holding them liable at all by failing to distinguish among those liable on exactly the same grounds that they are distinguished from those not held liable.

Causation and the Continuity of Responsibility's Rationale

It is important to see that holding contributors liable proportionally to their contribution in this way is not a proxy for the proportion of the harm the factories caused. The ground on which liability is distributed among contributors is that of control over contribution and not causal responsibility. The reason contributors are held liable in proportion to their contribution is because they controlled how much they contributed and not because their contribution actually caused that proportion of the harm. Even if they can be given any content independent of normatively rich accounts of agency,¹⁵ the specific, fine-grained details of the precise chains of

cause and effect which operated to bring about particular harms are irrelevant from the perspective of liability on the grounds of contribution. What matters is that contributors control their contribution, not what the contribution actually does in this particular case. This means that the kinds of questions about exactly who caused what which can bedevil accounts of liability on the basis of contribution are irrelevant here (See for examples of these problems Barry 2005). It does not matter if factories pour four times as much effluent into the lake as is needed to kill all the fish in it, over-determining their deaths hugely. What matters is that they all poured effluent into the lake, and that killed the fish. They are then liable according to the proportion of the total effluent they each produced.

Of course, we need to be able to say something about the connection between what counts as contribution and the harm. Otherwise, contributors could not control their contributions, since anything anyone had done could be seized on as a ground for liability for the costs of harms. That only requires that there is a generally acknowledged causal pathway between doing the sort of thing a contributor has done and the sort of outcome that they are being asked to cover the costs of, though. It is not difficult to anticipate that pouring effluent into a river, presumably precisely because it is in some way noxious, may harm those drinking the river water, or relying on it for food or to irrigate their crops. That, on this argument for liability on the grounds of contribution, is all that is needed, at least to identify anyone as a contributor. More detail may be needed in order to assign liability proportionally to contribution, since we may need to weigh weighing contributions of different types. In that case, general claims about the relative strength of different kinds of contributions or the ways in which they combine will be relevant. However, none of that is the sort of specific causal detail which would be needed to assess the particular causal responsibility of particular contributors.

Of course, there will be cases where, although we can be sure enough that what some agents did caused the harm we want to hold them responsible for, we struggle to identify the causal mechanisms involved in the harm with the degree of specificity seemingly necessary to hold them liable proportionally to their contribution.¹⁶ Perhaps two carcinogens were released as a by-product of an industrial process, both of which are found in dangerous amounts in the bodies of recent cancer victims in the area, but not in the proportions they were released. That suggests that the liability for increased local cancer rates should not be distributed in proportion to the amount of either chemical released, since the relevant causal pathway that either operated by cannot be identified. Here, because contribution's normative relevance is not determined by its causal relevance, we have a variety of options, all of which involve reassessing what counts as contribution in the relevant sense.

One solution, which offers itself because contribution's normative relevance is not determined by its causal relevance, would simply be to treat the release of both chemicals as the same sort of contribution. Since both cause cancer, there is a very real sense in which anyone releasing either is contributing to higher local rates of cancer. If contributors could be held liable for the consequences of releasing either of them individually, they can usually be held liable for releasing both of them.¹⁷ This might be unsatisfactory if, for example, one is usually dangerous at a much lower levels and ratios than the other, though. Then we might simply make use of estimates of dangerous levels and ratios of the two chemicals to define what counts as a contribution. Those estimates will have to be reasonable, given our background causal knowledge and the comparative levels of control available to different agents, but I do not think that constraint will often be insurmountable. We already have enough knowledge to see what has been done as a contribution, and since contribution's relevance is not set by causal facts but by normative considerations about control and comparative costs, this is enough.

It is central to the position that I am trying to argue for here that it is control that determines whether an agent is liable for the costs of a harm caused by a collective that it has contributed to. Imagine a case where the two carcinogens are identically carcinogenic but, as a matter of fact, we can determine which of the two carcinogens caused a given cancer because of differences in the mechanism they cause the cancer through, and it turns out that far more of the cancer happens, as a matter of luck, to have been caused by one of the chemicals rather than the other. If we assume that we can acquire this information costlessly, we might think that this requires us to distribute liability in accordance with the actual causal facts about which of two chemicals actually caused the cancers we are demanding have their costs covered. However, what matters are not the actual causal relations, but the cost at which agents can control whether they enter those relations. Luck of the sort involved in one of two otherwise identically carcinogenic chemicals happening to cause more cancers is not something that an agent can control and so it is irrelevant to the distribution of liability. The situation is like that of a firing squad, where their target's death is overdetermined. The causal facts, which may absolve each of the firing squad's members, are not what determine liability. Obviously, there has to be some connection between what the agent has done and what they are being held liable for, or else they would not be able to control their exposure to the liability. In both the case of the firing squad and of factories releasing carcinogens, though, there is a connection between what they have done and what they are being held liable for; the death of the firing squad's target and the level of prevalence of cancers of the sort the chemical they released would typically have caused. Without that connection, holding them liable would be inappropriate.

