

## Skepticism about Beneficiary Pays: A Critique

Some moral theorists argue that being an innocent beneficiary of significant harms inflicted by others may be sufficient to ground special duties to address the hardships suffered by the victims, at least when it is impossible to extract compensation from those who perpetrated the harm.<sup>1</sup> This idea seems aptly applied to climate change. The term "beneficiary pays" has been coined to capture this principle of responsibility for addressing the costs of climate change; and it has been appealed to by various moral theorists working on this issue.<sup>2</sup>

Our aim in this article is to examine some critiques of beneficiary pays (both in general and in the particular case of human-induced climate change).<sup>3</sup> 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.

### 1. The Bases of Beneficiary Pays

While the purpose of this article is not to provide a theoretical basis for beneficiary pays, it would be remiss of us not to at least mention why this idea has appealed to many moral theorists. Consider some rationales for this idea, each of which seems to complement the others. The first rationale connects benefiting from wrongful harm to familiar ideas such as duties of restitution. Robert Goodin, for example, claims that retaining benefits from wrongful harm is like retaining objects whose title is 'tainted', because its transfer has at some point involved a violation of rights.<sup>4</sup> That is, when wrongful harm occurs, some things—jobs, material resources, competitive advantages, and so on—typically end up where they shouldn't. Benefiting from wrongful harm is in this respect akin what is called 'unjust enrichment' in common law—the paradigm case of which involves the receipt of a mistaken payment.<sup>5</sup> Innocent beneficiaries of wrongful harm can be required to relinquish ('disgorge') their gains (at least in part) just as those who innocently receive mistaken payments must do so. Correspondingly, the gains that are

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relinquished should be used to correct these distortions.<sup>6</sup> Relatedly, Holly Lawford-Smith takes beneficiary pays to express the intuitively appealing idea that “it is impermissible to retain the material benefits of the world going other than it ought”.<sup>7</sup> Importantly, these rationales do not require that those holding tainted title have themselves engaged in any wrongdoing.<sup>8</sup> They claim only that once the situation becomes transparent to the beneficiary they have a duty to disgorge the gains to which wrongful harm has given rise.

The second rationale suggests that the duty to disgorge the benefits of wrongful harm is a corollary of the duty to oppose it. Daniel Butt, for example, has suggested that the duty “stems from one’s moral condemnation of the unjust act itself. [...] 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”.<sup>9</sup> Edward Page appeals to similar reasoning in his support of the ‘unjust enrichment’ account that he defends: “Not to disgorge their fair share 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 be historically linked”.<sup>10</sup>

A third rationale emphasizes the manner in which retaining the benefits of wrongful harm can involve the beneficiary in a separate wrong. Ronald Green, for example, claims that accepting the benefits of wrongful harm may itself be wrong insofar as doing so “legitimizes a wrongful practice”.<sup>11</sup> In a similar vein Christian Barry and David Wiens maintain that by retaining the benefits of wrongful harm the beneficiaries typically *sustain* that harm.<sup>12</sup> What makes it objectionable, on their account, for someone to keep the benefits of wrongful harm is not that they benefit per se but that retaining these benefits is an obstacle to the reconciling the claims of those who were harmed.

A fourth rationale for beneficiary pays is that it potentially provides for intuitively correct responsibility ascriptions (in the case of climate change) in ways that principles like contributor pays cannot. Some moral theorists are sceptical that a convincing story can be told that links *contemporary* individual emissions to climate change related harms. For example, Walter Sinnott-Armstrong writes, “...global warming is such a large problem that it is not individuals who cause it or who need to fix it”.<sup>13</sup> Arguably, no ordinary individual acts of emitting are necessary or sufficient for global warming: it seems implausible that *my* doing things like driving an inefficient car will make a difference to the occurrence or extent of climate change. Therefore, there will be no individual who is worse off due to my choice.<sup>14</sup> If this is so, then few contemporary individuals will have duties to take on cost to address climate change by appealing to the principle that contributors to climate change should pay. Contributor pays will not assign duties,

in other words, because an ordinary individual's emissions do not produce any climate related harm. Whether or not Sinnott-Armstrong's claim is plausible it seems difficult to deny that a great many people have *benefited* from past and present emitting activities.<sup>15</sup> Beneficiary pays can thus assign duties even if a clear link between an individual's emissions and climate change cannot be made.

