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The Beneficiary Pays Principle and Strict Liability: exploring the normative significance of causal relations

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Abstract I will discuss the relationship between two different accounts of remedial duty ascriptions. According to one account, the beneficiary account, individuals who *benefit* innocently from injustices ought to bear remedial responsibilities towards the victims of these injustices. According to another account, the causal account, individuals who *caused* injustices (even innocently) ought to bear remedial duties towards the victim. In this paper, I examine the relation between the principles central to these accounts: the Beneficiary Pays Principle and the well-established principle of Strict Liability in law. I argue that both principles display a strong yet unexplored similarity as they make certain kinds of causal connection sufficient for incurring liability. Because of this similarity, I suggest that insights into the Beneficiary Pays Principle can be gained from exploring its relation with Strict Liability. In particular, I examine two new positive arguments that could be adapted to support of the Beneficiary Pays Principle: the Minimising Injustice Argument and the Normative Connection Argument. However, I'll show that only one of those arguments, namely the Normative Connection Argument, can truly support the Beneficiary Pays Principle. I conclude that, if you endorse the Normative Connection Argument for Strict Liability, you have at least a strong prima facie reason to endorse the parallel argument for the Beneficiary Pays Principle.

Keywords Beneficiary Pays Principle · Strict Liability · Political philosophy · Political theory

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1 Introduction

My aim in this paper is to examine the relation between *causal accounts*, which attribute remedial duties on the basis of a causal relation (such as the Principle of Strict Liability) and *beneficiary accounts*, which attribute duties on the ground that one benefits from injustice (such as the Beneficiary Pays Principle). In this paper, I want to investigate the hitherto overlooked similarity between these two principles of duty ascription. In particular, I will suggest that they have a deep connection: they share the same commitment to regard certain kinds of causal relationship as generating remedial duties. Accepting one of these principles might therefore dispose its proponents to support the other.

Given this shared commitment, I will examine insights into the Beneficiary Pays Principle that can be gleaned from the far more extensive literature on Strict Liability. In particular, I will critically examine two positive arguments in favour of Strict Liability, the Minimising Injustice Argument and the Normative Connection Argument, to examine if they could be used to ground two new justifications for the Beneficiary Pays Principle. To begin with, I'll highlight that there is a tension between the two arguments, as each supports a different version of the Beneficiary Pays Principle. And to the extent that these two versions of the Beneficiary Pays Principle differ at a very fundamental level, this might indicate to us that proponents of the Beneficiary Pays Principle might thus endorse views that might be much more at odds than previously thought, as I believe that both these arguments motivate proponents of the Beneficiary Pays Principle.

Finally, I'll show that the first argument, the Minimising Injustice Argument, fails to support the most commonly accepted form of the Beneficiary Pays Principle (despite the fact that many proponents might be wrongly motivated by it to endorse the Beneficiary Pays Principle). The second argument, the Normative Connection Argument, however might provide a more promising normative foundation for the Beneficiary Pays Principle. I'll conclude that, if you endorse a version of this second argument in favour of Strict Liability, then you have, at the very least, a strong *prima facie* reason to also endorse the parallel argument for the Beneficiary Pays Principle.¹

¹ It might be objected that the debate about strict liability is not parallel to that about the BPP but orthogonal to it. Strict liability is a claim about liability irrespective of fault. The BPP is a claim about liability irrespective of causal responsibility *or* fault. But—the objection goes—fault and causal responsibility needn't always align in this way. We can think of cases where the persons who benefit from injustice *are* at fault, but the question may still arise whether they can be liable despite having no causal responsibility for the injustice. In reply, let me note the following. First, I follow here the bulk of the literature on the BPP in taking it to exclusively concern cases of *innocently* (viz. faultlessly) benefiting from injustice. Lack of fault is therefore an essential component of both debates. Second, it is true that one important disanalogy between Strict Liability and the BPP is that in the former one is causally responsible for the harm/injustice and in the latter one isn't. My entire argument revolves around the point that although in the BPP case one isn't causally *responsible* for the injustice, one is still causally *related* to it in a way that can generate liability (via a kind of 'moral taint'). The parallel I draw between the two debates concerns the existence of a relevant causal relation. Third, my argument doesn't require Strict Liability and the BPP to be normatively *identical* or for me to deny important differences between the two. It relies only on the weaker claim that there are *structural parallels* between the two that we can use to shed light on the BPP and to address persistent worries about its normative grounds. Finally, I address further the objection that the principles are too dissimilar in Sect. 7.3.

