

# The Paradox of the Benefiting Samaritan

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## ABSTRACT

Many persons believe that benefiting from injustice can be morally wrong. Philosophers have developed several compelling theories to justify this intuition. These theories, however, may have a difficult time explaining a particular set of benefit-from-injustice cases: cases in which the beneficiary subjectively opposes the injustice from which she objectively benefits. This paper suggests that our moral duties to disgorge the benefits of injustice may vary in proportion to our subjective intent in acquiring and using those benefits. In doing so, it reasons by analogy to other areas of moral and legal theory, including principles of compensation for unjust harms.

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In the 2005 film *Thank You for Smoking*, smooth-talking tobacco company spokesman Nick Naylor (Aaron Eckhart) is charged with publicly defending the interests of Big Tobacco. Naylor is invited to a panel discussion on live TV, where he faces an unfriendly studio audience; Robin Williger, a 15-year-old cancer patient who has recently quit smoking; and anti-smoking crusader Ron Goode, who works for an organization dedicated to fighting tobacco consumption. Naylor boldly goes on the attack against Goode, accusing him and his organization of benefiting from the well-publicized deaths of lung cancer patients:

*Naylor: The Ron Goodes of this world want the Robin Willigers to die.*

*Goode: What?*

*Naylor: You know why? So that their budgets will go up. This is nothing less than trafficking in human misery, and you, sir, ought to be ashamed of yourself.*<sup>1</sup>

Many people have the strong intuition that benefiting from injustice is wrong. These persons should be troubled by the type of case Naylor outlines in *Thank You for Smoking*. Let us call this problem the

*Paradox of the Benefiting Samaritan*: The greatest beneficiaries of injustice are sometimes those persons most opposed to it.

Here are two examples of the paradox:

*News Media*: A president is elected who has many unjust aims, some of which he immediately achieves. The media organizations who oppose him most stridently attract the greatest number of new readers and viewers, and their advertising revenues increase dramatically. Had any other president been elected, their revenues would have been significantly lower.<sup>2</sup>

*Patriotic Film*: A film director plans to release a patriotic film about a group of terrorists who are hunted down by heroic special operations forces. Shortly before the film is released, a real terrorist attack occurs, killing many people. The public is enraged by the attack, and many more filmgoers attend the director's film than would have had the real attack not occurred. The director becomes very wealthy.

The normative theories of benefiting from injustice currently in circulation may find it challenging to explain the Paradox of the Benefiting Samaritan. In this paper, I briefly consider as a solution, and then reject, the three most plausible existing theories—the first and second for permitting too many benefits from injustice, and the third for permitting too few. I then advance a new type of theory—the *use theory of benefit from injustice*, which relies on the doctrine of double effect (DDE)—which I hope can help solve the paradox. By “solving the paradox,” I mean satisfactorily explaining the intuition that Goode, the news media, and the film director are morally entitled to retain their benefits, but without abandoning the idea that benefiting from injustice—especially deliberately—can be wrong.

1. *Thank You for Smoking*. Fox Searchlight Pictures, released 17 March 2006.

2. This phenomenon arguably occurs on both sides of the political aisle. See, e.g., Dan Frommer, “Donald Trump helped the New York Times add its most digital subscribers since 2011”; see also David Folkenflik, “Fox News Thrives In The Age Of Obama.”

## A PRELIMINARY QUESTION: WHAT DOES “FROM” MEAN?

Before beginning the search for a solution to the Paradox, however, it is important to note a basic conceptual problem—one which affects all theories of benefit from injustice. That is the difficult question of what it means for a benefit to flow “from” an injustice. What is the type of causation required for a benefit to be of this type? Here are two possibilities:

1. *But-for causation.* But for injustice I, agent A would not now have benefit B.
2. *Proximate causation.* Injustice I is the closest or most immediate cause of agent A’s possession of benefit B.

But-for causation may seem too broad to accurately explain what a benefit from injustice is. Consider

*Lucky Number Seven:* An armed robbery delays the Number 7 subway line that Jenny takes to work every day. As a result, she has fifteen minutes of spare time on her hands. She decides to use that time to buy a lottery ticket. Jenny wins a million dollars.

But for the armed robbery on the 7 line, Jenny would not now have a million dollars. In fact, had the robbery occurred even a minute earlier or later, she would have bought a different ticket, and someone else would have won instead.<sup>3</sup> Are her lottery winnings a benefit from injustice? It seems a stretch to characterize her winnings in that way.