## 2. 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.<sup>16</sup> 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 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.<sup>17</sup>

This is a powerful objection. It does not challenge the idea of benefitting based 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 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.<sup>18</sup>

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*)”.<sup>19</sup> 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’.<sup>20</sup>

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 supports the claim that his preferred baseline constitutes a sufficient condition of benefiting, but it does nothing to demonstrate that it also constitutes a *necessary* condition of benefiting. Yet this is what Caney needs to demonstrate in order to claim that past industrialization has not benefited anyone now alive because current people are not better off than they would otherwise have been. That is, Caney needs to show that there are no *other* conditions that are independently sufficient for claiming that people today have benefitted from past industrialization. If there were other independently or jointly sufficient conditions, then people could benefit from past industrialization without benefiting according to Caney's preferred baseline. So Caney needs to show that standard version provides both necessary and sufficient conditions for benefiting, 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 won't 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. We need not argue for any necessary condition ourselves. Rather, our point is that if *any* of these constitute compelling sufficient conditions that make sense of benefiting from past emissions, then Caney's baseline cannot be a necessary condition of benefiting. Therefore, objections to beneficiary pays stemming from the non-identity problem do not succeed.

Daniel Butt has defended an explicitly moralized 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".<sup>21</sup> He claims we 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 labor will often be better off receiving wages than not being employed at all, which may well be the most likely alternative scenario.<sup>22</sup> Yet it would be odd to consider them beneficiaries in any sense relevant for beneficiary pays. Instead, Butt argues that we should pick out a counterfactual scenario in which "all the interaction between the relevant parties was just and consensual".<sup>23</sup> In other words, we should compare the exploited laborers' 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.<sup>24</sup>

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.<sup>25</sup> 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".<sup>26</sup> While it is highly improbable that had wrongdoing or injustice 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".<sup>27</sup> 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. Two points are worth noting: First, Butt's proposal may nevertheless still be an independent sufficient condition, in which case Caney's preferred baseline could not be a necessary condition. Second, we should look for another sufficient condition of benefiting that is able to identify benefiting in this case. 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 the world going as it morally ought to have gone".<sup>28</sup> 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".<sup>29</sup> 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 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. However, insofar as it offers a compelling sufficient condition, Caney's preferred baseline could not be a necessary condition.

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.<sup>30</sup> 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".<sup>31</sup> 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".<sup>32</sup> But one need not accept this particular view to get the basic idea of this notion of harm.

On this account, one can be harmed without being made worse off. Consider the following case:<sup>33</sup> 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 industrialized countries, for example, enjoy many benefits—the goods and services made available through industrialized economies, for example—and we can point to various activities which are responsible for the creation of these benefits. We can then also say that the processes of industrialization 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 industrialization), 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. 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.

### 3. 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.<sup>34</sup>

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.

#### 4. 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-based duties* to address harm.<sup>35</sup> 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-based duties* to address harm.<sup>36</sup> 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.<sup>37</sup> 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”.<sup>38</sup>

It is common for moral theorists to accept various grounds for addressing harm, and it is the complex interaction of these various grounds that determines agents’ duties to address harm.<sup>39</sup> Robert Huseby offers a case in which “an agent negligently causes an accident, while a different agent intentionally avoids preventing the same accident even if she could have done so with virtually no cost or effort”.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> 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.

## 5. No Net Benefits

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.<sup>43</sup>

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 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.

## 6. 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”.<sup>44</sup> 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.<sup>45</sup> 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 skeptic 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 skeptic might conclude that the duty to disgorge benefits, 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).<sup>46</sup> 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.<sup>47</sup>

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-based 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 problematic and, therefore, that beneficiary pays yields more intuitively plausible verdicts than luck egalitarianism.

## 7. 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 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."<sup>48</sup>

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-based duties to aid. Or perhaps some other ground of responsibility applies.

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.

## 8. 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.<sup>49</sup> 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 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 realize 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 neighboring 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.