This focus on control and its implications for the distribution of liability has further implications for when contribution is an appropriate ground of responsibility. Where we cannot distribute

liability for a collectively-caused harm proportionally to contribution to that harm, or where that does not seem like the right thing to do, contribution is unlikely to be the ground for any liability for that harm. Instead, a range of other kinds of grounds seem likely to be explaining why we can make someone pay for a cost produced by a group they are somehow involved in. This is because, as the case of contribution shows, the appropriate distribution of liability is related to that liability's ground. As I argued above, the same reasons that pick out the contributors as contributors differentiate among their different liabilities. If contributors were not held liable in proportion to their contribution, then those who are worse off than if liability had been distributed in proportion to contribution would have the same complaint as non-contributors would if they had been included in the distribution. This is independent of what counts as a contribution, and follows from the same normative considerations that identify it as a contribution. It is because what they have done is normatively relevant in the way it is that liability must, if at all possible, be distributed proportionally to what they have done. If it is not distributed in that way, then the rationale for any individual's liability risks incoherence as the grounds for that liability do not mesh together in the right way.

There are after all, many other possible grounds for holding those involved or implicated in a collectively-caused harm responsible for that harm. They may have participated in, authorized or chosen to join a group which acted together to bring about the harm; they may have benefitted from the harm, or have approved of it (See for examples of these views Kutz 2000; Stilz 2011; Butt 2009; Miller 2007). When these grounds of liability are appropriate, they will have their own rationale, distinct from that of contribution, and so they will tend to have particular distributions of liability associated with them. Just as the rationale for holding people liable for a harm because they have contributed to it has an impact on how that liability ought to be distributed, so will the rationale for holding them liable on other, different grounds. These distributions may conflict with the distribution of liability that liability according to contribution demands.

For example, it seems likely that if we are liable to bear the costs of a harm because we have benefitted from it, we will often be liable to the degree that we have benefitted from it. Beneficiaries of a harm will often have resources as a result of benefiting from the harm which they could relatively easily give up. Usually, it would be wrong to require people to give up resources simply because they can relatively easily as 'from each according to their ability' would have serious chilling and confining effects as a general principle.¹⁸ However, in some cases of benefiting from a harm, the abnormality of how the benefit was acquired means those chilling effects are absent, even if that abnormality was innocent; think for example of finding a large amount of money which turns out to have been lost or stolen rather than deliberately

abandoned. Here, the requirement is only to disgorge the benefits gained as a result of the harm, and so it matters how much agents actually benefitted.

The benefits an agent has gained from a harm will often come apart from their contribution to it, if they have contributed at all. Contributors may face quite different sets of options and associated payoffs, or may not have thought about what they are doing in these terms at all. Think again of the two polluting factories. There is no reason to suppose that their benefit will be proportional to their contribution, or indeed to the costs to them of meeting any liability they might face. It may be more profitable for one factory to pollute than another because it has access to markets the other does not, for example. Perhaps then the details of the case mean that liability should be distributed according to benefit. Perhaps they do not, since, for example, the indirect effects of discouraging businesses from being profitable by holding them liable for harms according to their profit from them would be too high.

That question is irrelevant to my point here, which is that whichever ground for liability we adopt, it has an impact on how liability is distributed. We cannot straightforwardly switch between different grounds of liability when picking out the group who is liable and distributing that liability among them. Both deciding who is liable and how they are liable concern the justifiability of the imposition of costs. Similar, if not identical, sets of considerations are going to be at stake in both cases. When we decide that having benefited from a harm justifies making a group bear the costs of it, how much each individual has benefited must be relevant to how much of the costs they must bear. Their benefit explains why they have to pay, and so must matter for what they have to pay. Equally, as we have already seen, if it is because someone has contributed to a harm that they must pay for part of it, how much they have contributed is central to how much of it they must pay for.