Proximate causation may seem too narrow, however. Consider

*Left Turn:* While fleeing from the police three weeks ago, the same armed robber accidentally dropped the proceeds of his robbery in an abandoned lot. During that three-week time span, Robert, who lives a few blocks away from the lot, has under-

3. See *Berry v. Sugar Notch Borough*, 191 Pa. 345 (1899). In *Sugar Notch*, a negligently maintained chestnut tree fell onto a railway line during a windstorm, crushing the roof of a passing train and injuring the train operator. The operator sued for damages. The defendant tree owner argued that the proximate cause of the injury was the operator’s own negligence in driving the train above the speed limit of eight miles per hour. Had the operator not driven the train too quickly, defendant argued, the train would not have reached the precise point on the rail line at which the tree fell at precisely the wrong time, and the injury would have been avoided. The court rejected this argument as “somewhat sophistical. That his speed brought him to the place of the accident at the moment of the accident was the merest chance, and a thing which no foresight could have predicted. The same thing might as readily have happened to a car running slowly, or it might have been that a high speed alone would have carried him beyond the tree to a place of safety.”

gone a series of dramatic life changes: he was fired from his job, started a part-time art degree, and eventually moved apartments. As a result, instead of taking his usual right turn past the lot, he takes a left and comes upon the robbery proceeds.

Despite the fact that the proximate cause of Robert's gain was arguably the last link in the chain of events leading to Robert's finding of the stolen property, it does not seem unreasonable to characterize his findings as a benefit from injustice—especially if he knows the goods were stolen.

Questions of what it means for a benefit to flow “from” injustice will affect any theory purporting to answer the Paradox of the Benefiting Samaritan. I ask the reader, however, to bracket these concerns for now, and to await a better examination of them in a different paper. Whatever the right answer to this question may be, there will be some cases which clearly count as a benefit from injustice and some which do not. In this paper, I hope to provide cases of fairly obvious benefits from injustice. If I fail to do so, the reader is invited to imagine her own cases in their place.

#### CURRENT THEORIES I: THE BENEFICIARY PAYS PRINCIPLE

The conceptual ambiguity above notwithstanding, philosophers have advanced several justifications for the claim that beneficiaries of wrongdoing ought to relinquish or transfer their benefits to others. The first of these justifications is the beneficiary pays principle (BPP).

The BPP holds, roughly speaking, that those who have benefited from a wrong may be obligated to help pay for the harms of the wrong.<sup>4</sup> It has legal parallels in the law of unjust enrichment. Most recently, the BPP has been advanced as a candidate principle for obligating the citizens of wealthy countries, most if not all of whom have benefited from the economic growth enabled by historical carbon emissions, to pay for the harmful effects of climate change.<sup>5</sup>

The foremost proponent of the BPP is Daniel Butt. Butt's polychrestos plant case offers a clear illustration of the type of situation which he thinks can trigger the BPP:

*Four people, A, B, C and D live on a remote island; each one possessing one quarter*

4. See, for example, Daniel Butt, “On Benefiting from Injustice.”

5. See Edward Page, “Give it Up for Climate Change: A Defence of the Beneficiary Pays Principle”; Simon Caney, “Climate Change and the Duties of the Advantaged.”

of the land. All four are entirely self-sufficient, and their landholdings are separated by high fences. There is little or no contact between the four. The only crop which will grow on the island is the extremely versatile Polychrestos plant, whose root can be used to produce a wide variety of different dishes, as well as providing raw materials for clothing and other household essentials. The Polychrestos plant's root grows underground and is harvested each autumn, and must not be disturbed at any other part of the year. Although this means that the size of the crop will only be revealed at harvest time, the climate on the island is extremely constant, and the island's underground river distributes water evenly throughout the island's soil... In order for each person to support herself, she must produce 200 kilos of root per year. A is a very hard-working, industrious type, whose agricultural efforts, from dawn to dusk each day, mean that she produces 700 kilos per annum, allowing her to eat very well and produce a wide range of leisure products. B, C and D are rather laid-back in their approach to agriculture, and work just five hours a day to produce the minimum 200 kilos a year. After a year of this, however, D, a rather unsavoury character, decides she does not want to work even five hours each day. Unknown to all the others, she diverts the underground river away from B and C's sections of land, so that her land receives all of their water, boosting, she hopes, her own crop considerably. When harvest time comes, there are a number of surprises. A harvests her regulation 700 kilos. C's land has had no water, and consequently she has no crop. She is destitute, despite her efforts over the past year. It also emerges that D (no water engineer) has in fact diverted the water away from her own land as well as that of C, and [therefore] B, far from having a failed crop, has been the beneficiary. To her surprise, she harvests 400 kilos. D is also destitute, and in rage and despair hangs herself with a rope fashioned from the last of the previous year's Polychrestos crop. This leaves the problem of C. Without her year's produce, C will die unless A and B provide her with the necessary 200 kilos. How should the remedial responsibilities be distributed?<sup>6</sup>

Butt's conclusion is that the BPP provides a strong reason to conclude that it is B, the beneficiary of D's wrongdoing, who should meet C's need for 200 kilos of polychrestos plant. I think that this conclusion is correct.