## 9. 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.

## NOTES

<sup>1</sup> See Bashshar Haydar and Gerhard Øverland, ‘The Normative Implications of Benefiting from Injustice’, *Journal of Applied Philosophy*, 31, 4 (2014): 349-362, Christian Barry and David Wiens, ‘Benefiting from Wrongdoing and Sustaining Wrongful Harm’, *Journal of Moral Philosophy* (2014): 1-23, Daniel Butt, ‘On Benefiting from Injustice’, *Canadian Journal of Philosophy*, 37, 1 (2007): 129-152, Robert E Goodin and Christian Barry, ‘Benefiting from the Wrongdoing of Others’, *Journal of Applied Philosophy*, 31, 4 (2014): 363-376, Thomas Pogge, ‘Severe Poverty as a Violation of Negative Duties’, *Ethics & International Affairs*, 19, 1 (2005): 70-74, Todd Calder, ‘Shared Responsibility, Global Structural Injustice, and Restitution’, *Social Theory and Practice*, 36, 2 (2010): 263-290. For an influential early treatment of these issues, see Judith Jarvis Thomson, ‘Preferential Hiring’, *Philosophy & Public Affairs*, 2, 4 (1973): 364-384.

<sup>2</sup> See Axel Gosseries, ‘Historical Emissions and Free-Riding’, *Ethical Perspectives*, 11, 1 (2004): 36-60, Christian Baatz, ‘Responsibility for the Past? Some Thoughts on Compensating Those Vulnerable to Climate Change in Developing Countries’, *Ethics, Policy and Environment*, 16, 1 (2013): 94-110, Clare Heyward, ‘Benefiting from Climate Geoengineering and Corresponding Remedial Duties: The Case of Unforeseeable Harms’, *Journal of Applied Philosophy*, 31, 4 (2014): 405-419, Edward Page, ‘Give It up for Climate Change: A Defence of the Beneficiary Pays Principle’, *International Theory*, 4, 2 (2012): 300-330, Eric Neumayer, ‘In Defence of Historical Accountability for Greenhouse Gas Emissions’, *Ecological Economics*, 33, 2 (2000): 185-192, Henry Shue, ‘Global Environment and International Inequality’, *International Affairs*, 75, 3 (1999): 531-545, Holly Lawford-Smith, ‘Benefiting from Failures to Address Climate Change’, *Journal of Applied Philosophy* 31, 4 (2014): 392-404.

<sup>3</sup> We will focus on objections developed in Carl Knight, ‘Benefiting from Injustice and Brute Luck’, *Social Theory and Practice*, 39, 4 (2013): 581-598, Ewan Kingston, ‘Climate Justice and Temporally Remote Emissions’, *Social Theory and Practice*, 40, 2 (2014): 281-303, Robert Huseby, ‘Should the Beneficiaries Pay?’, *Politics, Philosophy & Economics* (2013): 1-17, Rudolf Schüssler, ‘Climate Justice: A Question of Historical Responsibility?’, *Journal of Global Ethics*, 7, 3 (2011): 261-278, Simon Caney, ‘Environmental Degradation, Reparations, and the Moral Significance of History’, *Journal of Social Philosophy*, 37, 3 (2006): 464-482.

<sup>4</sup> Robert E Goodin, ‘Disgorging the Fruits of Historical Wrongdoing’, *American Political Science Review*, 107, 3 (2013): 478-491.

<sup>5</sup> Peter Birks, *Unjust Enrichment and the Law of Restitution* (Oxford: Clarendon Press, 2005).

<sup>6</sup> Note that on Goodin’s account, innocent beneficiaries can be required to disgorge their benefits of wrongdoing even if these benefits are not then used (and perhaps cannot be used) to correct distortions: “Disgorgement can sometimes be combined with restitution, with misappropriated goods being removed from the wrong hands and returned to the right hands. But although these approaches can sometimes be conjoined, they need not always be. We can [...] require those who are wrongly in possession of something to relinquish it, even if we have no idea to whom it should be rightfully be returned”. Goodin, op. cit., p. 482.

<sup>7</sup> Lawford-Smith, op. cit., pp. 392-393.

<sup>8</sup> Goodin, op. cit., p. 484.

<sup>9</sup> Butt 2007, op. cit., p. 143.

<sup>10</sup> Page, op. cit. p. 315.

<sup>11</sup> Ronald M. Green, ‘Benefiting from Evil: An Incipient Moral Problem in Human Stem Cell Research’, *Bioethics*, 16, 6 (2002): 544-556, at p. 544.

<sup>12</sup> Barry and Wiens, op. cit.

<sup>13</sup> Walter Sinnott-Armstrong, ‘It’s Not My Fault: Global Warming and Individual Moral Obligations’, in S.M. Gardiner, S. Caney, D. Jamieson, and H. Shue (eds.), *Climate Ethics: Essential Readings* (New York: Oxford University Press, 2010), pp. 343-344.

<sup>14</sup> Ibid., pp. 334-336.