Applying Contributory Responsibility

We now have two sets of criteria for assessing when contribution is the right ground for responsibility for collectively-caused harms. First, having contributed to a harm makes someone liable for part of its costs partly because they exercised control over whether they contributed. It is because they could have avoided contributing at a cost at least lower than the costs for other individuals involved in another distribution of responsibility that they are liable for part of the costs of the harm. Second, and relatedly, when we hold someone responsible in this way, we must, if at all possible, hold them liable in proportion to their contribution to the harm. If we do not, we separate the grounds for seeing them as liable at all from the grounds for how they are liable and so risk tipping our claim about their liability into incoherence. If they are liable because they could control their contribution in the way stated in the first condition, then how much of the liability they must bear also depends on that control. These two sets of criteria can

then be used to assess whether contribution is an appropriate ground for liability in various cases of collectively-caused harm. Where contribution is not under the control of contributors, there must at least be doubt about whether it is the appropriate ground for liability.¹⁹ Equally, where we do not feel that liability should be distributed proportionally to contribution, we should think again about whether we are holding people responsible because of their contribution. We may in the end decide that our intuitions about how liability should be distributed among whoever is liable are in this case wrong, but we should at least give them some weight.

These two criteria imply that many of the cases of liability for collectively-caused harms which theorists have discussed in terms of contribution are probably best not understood in those terms. For an individual to be liable as a contributor to a collectively-caused harm, they almost always have to have controlled whether they contributed and be liable in proportion to their contribution. As I will go on to suggest, typically, involvement in any complex form of social organization will not meet the second of these criteria, and where those forms of organization are inescapable or non-voluntary, it will not meet the first either. Since both Pogge and Young are interested in assigning responsibility for the harms done by and through various highly complex institutions, many of which are either inescapable or non-voluntary, this suggests that their use of contribution as a ground of that responsibility is a mistake. Pogge understands the problem of global poverty as being the problem of “the imposition, by our governments in our name, of a coercive global order that perpetuates severe poverty for many who cannot resist this imposition” (Pogge 2008, 30). Young, on the other hand, is concerned with our responsibility for our involvement in the kinds of social structures she illustrates by discussing the systemic disadvantages faced by lone parents (See Young 2011).

Of course, neither Young nor Pogge relies solely on the idea of contribution, at least probably not in the sense that I am using it here. They do not always explain why citizens of the developed world are responsible for the plight of the global poor in those terms, and may well be able to make the same arguments in different terms. For example, a perhaps more dominant theme in Pogge’s work is the idea of imposition, and the often related idea of negative rights violation. As he puts it in *World Poverty and Human Rights*, our support for “the current global order” means “we share a negative responsibility for the harms [it] foreseeably produce[s]” (Pogge 2008, 150). Young describes people as responsible for confronting structural injustices because they have contributed to them, but also because they have participated in them (Young 2011, 110). However, if there are connections between the rationale for picking out the bearers of the liability and the rationale for distributing it among them, then clarifying the basis on which Pogge and Young’s accounts assign liability will have important first-order consequences. Since what the rationale for identifying someone as a liability-bearer impacts on what liabilities they

bear, it matters whether Pogge and Young think that contribution to various collective harms to the global poor explains why citizens of the developed world are liable for those harms. It will tell us something about what the liabilities are, not just who has them, areas where not only both Young and Pogge's accounts seem to me underdeveloped but confusion might otherwise be generated.²⁰

When complex social organizations act, there are a number of reasons why their members should not be held liable in proportion to their contribution. First, assessing that contribution may be hard or even impossible. There are a variety of different reasons why it might be difficult to work out what a particular individual has contributed to a complex social organization. Complex social organizations are often agents in their own right, and in the sense that their acts then supervene on the acts of their members, isolating individual contributions to what they have done will be impossible.²¹ If the group's acts supervene on its members acts, then its acts are not reducible to its members' acts. This is simply what supervenience means, that a property *x* always accompanies but cannot be accounted for in terms of property *y*. The effects which emerge at the group level cannot be accounted for in terms of individual contributions. Even if a complex social organization is not in the relevant sense an agent and so its acts do not supervene on its members' acts, it would be a mistake to think that events which occur at the group level are reducible to discrete individual acts. The group does not have to be an agent in order for there to be emergent effects of the sort that the supervenience of agency entails. Any collective may have properties none of its members do, and the mutual interdependence of individual's wills and acts in a complex social organization could well give rise to emergent effects relevant to explaining what has happened at the group level. The difficulty about disaggregating what has happened at a collective level into individual contributions will of course only be multiplied if there are a number of complex social organizations interacting, as of course is typical of the kinds of cases Pogge and Young are interested in.