The remedial duty Butt and other BPP proponents identify is typically viewed as a secondary obligation, since it places compensatory duties upon beneficiaries only

6. Daniel Butt, "On Benefiting from Injustice," at 132-133.

if the primary duty-bearer—the wrongdoer—cannot be forced to pay the necessary remedial costs.<sup>7</sup> Holding beneficiaries remedially responsible in cases of this kind seems intuitively fairer than requiring Victim, or society at large, to bear the costs of Perpetrator’s wrongdoing.

The BPP seems intuitive. However, it cannot easily explain why beneficiaries should relinquish their benefits in at least two classes of case: *excess benefit* cases and *no compensable victim* cases.

Excess benefit cases are cases in which the benefits generated by a wrong for Beneficiary exceed the remedial costs required to adequately compensate Victim. (Imagine that A steals B’s property, uses it to C’s great benefit, and then returns B’s property, leaving B only minimally worse off than she was before.) I will not examine excess benefit cases here, and utilitarians may find little to regret about their existence. No compensable victim cases, by contrast, are those in which the victims of wrongdoing cannot be adequately compensated. This could be for several reasons. First, it could be because victims are inaccessible. Consider

*Forced Labor*: Victim V is forced into slave labor under totalitarian regime T, generating 100 units of benefit (in the form of lower prices) for Consumer C, a foreigner who lives in a faraway and wealthy country. T does not allow foreigners access to its citizens, meaning that V cannot be compensated for the wrong done to her.

No compensable victim cases also include cases in which the relevant injustice killed victims and their families, leaving no one to be compensated. Consider

*Genocide*: A genocidal regime R wipes out an entire ethnic group E, melts down their belongings into gold ingots, and transfers the ingots to beneficiary group B.

In *Forced Labor* and *Genocide*, the BPP does not clearly provide a strong reason for obligating the beneficiaries of the wrong to disgorge their benefits, since victims cannot be compensated. This set of cases illuminates an important fact about the BPP: the principle holds that there is a positive duty to compensate victims of injustice adequately, not necessarily that there is a negative duty to avoid benefiting

7. As Tom Parr writes, “With respect to corrective duties, the primary duty-bearer is the agent from whom the victim should first seek compensation.” Tom Parr, “The Moral Taintedness of Benefiting from Wrongdoing,” at 987.

from injustice.<sup>8</sup> In excess benefit and no compensable victim cases, these duties come apart.

I take it that willingly retaining one's benefits in *Forced Labor* and *Genocide*—say, using them to buy oneself a swimming pool or luxury car—would be wrong, and therefore that the BPP should be supplemented by another account in order to address the full set of benefit from wrongdoing cases.

Tom Parr has recently attempted to provide such an account. Parr thinks that beneficiary B's decision to retain the benefits of injustice is wrong when a wrongdoer W intends that a beneficiary B benefit from his wrong. This is because it is morally bad if B allows W's malicious plans to succeed. We should now examine Parr's account in more detail.

## CURRENT THEORIES II: THE MORAL TAINTEDNESS ACCOUNT

Parr agrees with Butt that beneficiaries of wrongdoing, whom he terms "recipients," can bear obligations to disgorge their benefits. Parr thinks, however, that this obligation is not best justified by the BPP's requirement that beneficiaries of wrongdoing provide victims with compensation. Parr thinks that a better justification for requiring beneficiaries of wrongdoing to disgorge their benefits is that benefits generated by wrongdoing are "morally tainted."

On Parr's account, a benefit is morally tainted when "the recipient's possession of it is the *intended result of injustice*" [emphasis in the original].<sup>9</sup> Moreover, "[t]he fact that a good is morally tainted generates an extra reason for the recipient to relin-

8. If Beneficiary's benefits exceed the cost of Victim's entitlement to compensation, the BPP allows Beneficiary to retain the excess. Tom Parr succinctly describes this aspect of the principle: "Recipient is liable either to compensate Victim adequately or to compensate Victim by an amount equal in value to the benefit received, whichever is the smaller... [I]t may be helpful to distinguish between the duty to mitigate the harmful effects of wrongdoing and the duty to avoid benefiting from wrongdoing. These duties diverge when the value of the benefit to Recipient is greater than the value of compensation that Victim can justly demand." Parr, "The Moral Taintedness of Benefiting from Wrongdoing," at 987. If, on the other hand, Beneficiary's benefits are inadequate to compensate for Victim's losses, the BPP does not require Beneficiary to give up resources in excess of those he derived from Victim's loss. Robert Goodin and Christian Barry put the point this way: "the innocent beneficiary has no special responsibility for paying the victim's costs over and above relinquishing in her favour the benefit he has received in consequence of the wrongdoing, and some other mechanism should be found for the victims to be compensated for the rest of their losses." R. E. Goodin, and C. Barry, "Benefiting from the Wrongdoing of Others," at 363.