2 The Beneficiary Pays Principle

There has been recently a great deal of debate within political philosophy about the question of whether we should endorse the Beneficiary Pays Principle (henceforth BPP), according to which those who innocently benefit from wrongdoing or injustice hold duties (which, on different views, can take the form either of compensation or the disgorging of all the acquired benefits). Accepting such a corrective principle is almost certain to have many important implications in many areas of political philosophy, including on the questions of who holds remedial duties for the damages of climate change (Gosseries 2004; Shue 1999) or for the past injustices committed by colonial powers (Butt 2012). The literature is divided between those who think that such a principle has independent normative force (Haydar and Øverland 2014; Butt 2007; Goodin and Barry 2014) and those who think that the principle has no independent normative force and that the cases where beneficiaries owe remedial duties to victims of injustice can be accounted for by reference to other principles (Huseby 2013; Knight 2013).

According to the BPP, an agent can accrue remedial/disgorging duties merely in virtue of benefitting from an injustice, even if she does so innocently, that is, without having contributed to, instigated or encouraged in any way the commitment of the injustice in question. Since the majority of the literature addresses innocent benefitting, and the ground for justifying benefitting that is not innocent will differ significantly, I will focus solely on innocent benefitting in this paper.² The remedial duty is owed first and foremost to the victims of the original injustice but—according to the version of the principle that has gathered the most support—it could also be owed to individuals who are currently suffering from the consequences of the original injustice. But some defend a stronger version of the principle according to which the duty could even be discharged to someone not connected to the specific injustice, if the original victim is not around anymore or if one can't identify individuals suffering from the consequences of the original injustice (Goodin 2013).

2.1 Qualifying the Beneficiary Pays Principle

Proponents of the BPP have qualified the principle in various ways. But here I will only focus on two qualifications that are crucial for my argument. I will return to those qualifications in Sects. 6.1 and 7.5.

Among those who argue that this principle has independent normative force, the majority of authors believe that the principle needs to be qualified in the following two ways (Goodin and Barry 2014; Haydar and Øverland 2014).

Intention to benefit It has been argued that the presence of an intention to benefit considerably strengthens the requirement to hold remedial duties (Haydar and Øverland 2014). On this view, if a person commits an unjust act

² For a discussion of benefitting that is not innocent, see Goodin and Pasternak (2016).

with the intention to benefit the beneficiary, the beneficiary's remedial duties are greater because of that intention.³

Victim-centred versus Beneficiary-centred The victim-centred version of the BPP focuses on ensuring that the victim gets compensated for the injustice; it is thus mainly motivated by a concern for the victim. Because of this motivation, on this version, the requirement to reconstitute the benefits disappears if the victim is either (a) already compensated, (b) not around any more, (c) not identifiable. This version of the principle is the one that predominates in the literature. In contrast, the beneficiary-centred version of the BPP is motivated by the wrongness of holding benefits resulting from injustices. On this version of the principle, it is wrong in itself for the beneficiary to keep these benefits because they are tainted. If this variant of the BPP is endorsed, the beneficiary still has a duty to disgorge the benefits in the cases mentioned above of (a), (b) or (c) (Goodin 2013).⁴

In what follows I will describe the transfer of gains from the beneficiary to the victim as restitution or fulfilling a remedial duty (in the case of the victim-centered version), but will use 'disgorging' when I discuss beneficiary-centered version of the principle. Restitution compensates the victim (or compensate her as much as feasible if the benefits are less than the harm). In contrast, disgorging involves giving up the benefits without the intent of compensating the victim (possibly because the benefits are morally tainted). When I speak of both, I will refer to either "remedial/disgorging duties.