Given what I have already argued about contribution not being a proxy for what can be properly causally attributed to a particular actor, this difficulty would not be decisive against assigning responsibility to members of such organizations on the grounds of contribution. The problem of the remainders left by the emergent effects at the collective level would need to be overcome in particular, but that may not be insurmountable. We talk, apparently perfectly sensibly, about individuals' contributions to groups, and although summing them in some way to make them add up to the whole seems like it would be difficult, that does not mean it cannot be done.

What adds to the difficulty is that we do not seem to think that contribution is the right kind of metric for or ground of responsibility.²² Consider an incompetent concentration camp guard. Their contribution to the functioning of the concentration camp may be negative. It may

imprison fewer people than if they simply were not there or than if the next most likely candidate for their position had filled it instead.²³ Unless we want to collapse the idea of their contribution completely into what seems to be the different idea of their having occupied a certain role and so ignore the different question of how they performed in it, which would rule out distinguishing between ineffective and particularly brutal guards, they do not seem to have contributed to the camp's functioning. If we were to distribute responsibility for what the camp did proportionally to contribution, they would be less liable or perhaps even escape liability altogether. Concentration camp guards do not escape liability by being incompetent though. Their role and how they play it is at least as relevant as anything we can understand as their contribution. As I argued above, the grounds of responsibility and the metric it is distributed by are linked. We do not want to hold the concentration camp guard liable in proportion to their contribution because we do not seem to think that they are liable because of their contribution. Their role as a participant in the operation of the camp, obeying, however ineffectively, their superiors' orders and so intending, in some sense at least, what those orders aim at, seems to do the work. They meant the harms the camp inflicted even if they did not contribute to them.

The same sorts of things can I think be said about members of corporations and other organizations. A CEO is responsible for what their company does through their role as CEO and not through what they actually do. It is because they have the power to direct the organization not because of what they do with that power that they are responsible. This might seem to hold anyone who happens to have a role thrust on them responsible, regardless of how they perform in it. That is not the case though. What matters is the intention to perform the role. This is why an incompetent concentration camp guard is liable; they try to prevent escapes, brutalize prisoners and so on, but just are not very good at it, perhaps because of the way that how another guard tries to fulfil their role cuts against what they do. This means that when agents are under duress and acting as tools of another, or subvert their role in some way, they may not be liable. Their intentions may have been bypassed by the coercive force applied to them or, because of the way they have opted out of the collective endeavour by refusing to play their role in it, no longer be directed towards the goal of a broader collective endeavour. A concentration camp guard who deliberately frees prisoners does not share the intentions of his superiors in the way that an incompetent one who accidentally lets them escape does.

I do not have space here to further develop or defend that view, or to explore its implications for how liability ought to be distributed. I draw attention to it to suggest that if we should think about liability for contributions to collectively-caused harms in the way I have argued we should so far, then we should not think about liability for what complex social organizations do in terms of contribution. That model calls for liability to be distributed proportionally to contribution for exactly the same reasons that it calls for liability to be distributed on the basis of contribution at

all. When we give up on contribution as a metric for distributing liability, we risk at least incoherence if we nonetheless hold people liable because they have contributed. We should think again when confronted with cases like that of the incompetent concentration camp guard. They strongly suggest that a factor other than contribution is decisive in these cases.

There is also the further consideration that many of the complex social organizations and institutions Young and Pogge are concerned with are inescapable or non-voluntary. While perhaps we could cease being involved in global supply chains of the sort Young is concerned with and so contributing to their injustice, the withdrawal from society that would entail would be enormously personally costly. Pogge's concern is instead with the international order he argues causes much global poverty. If, as his argument suggests, many of us contribute to the harms that international order inflicts by simply accepting the authority of states which uphold it, it is very difficult to see how we could stop contributing to them. Even if we could become officially stateless, it is almost impossible to avoid living under some kind of state authority in the contemporary world and through that, contribute to the harms the international order inflicts. We cannot then control our contribution to the harms we are involved in. The rationale for assigning liability for harms on the basis of and in proportion to contribution to them depends on it being relatively costless for individuals to control their contributions. That rationale then does not apply in cases where contribution is through involvement in institutions or organizations we cannot easily leave.