9. Tom Parr, "Moral Taintedness," at 994.

quish the good or the benefit it yields,” which is true “for both wrongdoers and other beneficiaries.”<sup>10</sup>

Why might this be so? First, Parr thinks that if Recipient allows Wrongdoer to complete her immoral plans, Recipient does something bad *for Wrongdoer*: she “morally defiles her.”<sup>11</sup> Second, Parr thinks that allowing immoral plans to be completed is “impersonally bad.”<sup>12</sup> It is therefore “bad for a wrongdoer to complete her immoral plans,” and good if Recipient “frustrates the immoral plans of the wrongdoer.”<sup>13</sup>

I agree with Parr that benefiting from wrongdoing is especially bad if it helps fulfill the evil plans of one or more wrongdoers. However, there are some cases of intuitively wrongful benefit from injustice that the moral taintedness theory would not identify as wrongful. As a result, the moral taintedness theory seems slightly too narrow to solve the Paradox of the Benefiting Samaritan. Consider

*Thwarted Trust*: Person A runs a network of corrupt, rights-violating mob organizations. After he retires, he places the profits of his wrongdoing in a trust for his beloved granddaughter, B, to be transferred upon A’s death. When A dies, however, things do not go according to plan. Instead, A’s equally corrupt lawyer, C, embezzles the funds intended for B and flees to Switzerland, where he buys himself a collection of vintage cars and a mountain chalet.

In embezzling the money intended for B, C has not fulfilled A’s evil plans. If anything, he has thwarted them. A would have been furious to find out about C’s embezzlement of the funds intended for his granddaughter. Yet it is not obvious why C is any more morally entitled to use the ill-gotten funds from the trust than B would have been, as Parr’s theory might seem to suggest. There are two reasons we should doubt that C is entitled to use the funds for his own benefit while B would not have been.

First, to hold otherwise would be to seriously weaken the real-world case against benefiting from injustice. Relatively few benefits of injustice flow from a wrongdoer’s intentional transfer of benefits to favored beneficiaries. Consider the case of the low prices Western consumers arguably face as a result of sweatshop labor. The manu-

10. Tom Parr, at 994. Butt also expresses an argument in this direction; he believes that we have good reasons to ensure that wrongdoers do not achieve their unjust aims. “Being a moral agent,” argues Butt, “means being committed to the idea that justice should prevail over wrongdoing.” Daniel Butt, *Rectifying International Injustice: Principles of Compensation and Restitution between Nations*, p. 128.

11. Tom Parr., at 994.

12. *Ibid.*, at 994.

13. *Ibid.*, at 994.



facturer's intention (and possibly its legal duty) in such cases is to maximize its own profits and hence the return to shareholder value; reduced clothing prices for consumers are merely an incidental side effect of this goal.<sup>14</sup> Benefits from wrongdoing can also flow to precisely the persons wrongdoers *did* not wish to benefit. Consider the debate over reparations for American slavery. Recent historical scholarship has revealed that Northern institutions, including major universities, derived significant benefits from the institution of Southern slavery—benefits that in some cases persist to this day.<sup>15</sup> One can be fairly certain, however, that Southern slaveowners did not intend for the descendants of Northern military officers, against whom they fought more than four years of bloody war, to benefit from plantation slavery. Yet this fact alone does not seem to eliminate the moral case for reparations.

The second reason is one of principle. In *Thwarted Trust*, C actively and willfully planned to exploit the benefits of A's mob operations, while B would have been a passive recipient of them had A's plan succeeded. To the extent that beneficiaries' intentions matter in assigning duties of compensation or disgorgement, the self-serving C should bear a heavier moral burden than the innocent B, not a lighter one.

Avia Pasternak has recently addressed this second point. She thinks that beneficiaries like C owe stronger compensatory duties than beneficiaries like B. Pasternak agrees with Parr that beneficiaries have a negative duty to avoid benefiting from the injustice, rather than only the BPP's positive duty to compensate victims adequately. If an agent chooses to benefit from an injustice when she could have refrained from doing so, Pasternak argues that the agent owes a *voluntary beneficiary penalty* in addition to any compensation owed to victims of the relevant injustice.<sup>16</sup>

This result seems correct. Furthermore, it can help address the intuitively wrongful cases of benefit from injustice, like *Thwarted Trust*, that the moral taintedness theory seems less easily able to identify as wrongful. As we shall see, however, Pasternak's theory is slightly too broad to solve the Paradox. It forbids benefits from injustice that are intuitively non-wrongful, like those in *News Media* and *Patriotic Film*. We should turn to this issue now.

14. For a legal articulation of this principle, see *Dodge v. Ford Motor Co.*, 204 Mich. 459 (1919) (holding that “[a] business corporation is organized and carried on primarily for the profit of the stockholders” and that “it is not within the lawful powers of a board of directors to shape and conduct the affairs of a corporation for the merely incidental benefit of shareholders and for the primary purpose of benefiting others.”).