2.2 Two objections to the Beneficiary Pays Principle

A successful defence of the BPP will need to address two key objections: *The Liability without Responsibility Objection* and *the Arbitrary Victim Objection*.

Liability without Responsibility Objection: First, the BPP attributes remedial/disgorging duties to innocent individuals who are not responsible for the wrongdoing in question and this is controversial (Butt 2007; Fullinwider 2002).⁵ I take substantive responsibility for an injustice here to mean having made the voluntary decision to do something that brought about the injustice in question. The view that innocent individuals ought to hold remedial/disgorging duties goes against the grain of most political and legal philosophy of the last decades, which is based

³ Butt similarly argues that the BPP is easier to accept in cases involving such intention: 'It is not a necessary condition of having these duties that it was intended that we benefit from the act of injustice but it may be that we can see our moral duties more clearly when this is indeed the case' (Butt 2007, p. 146).

⁴ This distinction might remind of the distinction in law between two monetary remedies for wrongdoing; 'restitutionary damages' and disgorgement damages'. While restitutionary damages aim to reverse wrongful transfers, disgorgement damages aim to strip the beneficiary of profit made by wrongful conduct (Edelman 2002). Note that in law, these kinds of damages are attributed to those who wrongfully benefitted (hence not innocent beneficiaries).

⁵ Note that the fact that one has made a voluntary decision doesn't mean that one is ultimately morally responsible. The arguments examined here do not need to commit themselves to specific views about moral responsibility and freedom of the will.

on the assumption that individuals should be held accountable only for things that they are substantially responsible for.⁶

Arbitrary Victim Objection: Second, adopting the BPP leads to a state of affairs in which we give special attention to victims when the injustices they suffer from benefit others. But this seems counter-intuitive: Why should we arbitrarily discriminate against victims on this basis (Huseby 2013; Knight 2013)?

3 Strict Liability

Let me now introduce causal accounts in the attribution of remedial duties along with what I take to be its instantiation in law: the principle of Strict Liability. Following John Gardner, I take Strict Liability to be liability regardless of fault or, more specifically ‘liability that attaches to someone (call her D) for something she did (call it x-ing) irrespective of any steps that she took in order not to x and irrespective of whether she knew or had reason to know that she was x-ing’ (Gardner 2015, p. 207).⁷ The Strict Liability principle thus attributes remedial duties to agents who merely *caused* harm.

It is worth making explicit several assumptions I will be making in what follows. I will assume here a particularly influential account of causality which takes causality to be best understood in terms of counterfactual conditionals of the type “If x didn’t occur, y would not have occurred” (Lewis 1973, 2000).⁸ Although Strict Liability is a legal principle with a restricted scope, I will use the expression ‘Strict Liability’ to refer to what I take to be the underlying moral principle (Kramer 2005). And for now, I will leave aside the question of the field and limits of application of this moral principle.⁹

The Principle of Strict Liability (and what has been called causal accounts of duties ascription more generally) is controversial. On one hand, it is sometimes perceived as having some legitimate role in attributing remedial duties (Miller 2001). For instance, in the case of climate change, it is often thought to be very plausible to hold that those industrialised countries that caused the greatest emissions of CO₂ should pay the larger share of climate change costs- even if at least during a substantial period of industrialisation, western countries didn’t know about the environmental harm associated with it and thus cannot be taken to be morally responsible for the harm caused during this period (Caney 2006, p. 472;

⁶ Consider, for instance, the predominant place that luck egalitarianism holds in debates on social justice. Luck egalitarians argue that redistribution should track substantive responsibilities and that only inequalities that do *not* result from agents’ differential responsibility should be corrected.

⁷ This corresponds to what Simester refers to as substantive Strict Liability: ‘an offence imposes substantive Strict Liability when it contemplates the conviction of persons who are blameless for committing that particular offence’ (Simester 2005, p. 23).