Contribution seems most appropriate as a basis of liability in cases where individual contributions are voluntary and relatively easy to disentangle and so emergent effects are not difficult to deal with. When uncoordinated individual acts aggregate, as they do when all our individual emissions of greenhouse gases together begin to alter the climate system, we can draw straightforward causal pathways between what individuals have done and there is a sense in which those individuals can be held responsible proportionally to their contribution. When agents cooperate in complex social institutions to bring about some outcome however, separating out their individual contributions may be exceptionally difficult and anyway seems the wrong thing to do. On top of that, however we make sense of their contribution, it may not be under their control in the relevant sense. Since we hold agents responsible for their contribution because they have more control over it and so what happened that it contributed to than anyone else, that means they should not be held liable for their contribution. Contribution works best as a model for liability for uncoordinated collectively-caused harms which agents can control their contributions to at comparatively low cost. That means it not only does not work well for cases of cooperation of the sort Pogge and Young are concerned with, but may not apply, for example, to all of our greenhouse gas emissions either because of the cost of avoiding them.

Conclusion

In this paper, I have argued that we can helpfully understand responsibility as a practice of distributing liability among agents each with entitlements to govern their lives as they please. This gives us a model of responsibility which is concerned with providing these agents with as large a space as possible where they can choose how to live their lives, compatible with others having a similar space. It is then concerned both with the direct and indirect costs of distributions of responsibility, since that space can be compromised both by deprivation and by the risk of deprivation. Understanding contributory responsibility in this framework, I argued, gives us a certain account of when contribution is an appropriate ground of responsibility. It suggests that we may hold people responsible on the grounds of their contribution only when they have voluntarily performed acts which added to the acts of others they did not coordinate their behaviour with to produce a serious harm. This, if right, implies that some contemporary claims about contributory responsibility's applicability and relevance are false, since they relate to complex social organizations.

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Robert Jubb completed his doctorate at the University of Oxford in 2009 and has been working in the Department of Political Science at UCL since, including a period as Director of its MA in Legal and Political Theory. From October 2011, he has been a Leverhulme Early Career Fellow. His fellowship was granted to complete a project on duties of justice in situations of partial compliance, an interest which his work on responsibility forms part of. He has also published on ideal and non-ideal theory, the professional responsibilities of moral and political philosophers, distributive justice, the role of facts in normative theorising, and Rawls' interpretation of Rousseau.

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¹ The arguments in this paper were first made as a part of a collaboration with Avia Pasternak. I draw extensively on work we did together here, and I am very grateful to her both for allowing me to do so and for her participation in the original project. Obviously she is not responsible for my (mis)use of its results. The paper was written whilst a Leverhulme Early Career Fellow at UCL and a visiting fellow at Justitia Amplificata Centre for Advanced Studies at Goethe University in Frankfurt, and I would like to thank the Leverhulme Trust, UCL, and Justitia Amplificata for their support, as well as the Forschungskolleg Humanwissenschaften in Bad Homburg for a supportive and stimulating environment during my stay

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² In this sense, I understand the contribution model as being about what David Miller has called “remedial responsibility” and not, for example, responsibility as blameworthiness or specifically legal liability (See Miller 2007, 83-84). It tells us what our moral duties are, not who we should blame for a collective harm or which set of duties we should enforce through legal coercion.

³ In thinking about responsibility in this way, although not in the details of the framework I provide, I am indebted to the work of Christopher Kutz (See Kutz 2000). In a broader methodological sense, understanding responsibility in this way may affirm a kind of practice-dependence (See Sangiovanni 2008). However, I may merely be committed to the importance of what one of Kutz’s advisors, Bernard Williams, said about the only “serious enterprise” being living, even if I understand that enterprise’s content differently (Williams 2011, 130).

⁴ One might think that citizens’ responsibilities to each other depend on their undifferentiated contributions to their respective fates. However, when special duties to those one shares a state with are defended, this is rightly not usually the explanation relied on (See for example Blake 2002; Nagel 2005; Sangiovanni 2007). Citizens are very rarely the only ones who contribute to each others’ fate if they do so at all, nor, when they do, do they do so uniformly. This is even if, as I go onto discuss, we can make sense of the idea of contribution in contexts like those of the mutual imposition of a framework of shared rules.

⁵ Saladin Meckled-Garcia has made this claim, for example (Meckled-Garcia 2008, 268-269). Meckled-Garcia’s position on contribution in particular is a consequence of a set of sophisticated arguments about the significance of an authority able to distribute duties amongst its subjects for claims of justice. I do not engage with these arguments here.