15. See, for example, *Slavery and Justice: Report of the Brown University Steering Committee on Slavery and Justice* (2006).

16. Avia Pasternak, “Voluntary Benefits from Wrongdoing,” at 377.

CURRENT THEORIES III: THE VOLUNTARY  
BENEFICIARY PENALTY

Pasternak agrees that the BPP is a valid principle.<sup>17</sup> However, she also thinks that beneficiaries of wrongdoing have a negative duty which prohibits them from benefiting: a duty “not to benefit from the suffering of others, or not to take advantage of wrongdoing at the expense of others.”<sup>18</sup> As a result, she argues that “voluntary beneficiaries”—persons who actively choose to benefit from wrongdoing when they could have chosen not to—owe more in compensation than do innocent beneficiaries who benefit unwittingly or under duress.

Pasternak considers, for example, the case of a company C which knowingly contracts with an overseas factory F whose bosses violate the rights of their workers. This contract with the factory benefits the company by lowering its costs and raising its profits. Pasternak argues that if compensation must be paid for wrongs done to the workers and if F is unable to pay the full cost, then it is reasonable to compel C to pay “more in compensation to the workers than it gained from the deal with the factory.”<sup>19</sup> She concludes more generally that while involuntary beneficiaries need only disgorge their benefits to meet their moral obligations, the obligations of “voluntary beneficiaries to the victims of the wrongdoing could exceed the benefit they derived from the wrong.”<sup>20</sup> The justification Pasternak gives for this conclusion is based on a negative duty not to benefit from injustice which is distinct from the BPP—which, as we have seen, does not obviously support such a negative duty in cases where the duty to compensate victims and the duty to avoid benefiting come apart. “The principle,” Pasternak contends, “rests on the core intuition that moral agents have a duty, to the victims of wrongdoing, not to benefit from the wrong done to them... In the case of [the factory], what grounds the duty to compensate the victims is the benefit, which acceptance constitutes a wrongdoing.”<sup>21</sup>

Pasternak’s conclusion seems correct, but her justification for it—that agents have a duty not to benefit from injustice—looks slightly too broad to solve the Paradox. Goode, the news media, and the film director in *Patriotic Film* all benefit

17. Ibid., at 377.

18. Ibid., at 377.

19. Ibid., at 383.

20. Ibid., at 378.

21. Ibid., at 382.

from injustice voluntarily, in the sense that they could have avoided doing so. Goode could have taken a job at an insurance company or a telecoms firm; the news media executives could have worked for a university or school charity; the film director could have refused to sell tickets to his own film or insisted that they be given away for free. Yet it would be odd enough to demand that these agents relinquish a significant share of their benefits; it would be even odder to punish them by requiring that they pay an additional penalty on top of relinquishing their benefits.

My view is that voluntariness is necessary, but not sufficient, to render benefits from injustice wrongful. I think that Pasternak's conclusion that voluntary beneficiaries owe more than innocent beneficiaries is best explained by reference to a *use theory* of unjust benefit, under which we act wrongly when we both a) voluntarily accept the benefits of injustice and b) intend to use the injustice primarily as a means to our own benefit. The use theory relies on the doctrine of double effect (DDE). Incorporating a use theory enables us to more satisfactorily solve the Paradox of the Benefiting Samaritan. Such a theory would be broader than the BPP, since it could require beneficiaries to disgorge actively sought-out benefits of injustice even when victims of that injustice cannot be compensated. It would also be broader than Parr's moral taintedness theory, since it could identify an additional set of benefit cases as wrongful that the moral taintedness theory would not. It would be narrower, however, than Pasternak's voluntary beneficiary penalty, since not all voluntary cases of benefit from injustice would be wrongful when evaluated against the use theory; only those cases in which we both act voluntarily *and* primarily aim to benefit ourselves would be wrongful.

In the remaining sections, I outline the two basic elements such a theory might contain, and explain why the theory's conceptual underpinnings are familiar to political and moral philosophy.

## THE USE PRINCIPLE

Here is a principle:

*Use Principle:* Voluntary beneficiaries' duties not to use the benefits of injustice to their own advantage vary in proportion to the reasons which motivate, guide, or drive their decision to acquire those benefits.

The use principle in this form contains two important elements. First, it holds that an agent's subjective intention in acquiring benefits from injustice can affect

whether her use of those benefits for her own advantage is morally permissible. This part of the principle relies heavily on the doctrine of double effect, or DDE. Second, the use principle holds that the wrong of acquiring benefits from injustice lies in their use for personal advantage, not in the original acquisition itself.