⁸ I found this account particularly congenial in thinking about benefitting cases. That said, I am not committed to it and I believe other competing accounts of causality, such as a probabilistic ones, are also compatible with the arguments presented here.

⁹ Note that in law, on the contrary, the concept of Strict Liability is restricted to specific fields of application.

Agarwal and Narain 1991; Simms 2005; Shue 1999). On the other hand, there is a lot of philosophical opposition to Strict Liability for the same reason that the BPP is opposed: Strict Liability attributes remedial duties to agents on the mere ground that they played a causal role in bringing up a certain state of affairs, *irrespective of fault*.¹⁰ This, once again, goes against some deeply entrenched views in moral philosophy. For this reason, even though legal Strict Liability is tolerated in tort, there is a widespread consensus that Strict Liability should not be used to determine criminal punishment (Duff 2009; Lamond 2007, p. 610; Coleman 1976, p. 277).

4 The unexplored similarity between Strict Liability and the Beneficiary Pays Principle

The BPP and Strict Liability share an essential feature that has been so far overlooked in the political philosophy literature: they both make certain kinds of causal connection sufficient for incurring liability. In order to highlight this similarity, the two principles could be re-described in the following way:

According to **Strict Liability**, remedial duties are attributed to an agent, in the absence of fault if this agent is at the *incipient* end of a causal chain of events linking her to the harm incurred by another agent.

According to the **BPP**, remedial/disgorging duties are attributed to an agent, in the absence of fault if this agent is at the *recipient* end of a causal chain of events linking the benefits she receives to the wrong caused to another agent.

In order to illustrate this, let us consider the following traffic accident. Motorcyclist Adam runs over Betty who is seriously wounded as a consequence. But Adam is innocent of any negligence (say the individual who was really at fault for the accident is a third individual, Elisabeth, who has pushed Betty into the road just as Adam was driving by and has since then left the country). Because of the accident, Betty can't attend the final interview for an enviable job. The only other contender at this stage, Jennifer, thus gets the job as a consequence of the accident (let us assume that she would not have gotten the job had Betty attended the interview, as Betty is a superior candidate). Jennifer benefitted thus innocently from the accident while Adam blamelessly caused it. Both Adam and Jennifer are innocently connected to the same causal structure.

¹⁰ It is important to note here that Strict Liability cover cases which involve the involuntary bringing about of a harmful outcome as well as cases which involve a voluntary but justified decision to bring about a harmful outcome. In a case discussed by Gardner (*Vincent vs Lake Erie*), the captain moors his boat at a dock, while a storm is raging in order to save his crew and his vessel from damage. Damage to the dock resulted and the owner of the dock was held entitled to compensation. In other words, the captain was held legally responsible for the damages while not being at fault (Gardner 2005). Since the captain made a decision to risk damages to the dock, he could be said to be substantively responsible as well as legally responsible for the damages. This explains why the debate on Strict Liability should be understood as focusing on the role of fault rather than on the role of responsibility. I am grateful to an anonymous reviewer for pressing me to think more about the predominant role of fault (rather than responsibility) in Strict Liability cases.



In this case, who should hold remedial duties towards Betty (the victim)? While the Strict Liability principle would attribute remedial duties to Adam, the BPP would attribute remedial duties to Jennifer.¹¹ In both cases, the presence of a causal relation constitutes at least part of the normative ground for attributing duties in the absence of fault.

Let me consider straight away the following objection. In the case of Strict Liability, the causal connection is a special kind of causal connection; there is something special about *initiating* a causal chain.¹² And the objection continues, if Strict Liability differs substantially from the BPP, my attempt to draw on the similarities between the two principles will fail.

But I don't need to claim that any causal connection would be sufficient in order to claim that Strict Liability and the BPP are importantly similar. In fact, in both cases specific kinds of causal connection are taken to allow for the attribution of remedial/disgorging duties.