<sup>15</sup> 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”. Furthermore, they claim, this implies that even affluent people who do not support their government’s policies that contribute to global poverty (for example, they do not vote for them), they may be morally required to relinquish benefits towards the victims of their government’s contribution insofar as they have benefited from it. Haydar and Øverland, op. cit., p. 358.

<sup>16</sup> See Derek Parfit, *Reasons and Persons* (New York: Oxford University Press, 1984), pp. 351-379.

<sup>17</sup> Caney, op. cit., p. 475.

<sup>18</sup> 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, op. cit., p. 315. We thank [name removed] for raising this problem with us.

<sup>19</sup> We have bolded the sufficiency claim “ifP” to contrast it with the bolded necessary claim “only if” below. However, these are Caney’s italics: see Caney, op. cit., p. 474.

<sup>20</sup> Ibid.

<sup>21</sup> Butt 2007, op. cit., p. 146.

<sup>22</sup> Daniel Butt, *Rectifying International Injustice: Principles of Compensation and Restitution between Nations* (New York: Oxford University Press, 2009), pp. 105-115.

<sup>23</sup> Ibid., p. 115.

<sup>24</sup> 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.

<sup>25</sup> He credits this argument to A. John Simmons, ‘Historical Rights and Fair Shares’, *Law and Philosophy*, 14, 2 (1995): 149-184.

<sup>26</sup> Butt 2009, op. cit., p. 105.

<sup>27</sup> Norbert Anwander, ‘World Poverty and Moral Free-Riding: The Obligations of Those Who Profit from Global Injustice’, in E. Mack, M. Schramm, S. Klasen, and T. Pogge (eds.), *Absolute Poverty and Global Justice: Empirical Data - Moral Theories - Initiatives* (Farnham: Ashgate Publishing Limited, 2009), footnote 8, pp. 181-182.

<sup>28</sup> 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, op. cit., pp. 399-400.

<sup>29</sup> Ibid., pp. 401-402.

<sup>30</sup> See Seana Shiffrin, ‘Wrongful Life, Procreative Responsibility, and the Significance of Harm’, *Legal Theory*, 5, 2 (1999): 117-148, Seana Shiffrin, ‘Harm and Its Moral Significance’, *Legal Theory*, 18, 03 (2012): 357-398, Elizabeth Harman, ‘Can We Harm and Benefit in Creating?’, *Philosophical Perspectives*, 18, 1 (2004): 89-113, Elizabeth Harman, ‘Harming as Causing Harm’, in M.A. Roberts and D.T. Wasserman (eds.) *Harming Future Persons* (Dordrecht: Springer, 2009), pp. 137-154. Matthew Hanser develops an entirely distinct “event-based” account in Matthew Hanser, ‘The Metaphysics of Harm’, *Philosophy and Phenomenological Research*, 77, 2 (2008): 421-450.

<sup>31</sup> Harman 2009, op. cit., p. 149.

<sup>32</sup> Shiffrin 2012, op. cit., p. 384.

<sup>33</sup> Similar cases are common in the literature on the non-identity problem. See, for example, the various cases developed in Parfit, op. cit., pp. 351-379.

<sup>34</sup> Caney, op. cit., p. 473.

<sup>35</sup> See Peter Singer, ‘Famine, Affluence and Morality’, *Philosophy & Public Affairs*, 1, 3 (1972): 229-243, Peter Singer, *The Life You Can Save: Acting Now to End World Poverty* (Melbourne: Text Publishing, 2009).

<sup>36</sup> See Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, Second ed. (Cambridge: Polity Press, 2008).

<sup>37</sup> 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.

<sup>38</sup> Caney, op. cit., pp. 472-473.

<sup>39</sup> 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, op. cit.

<sup>40</sup> Huseby, op. cit., p. 6.

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<sup>41</sup> David Miller, 'Distributing Responsibilities', *The Journal of Political Philosophy*, 9, 4 (2001): 453-471.

<sup>42</sup> Huseby, op. cit., p. 6.

<sup>43</sup> Caney, op. cit., p. 476.

<sup>44</sup> Huseby, op. cit., p. 7.

<sup>45</sup> For a forceful statement of this objection, see Knight, op. cit.

<sup>46</sup> Ibid., 594-595.

<sup>47</sup> Barry and Wiens, op. cit., p. 9.

<sup>48</sup> Knight, op. cit., p. 597.

<sup>49</sup> Schüssler, op. cit., Kingston, op. cit.