Let us examine the reasons element first. The reasons for which we benefit are distinct from the voluntariness with which we benefit. To see the difference, we should consider a new version of the Naylor-Goode debate with which this paper began. In the original film, Goode was a morally pure campaigner for justice whose primary goal was to take on the malicious tobacco industry. Here is a second possibility:

*Goode 2*: Following the live TV debate, a reporter locates Goode's personal diary, inadvertently left backstage. Each entry excitedly chronicles the rising number of teenage tobacco deaths and celebrates the increasing donations to his nonprofit. "April 2nd: new report shows adolescent lung cancer deaths higher than anticipated. Here comes a raise and Cancun for spring break!... November 4th: new lawsuit filed by irritating rival campaign group against Philip Morris for lung cancer deaths. Have to hope Morris doesn't go bankrupt so public remains frightened and donating to us. Note to self: present innocent face at TV debate Friday."

Goode 2's moral character is certainly inferior to that of Goode 1. But more importantly, is Goode 2 a beneficiary of injustice in exactly the same way that Goode 1 was, or in a different way? Should Goode 1 and Goode 2 be equally liable to compensate victims of the injustice from which they benefit? Imagine that the outward effects of Goode's actions were precisely the same. (Note that Goode acts equally voluntarily in both cases.)

My intuition is that Goode 2 has acted wrongly while Goode 1 has not. The result is that Goode 2 bears moral duties of compensation or disgorgement while Goode 1 does not. (This, of course, does not settle what the absolute amount of compensation owed should be. If Goode 1 owes \$0 in compensation, Goode 2 could owe anything from \$0.01 to his full salary.) One possible way to explain this intuition is to appeal to the doctrine of double effect (DDE).

## INTENTION AND THE DOCTRINE OF DOUBLE EFFECT

Let us call the subset of Benefiting Samaritans who primarily aim at benefiting from injustice *Selfish Samaritans*. Let us call those who primarily aim at ameliorating injustice *Altruistic Samaritans*. If the doctrine of double effect has force in benefit from

injustice cases—as it seems to in at least some harming cases—Altruistic Samaritans may act permissibly while outwardly identical Selfish Samaritans do not.

According to proponents of the DDE, “it is sometimes permissible to bring about by oblique intention what one may not directly intend.”<sup>22</sup> While we may not use a Bad X as a deliberate means to bring about a Good Y, the DDE sometimes permits us to achieve Y while knowing that X will occur as a foreseen but unintended side effect of achieving Y.

A classic example is the case of the terror bomber and the tactical bomber. The terror bomber strikes a civilian area with the goal of killing 100 civilians, intending to use the resulting civilian terror to help win a war. Such an action would be intuitively impermissible. The tactical bomber, by contrast, strikes a military depot knowing that 100 nearby civilians will be killed as a foreseen side effect of his attack. Such an action is intuitively permissible (if we assume that a proportionality constraint is satisfied), despite the fact that the same number of civilians will be killed.<sup>23</sup>

Another is the case of the doctor who administers morphine to a terminally ill patient, intending to accelerate the patient’s death. Such a doctor would act impermissibly. A doctor who administered the same dose of morphine with the intent to reduce the same patient’s pain, however, would act permissibly, despite knowing that the morphine would accelerate the patient’s death as a side effect.<sup>24</sup>

Victor Tadros has given us a particularly interesting application of the DDE to cases of overdetermined harm. I paraphrase his set of cases here:

*Overdetermination*: C plans to harm A, causing 12 units of damage. The only way B can stop C from harming A is to harm A himself, causing only 7 units of damage, before C arrives in thirty seconds’ time. Seeking to minimize harm to the innocent A, B does in fact harm him, causing 7 units of damage.<sup>25</sup>

In *Overdetermination*, B intuitively does not owe A compensation; B has, in fact, benefited A by preventing C’s imminent and even more harmful action. As Tadros observes, “if anyone owes A compensation in that case, it is C.”<sup>26</sup>

Now consider

*Overdetermination'*: C plans to harm A, causing 12 units of damage. The only way

22. Philippa Foot, “The problem of abortion and the doctrine of double effect.”

23. Alison McIntyre, “Doctrine of Double Effect.”

24. Ibid.

25. Victor Tadros, “What Might Have Been,” at p. 18.

26. Ibid.

B can stop C from harming A is to harm A himself, causing only 7 units of damage, before C arrives in thirty seconds' time. B knows this but does not care about minimizing harm to A, his longtime nemesis. Instead, in a fit of vindictive rage, *he* wants to be the one who harms A, rather than allowing C to do it. B does in fact harm A, causing 7 units of damage, and departs, having gleefully accomplished his objective.<sup>27</sup>

In Overdetermination', it looks like B *does* owe A compensation, even though the external qualities of his action were identical to those in the first variation case in which B did not owe A anything. An obvious way to explain this fact is by reference to some form of the DDE under which what B intends, versus what B merely foresees, matters in determining whether he has acted wrongly, and therefore whether he owes A compensation.