Let me illustrate this by considering the case of Lisa throwing a stone into Anna's garden, damaging it as well as the edge at the border of the garden between Anna and Leïla.¹³ But the damage caused by the stone thrown off by Lisa also leads Leïla to find a piece of gold on her side of the edge. Let us further stipulate that, although the piece of gold compensates Leïla for her damage and for the lost time and the extra stress she endured from the whole story, she is now overall as well-off as she used to be before the stone was thrown. She remains nevertheless connected causally to the injustice committed by Lisa towards Anna. If any causal connection was sufficient to attribute remedial duties, then Leïla would have accrued remedial duties towards Anna. But this isn't required by the BPP. So causal connection alone doesn't fully account for the attribution of remedial duties: *benefitting* itself plays a role in accounting for the attribution of remedial duties. Benefitting from a particular injustice is the kind of causal connection, which is sufficient to attribute remedial duties. And something similar can be said about the Strict Liability principle: causing an injustice to occur is not merely any causal connection; it is a special kind of causal connection, whereby an agent is identified as *instigating* a

¹¹ One might also endorse the view that both principles have a role and that the burden must thus be shared between Adam and Jennifer (Huseby 2013).

¹² I will consider another aspect of this objection in section (namely the claim that causing isn't similar to benefitting because of its relation to agency).

¹³ I owe this example to Robert Huseby.

chain of events. So although not any causal connection would be sufficient to incur remedial/disgorging duties, specific kinds of causal connections, such as benefitting from injustices and causing an injustice to occur are sufficient.

I have argued so far that both principles share part of the same normative ground and thereby encounter similar objections to their normative ground. Something else could be said on the basis of that relationship, namely that, given that Strict Liability is a widely accepted principle in law, some *prima facie* support should be gained by the BPP. However, this support is tempered by the theoretical controversy attached to the legitimacy of Strict Liability.¹⁴

5 Dispelling some of the force of the Liability without Responsibility Objection

Because of this similarity between the BPP and the Strict Liability Principle, I believe that at least some important insights into the BPP can be gained from an examination of the sophisticated and more extensive literature on the Strict Liability principle. But before I do that, let me first at least attempt to dispel some of the worries that stem from the *Liability without Responsibility Objection*, which claims that it is wrong to attribute remedial/disgorging duties to innocent individuals who are not responsible for the wrongdoing in question. In other words, there seems to be a resistance to the attribution of legal responsibility to those who are not substantively responsible for the injustice in question.

But the assumption that we should have duties only if we are substantively responsible is highly questionable. Other ethical principles which have gathered considerable theoretical support attribute duties in the total absence of responsibility. Take for instance, the duty of assistance (Singer 1972). According to the duty of assistance, if ‘it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it...’ (Singer 1972, pp. 231–232). If we can acquire duties to help victims merely because we have the capacity to do so (without this causing a great cost to ourselves), why couldn’t we acquire duties merely by benefitting from injustices? Endorsing the Liability without Responsibility objection would undermine our commitment to widely endorsed principles, such as the duty of assistance

¹⁴ Does that mean that if we accept the validity of the principle of Strict Liability, we are bound to accept the legitimacy of the BPP? No, as one of these principles might be overall better justified: even in the absence of a relevant normative distinction between the two, pragmatic reasons could still lead us to favor one principle over the other. For instance, it is often argued that, by instituting Strict Liability, we would give further incentives to individuals to avoid causing harm and that it is a good mechanism to allocate the costs of risk creating activities (Stanton-Ife 2007, p. 155). But similar as yet undiscovered pragmatic reasons might exist in favor of the BPP, as we might also be incentivised to become attentive to the source of our benefits and refuse to, say, acquire some goods, which might have been produced under unjust conditions. By refusing some benefits that could have resulted from injustices, we might prevent future similar injustices to be created, in particular when injustices are committed in order to benefit specific others (Haydar and Øverland 2014) or when the injustices would not be committed in the absence of a demand (sweatshops benefit the perpetrator and the beneficiary). So the similarity between the principles at the normative level cannot give us direct definite answer on the role and importance of each of the principles.

based on our capacity to remedy, which is a fairly commonplace principle in political philosophy (Miller 2001).