⁶ Joel Feinberg famously made this point using an example involving a hiker breaking into a mountain cabin to escape a blizzard (Feinberg 1978).

⁷ In this sense, my account is contractualist (Scanlon 1998).

⁸ If it becomes straightforward for them to replace it, then presumably they should.

⁹ This point has been used as the basis of what seems to me a decisive objection to luck egalitarianism, the view that equality requires leaving the results of conscious gambles where they lie (Anderson 1999). What luck egalitarianism misses is that the range of options people face can be unjust and not merely the processes which allocate costs.

¹⁰ To be clear, at no point do I defend rather than assume contractualism’s account of morality in general, except insofar as any persuasiveness my account has reflects well on the theory used to produce it.

¹¹ I have also ignored cases where liabilities are not only burdens. Liabilities generated by relationships dominated by intrinsic goods may be beneficial to those who have them. In those cases, other considerations will come into play since the general constraint here, of minimizing the costs of liability for any individual agent, does not make sense when those costs cannot be separated even in principle from certain benefits. Here, a different kind of framework will be needed.

¹² As Daniel Butt points out, working out what the relevant costs of a wrong are can be difficult. I endorse the broad principles of his account (Butt 2009, 102-115). In particular, notwithstanding concerns about what counts as causation in the relevant sense, I do not want to claim that the costs a wrongdoer is liable for include anything and only anything they caused. For example, if my break-in prevents another burglar from taking more by increasing police visibility in the area, I do not cease to be liable for the costs of what I did.

¹³ Thomas Pogge and Elizabeth Ashford both use a pollution case to illustrate the possibility of what Ashford calls ‘multiplicative’ harms and the plausibility of holding what they call contributors liable for them (see Ashford 2006, 226-227).

¹⁴ There is obviously a question about the point at which the generation of externalities is over-regulated. I assume, however, that there is usually a good case for internalizing externalities of at least this sort.

¹⁵ Christopher Kutz has argued that this is impossible (See Kutz 2000, 40-42 and 51-52).

¹⁶ Part of the reason Iris Marion Young wants to move beyond what she calls ‘liability’ models of responsibility to her favoured ‘social connection’ model is that she thinks this problem is cannot be overcome (See Young 2006). As what I say here suggests, I disagree with her about whether the problem is insurmountable, not least because causal questions seem to me considerably less relevant to the liability model than they do to Young. I discuss Young’s view in more detail later.

¹⁷ I am reluctant to say they can definitely be held liable for releasing both of them, since I have elsewhere relied on the fact that sets do not only have the properties of their members to argue against various first-order views in political philosophy and theory (Jubb 2011). However, standardly, if you can be held liable for Xing or Ying, then you can be held liable for Xing and Ying.

¹⁸ Our innate abilities are not under our control, although their development partly is. If the moral demands on us varied according to our abilities in all cases, we would be both seriously confined and chilled in decisions about which projects to pursue and abilities to develop (Kumar 1999).

¹⁹ I say doubt here partly because it is possible that there are cases where contribution is not under the control of contributors, but other putative grounds of responsibility for costs are even more individually costly. In this case, contributors would have less of an objection to being held responsible than anyone else.

²⁰ At one point, Pogge endorses Liam Murphy's view about the content of duties in situations of partial compliance (Pogge 2008, 150, n. 246). Murphy's view is that individuals' duties are to do the same share of what we collectively all have to do in full and partial compliance (Murphy 2000). This is neither coherent nor, when any sense can be made of it, plausible (Jubb 2012). I have argued against Young's prescriptions about duties flowing from our involvement in structural injustices elsewhere (Jubb 2012).

²¹ Christian List and Philip Pettit have shown that group agents can be explanatorily relevant. That work depends on various results in social choice theory which show that the processes by which collective decisions are made, that is, features of the collective agent, matter for what the agent does and so what the agent does cannot be reduced to what its individual members do (List and Pettit 2011; Pettit 2007).

²² I am particularly indebted to Christopher Kutz's account in his *Complicity* here.

²³ Daniel Butt's discussion of how to assess harms suggests part of what we need to do there is hold the (normative) background stable so as to see what would have happened otherwise. See n. 12 above. This also seems relevant for assessing contribution. When we ask, what difference did you make, we need to know what would have (relevantly) happened otherwise. It may not be possible to assess this in the right kind of way in cases of complex interaction, as the uncertainty about what the relevant question to ask suggests.