Might the DDE's application in benefit-from-injustice cases parallel its application in harm cases? Joseph Mangan articulates a classic version of the DDE:

*"A person may licitly perform an action that he foresees will produce a good effect and a bad effect provided that four conditions are verified at one and the same time:*

- 1) that the action in itself from its very object be good or at least indifferent;*
- 2) that the good effect and not the evil effect be intended;*
- 3) that the good effect be not produced by means of the evil effect;*
- 4) that there be a proportionately grave reason for permitting the evil effect."<sup>28</sup>*

Let us call a morally bad benefit from wrongdoing B and a morally good amelioration of wrongdoing A.

The Altruistic Samaritan intends A and accepts B as a side effect. Mangan's condition 1 is satisfied because A is morally good. Mangan's condition 2 is satisfied because A is the goal intended. (The case is slightly different in *Patriotic Film*. There, the director did not aim at A, but neither did he aim at B. It may be that merely not aiming at the bad effect is sufficient to justify profiting in cases of this type.)

Whether Condition 3 is satisfied will depend upon the nature of the relation-

27. Ibid.

28. Joseph Mangan, "An Historical Analysis of the Principle of Double Effect," at 43.

ship between A, B, and the Altruistic Samaritan's action. In *News Media*, for example, media executives' decision to criticize the president's unjust actions brought about both increased profits from injustice (morally bad) and citizens being exposed to criticism of an unjust figure (morally good or at least morally neutral). The criticism was not brought about by means of the morally bad increased profits, so it seems that condition 3 is satisfied.

Whether condition 4 is satisfied will depend again upon the particulars of the case. Perhaps principles of moral desert justify permitting Altruistic Samaritans who achieve a good outcome (criticism of tobacco companies or a bad president in *Goode 1* and *News Media*, or a valuable depiction of justified military heroics in *Patriotic Film*) to retain some or all of their benefits from injustice. Or perhaps economic incentives and the profit motive require states to structure markets in such a way that those who ameliorate injustice receive a high degree of compensation for doing so.

The situation is different with Selfish Samaritans. They fail Mangan's test immediately at condition 2, since they intend the bad effect (personal profit from injustice) and not the good effect (amelioration of the injustice). As a result, the DDE can condemn their acts as wrong while permitting the otherwise identical acts of the Altruistic Samaritan.

Daniel Butt has applied a form of this insight to the case of microfinancial institutions which lend money to poor citizens of developing countries.<sup>29</sup> By lending money to those who need it, microfinance institutions achieve a good. By charging interest, however, they themselves benefit from the loans they disburse, often to persons who are poor because of grave injustice done to them and their fellow citizens. If the profit becomes too high or the aid to the poor too minimal, the relationship between microfinance NGOs and the poor begins to look exploitative and at least *pro tanto* wrong.

Butt argues, however, that whether a relationship is exploitative does not depend only on objective facts like the profit margin of the microfinance NGO or the size of the benefit received by the poor borrower in the form of a microcredit loan. Butt thinks that the subjective intent of the microfinance NGO in making loans to the poor can itself determine whether the relationship is exploitative. "[I]t might be the case," argues Butt, "that two microfinance institutions might offer identical terms to the same individuals, one of which counts as wrongfully exploitative, and one of which does not on account of the former's seeking to gain advantage from injustice."<sup>30</sup>

29. Daniel Butt, "Microfinance, Non-ideal Theory, and Global Distributive Justice."

30. *Ibid.*, at 78.

It is the seeking and not the advantage, on this theory, that creates a relationship of exploitation: “as soon as institutions seek to gain benefits from the situation of these individuals by extracting a surplus, they are guilty of wrongdoing.”<sup>31</sup>

If the DDE is right, then it provides an underlying rationale for Butt’s claim here, and for Pasternak’s distinction between the moral obligations of voluntary and involuntary beneficiaries of injustice.

### USE AND PERSONAL ENRICHMENT

We now move to the second element of the use principle: the idea that the wrong of acquiring benefits from injustice lies not in their acquisition but in their use for personal enrichment. Recall *Thwarted Trust*. There, the lawyer used the profits of exploitation to buy expensive luxury goods, which seemed intuitively wrongful. What could he have done to render his voluntary acquisition non-wrongful?

Advocates of the BPP will likely argue that he is obligated to return the profits to the victims of the injustice which generated the profits in the first place: those harmed by the deceased mob boss’s wrongdoing. That is one possible answer.