In order to address a similar criticism, proponents of Strict Liability have pointed out that a distinction ought to be made between stigmatising and non-stigmatising offences. If no stigmatisation is attached to causing harm without fault, attributing remedial duties to those who caused harm might be much less problematic (Simester 2005).¹⁵ Similarly, one might point out that the attribution of duties on the basis of benefitting from injustice should not be seen as an attempt to stigmatise the beneficiaries. And if no stigmatisation is attached to the holding of remedial duties deriving from innocently benefitting from injustice, this would further undermine the strength of the Liability without Responsibility objection. Part of what is objected is that individuals are acquiring remedial duties for events they are not responsible for. But acquiring remedial duties doesn't entail that one did something wrong in the case of non-stigmatising offences.¹⁶

Moreover, ensuring that individuals are endowed with goods they are substantially responsible for is a commitment that might actually support the BPP. If it is established that *x*'s benefits result from an injustice committed by others that he didn't intend or take part in, it is thereby shown that *x* is not substantially responsible for bringing about the benefits in question. And if *x* is not substantially responsible for these benefits, this undermines the entitlement *x* has to their benefits. If *x* is not entitled to their benefits, this could thus at least lift an objection to the repudiation of these benefits, namely the objection that *x* is entitled to them.

Finally, even if the beneficiary is not responsible for getting the benefits in the first place, she is responsible for taking the decision to retain or not the benefits once received (Butt 2007; Barry and Wiens 2014). We can conceive of benefitting as involving a temporal notion. At *t*₁, the beneficiary gets a certain good connected to an injustice *x*. Putting aside cases in which one would need to accept the benefits in order to first receive them, it is true that, at *t*₁, the beneficiary is not voluntarily deciding to get the benefits and can't thus be held responsible for holding them. But at *t*₂, the beneficiary decides to retain or not the benefits. If she decides to retain them, she is thus voluntarily keeping the benefits at *t*₂. The beneficiary at *t*₂ is thus responsible for keeping the benefits.

6 The Minimising Injustice Argument¹⁷

It has been argued—persuasively, in my view—that current attempts to defend the BPP have so far failed to give it a persuasive normative foundation (cf. Huseby 2013; Knight 2013). One interesting upshot of the analogy to Strict Liability is that it

¹⁵ For a critique of this argument, see Stanton-Ife (2007).

¹⁶ Some might still object that the holding of remedial/disgorging duties would be tantamount to punishment. And punishment can only be justified if the person is found guilty of some criminal violation. But, in the non-stigmatising case of innocently benefitting from injustice, the holding of remedial/disgorging duties doesn't amount to punishment.

¹⁷ I am grateful to an anonymous reviewer for suggesting I use the expression 'minimizing injustice'.

suggests two new justifications for the BPP that draw on arguments first put forward in defence of Strict Liability. The first one is what I will call the Minimising Injustice Argument. This argument relies on the consideration that a principle that incurs costs to innocent individuals might nevertheless be justified when the alternatives lead to results that are even more unjust. In this case, the alternative we want to avoid is the one in which the innocent victim has to carry all the costs on her own.¹⁸

Even in legal systems regulated by the fault principle, which attributes remedial duties to agents who are at fault for causing harm (Feinberg 1970, p. 187), the application of the fault principle is really the exception rather than the rule (Coleman 1976). The burden of proof remains with the victim to show that the losses should not stay with her. As a consequence, in tort litigation, losses lie most often where they fall and the victim carries the burden of the injustice that befell upon her. In other words, the recognition that remedial duties should be attributed to those at fault doesn't ensure that the victim will be compensated. In this context, the principle of Strict Liability might strike us as being not strikingly more unfair than the alternative, the fault principle, given that the latter often fails to ensure that only those who are at fault have to bear the costs of wrongdoing or harm (Kramer 2005, p. 332).