Parr thinks that a better solution is to distribute them to the victims of injustice generally, rather than the victims of the particular injustice which generated the benefits. Parr’s primary reason for rejecting the BPP lies in what he calls the fairness objection. According to Parr, the BPP licenses distributive unfairness among victims of wrongdoing. Parr illustrates the *fairness objection* with the following case:

*Double Embezzlement*: Wrongdoer embezzles equal funds from the bank accounts of Victim 1 and Victim 2 in order to transfer half of the combined embezzled funds into Recipient’s bank account. Unaware of the embezzlement, Recipient then purchases a ticket to the circus using these funds. Wrongdoer then disappears, after having spent the other half of the embezzled funds on fine wine that she consumes.<sup>32</sup>

Parr asks us to imagine that “the funds transferred to Recipient are taken from Victim 1’s bank account only. The funds embezzled from Victim 2 were those that Wrongdoer spent on fine wine. A consequence of this is that Recipient benefits specifically from the injustice suffered by Victim 1, but not from the injustice suffered by Victim 2.”<sup>33</sup> Parr argues that the connection theory would obligate Recipient to

31. Ibid.

32. Tom Parr, “The Moral Taintedness of Benefiting from Wrongdoing,” p. 989.

33. Ibid., at 989.



grant lexical priority to Victim 1's claim for compensation over the claim of Victim 2, from whose plight Recipient did not benefit—since “[a]fter all, whereas Recipient and Victim 1 now share a connection, Recipient and Victim 2 do not.”<sup>34</sup>

This result, argues Parr, would be unfair. Specifically, it would be “unfair to Victim 2. It is unfair for Victim 2 to receive fewer entitlements than Victim 1 simply on the grounds that Victim 2 had the misfortune of being involved in a causal chain from which Recipient did not profit.”<sup>35</sup>

Parr's objection seems persuasive. Imagine that A suddenly finds herself in possession of benefits from an injustice that left its victims at welfare level 100. She has two choices: she can distribute the benefits to those victims, or she can donate them to the victims of a completely separate and even worse injustice that left its victims barely above subsistence level, at welfare level 5, but generated profits for no one. It would be strange if A were forbidden to donate her benefits to the victims of the more severe injustice, merely because they were unlucky enough to suffer from an injustice that generated profits for no one.

If Parr is correct, then our use of the benefits of injustice is not necessarily wrongful insofar as it is used to ameliorate injustice generally. Let us return to the lawyer in *Thwarted Trust* a final time. If the lawyer donated the boss's trust fund to an anti-corruption nonprofit—or even to a completely unrelated but sufficiently good cause—he would not act wrongly merely because he voluntarily acquired additional benefits from injustice.

What would be a sufficiently good cause? What if the lawyer distributed the trust to a school charity that helped disadvantaged kids learn how to play musical instruments? What if his own children attended that same school and also benefited from the funds? What if he used the funds to start a business which provided high-wage jobs to many deserving job applicants in need of employment? These questions are difficult to answer. It seems sufficiently clear, however, that the lawyer acted wrongly insofar as he sought out the profits of injustice purely in order to use the benefits for his personal enjoyment. The use principle specifies that it is the use of the profits for personal satisfaction, rather than the initial voluntary acquisition of them, that is morally troubling.

One final methodological note: I admit that in some of the cases I have described, several moral wrongs exist that are separate and distinct from the use of unjust ben-

34. Ibid., at 989.

35. Ibid., at 989.

efits for one's own advantage. In *Thwarted Trust*, for instance, the lawyer embezzled funds that did not belong to him. He both a) stole and b) aimed to use the benefits of injustice for purposes of personal enrichment. The presence of several wrongs in a single act can complicate the moral picture.

I do not think, however, that aiming to benefit from injustice is reducible purely to other moral wrongs that might accompany the benefit. Imagine that the lawyer in *Thwarted Trust* had instead voluntarily entered a lottery, the winner of which would receive all of the mob boss's ill-gotten gains. The lawyer passionately hoped to win and purchased as many lottery tickets as allowed him under the rules. Were he to win, the use theory would still condemn his use of the ill-gotten gains for personal enrichment, as in the original case. That result seems intuitive, and accords with the core principles of the use theory. Aiming to use injustice for our benefit is merely one of many wrongs that agents can perform in relation to the fruits of injustice. Yet it is a distinct wrong nonetheless.

## CONCLUSION

This paper has argued that some version of the use principle can provide a plausible answer to the Paradox of the Benefiting Samaritan. The use principle holds that voluntarily acquired benefits from injustice are wrongful to the extent that an agent intends to use them primarily for the purpose of personal enrichment.

I did not, however, mean to suggest that alternative theories regarding benefits from injustice are incorrect. Consider, for instance, the BPP. If victims of an injustice require compensation, I agree that we may violate a positive duty to compensate them insofar as we possess the benefits of the injustice that harmed them, regardless of whether we sought those duties out for the purpose of personal enrichment. The use principle is not intended to contradict that position. Instead, it is intended to supplement those theories which establish a negative duty not to benefit from wrongdoing, regardless of the need of victims for compensation and our ability to compensate them.

The use principle, as a result, provides a targeted solution to the Paradox of the Benefiting Samaritan that neither forbids intuitively permissible benefits like those in *News Media* nor permits intuitively wrongful benefits like those in *Thwarted Trust*. In that sense, the goal of this paper was simply to map out a possible theoretical basis—

one familiar to us from other areas of political and moral philosophy—for rendering our competing intuitions about Paradox cases internally coherent.

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