There is thus nothing radical in having agents bear the costs of events for which they are not at fault: it happens on a daily basis for victims which haven't succeeded in showing that the losses should not stay with her. In these kinds of circumstances, we cannot obtain a perfectly just distribution of duties, but we might still try to minimise injustices. This is why Strict Liability can be said to be a principle that minimises injustice in non-ideal circumstances.

Now, a similar argument could be induced to support the BPP. Of course, it would be better if we could attribute remedial duties to the wrongdoer and ensure that the wrongdoer fulfils his remedial duties to the victim. But in the world as it is, this is often impossible. Sometimes, the responsible individuals aren't around anymore, sometimes they aren't in a position in which they can compensate the victim and sometimes, even more frustratingly, the relevant individuals can't be *shown* to be at fault. In all these cases, in circumstances that are non-ideal, even if we can't attribute remedial duties to the individual(s) responsible for the wrong, we must still find a way of attributing remedial duties which minimises injustices. And attributing remedial duties to the beneficiary isn't more unfair than letting the victim of the injustice bear the burden on her own. So, even if one believes that there is something unfair in attributing remedial duties to innocent beneficiaries, as the BPP recommends, it might be even worse to let the victims bear the cost, and to that extent, the BPP might be more attractive as a principle of duty attribution than previously thought.

6.1 What version of the Beneficiary Pays Principle does the Minimising Injustice Argument support?

However, endorsing such an argument in favour of the BPP has important implications for the kind of BPP one is justified to endorse.

¹⁸ For an example of this intuition, see Shue (2015, pp. 16–17).

First, such an argument can only support a victim-centred version of the principle. If our concern is to ensure that the victim doesn't have to bear the costs of the injustice, then there should be no requirement to repudiate the benefits when this doesn't help the victim.¹⁹

Second, such an argument cannot take the intention of the wrongdoer as normatively relevant. The intentions of the wrongdoer don't have in themselves any impact on how badly off a victim ends up being. Given that the principle is held because we care about alleviating the victim's burden as the Minimising Injustice Argument holds, the intentions of the wrongdoer are irrelevant to the attribution of remedial duties.

Finally, the Minimising Injustice Argument implies that what motivates the BPP is a concern for the victims of the injustice. However, if this is the case, it isn't clear why such a concern should not extend towards victims who have suffered mere harm instead of injustice. The Minimising Injustice Argument on its own doesn't have thus the resources to draw a distinction between harm and injustice. But most proponents of the BPP restrict its application only to benefits resulting from injustices and, with the exception of Haydar (2009), reject its extension to benefits resulting from mere harm.²⁰ So endorsing the Minimising Injustice Argument would have significant further revisionary implications for the BPP.

6.2 Why the Minimising Injustice Argument ultimately fails to support the Beneficiary Pays Principle

First, as I have just highlighted above, the Minimising Injustice Argument on its own can't support the version of the BPP which is held by the majority of its proponents, that is, a version which discriminates between victims of harm and victims of injustice (Goodin and Barry 2014; Haydar and Øverland 2014; Butt 2007). Instead, it supports a revisionary and much broader version of the principle, which grounds restitution to victims of harm as well as injustice. Most proponents of the principle are likely to reject this extension. This doesn't bode well for the Minimising Injustice Argument.

Second, the Minimising Injustice Argument fails to respond to the Arbitrary Victim Objection, which highlighted the arbitrariness of helping only those victims that have suffered an injustice which benefitted a third party. Given that the

¹⁹ I don't want to suggest here that no argument could be made in support of the claim that benefits from injustices ought to be disgorged even when they don't help the victim (in fact the Causal Connection Argument I explore later in this paper could support a beneficiary-centred version of the BPP, which would attribute duties to disgorge even when this can't benefit the victim). Some authors have argued along these lines (Goodin 2013). In law, gain-based disgorgements greater than what is needed to compensate the victim have been justified on the ground that they could provide a deterrent (Edelman 2002). In this section, I aim to highlight that endorsing the Minimising Injustice Argument can only support a victim-centred version of the BPP.

²⁰ This distinction might appear surprising. One might even want to investigate whether such a distinction is reasonable. For my purposes here, I merely want to point out that this distinction can't be supported by the Minimising Injustice Argument. This however shouldn't lead us to reject the distinction, as other arguments in support of the BPP not considered here might be able to justify it.

Minimising Injustice Argument doesn't show that there is anything special about the relation between the victim and the beneficiary of the injustice, it can't really give a plausible explanation for why we should discriminate between victims and help only those whose injustice benefitted us.

Finally, and decisively, the argument on its own can't provide specific support to the BPP. If what matters is to avoid a situation in which the victim alone bears the costs, other principles could also be said to achieve this: we could attribute remedial duties randomly (by attributing the duties to everyone born on the same day as the victim say); collectively (more reasonably), by pooling all the costs generated by injustices or even by combining different principles.²¹ In order to argue *specifically* in favor of the BPP, the argument needs to explain why (at least some) remedial duties ought to be attributed specifically to the beneficiaries of a particular injustice (over other potential duty-holders). The Minimising Injustice argument on its own merely excludes a principle according to which the victim would bear the burden on her own. The Minimising Injustice Argument on its own can't thus support specifically the BPP—or the principle of Strict Liability, for that matter. It just supports a whole category of principles of remedial duties: those principles which won't leave the victim carry the whole burden on her own.

7 The Normative Connection Argument

This seems to highlight a necessary requirement for the BPP to be plausible: we need to find a reason that would explain why it would be appropriate to attribute remedial/disgorging duties *specifically* to the beneficiaries of the injustice and not to anyone else. Barring this, we would have no support for the BPP as such. Let us thus consider the possibility that this reason might be partly given by the special relation that is established by the causal connection between an injustice and a beneficiary.

7.1 The Normative Connection Argument for the principle of Strict Liability

Given that there is some puzzlement as to how exactly causal relations could ground a normative relation (Huseby 2013), I want now to propose possible moves that are available to those who wish to defend the normative relevance of causal relations. Once again, we can gain some insight by drawing on the literature on Strict Liability. There are three possible basis for establishing that there is a normative connection between an agent and her faultless deeds.

First, in order to provide a normative defence for the principle of Strict Liability, Matthew Kramer has tied the infringement of a moral right with a duty to remedy it *irrespective of whether or not the person who caused the right to be infringed is at*

²¹ I don't want to imply that the different principles I examine in this paper (including Strict Liability) are rivals. We could combine different principles by, for instance making the person who is strictly liable responsible for insuring, and hence spreading, the losses (I owe this suggestion to an anonymous reviewer for this Journal). Or in the case of the BPP, by making the beneficiary responsible for insuring.

fault. According to him, the (blameless) infringement of a moral right correlates with a moral duty to remedy it via apologies, compensation, restitution or punishment (Kramer 2005). If an individual's moral right is infringed by *x*, *x* has a duty to remedy the situation in some way.²²

To drive this point home, Kramer considers the case of George who is convicted and jailed for 6 years for a crime that he hasn't committed (Kramer 2005). Assuming that the court fulfilled adequately the requirements of procedural fairness and that all the officials in the system had an impeccable behaviour throughout, it is still the case that George's moral right to be free has been infringed. And it is plausible to believe that George is nevertheless owed at least an apology by the court, despite the fact that the court has done no wrong (Kramer 2005). On this picture, irrespective of whether or not the person who caused the right to be infringed is at fault, he owes a remedy to the individual whose moral right has been infringed (Kramer 2005). The absence of fault might thus have an impact on the nature and size of the appropriate remedy, but it can't fully exonerate (Kramer 2005). In Kramer's case, it is the very nature of rights, which ultimately justifies the irrelevance of fault in cases regulated by Strict Liability.

Second, John Gardner has put forward the claim that morally blameless actions can have an effect on their agent's "moral situation" (Gardner 2015). According to him, in the cases in which an agent is morally blameless yet causally connected to harming someone, it is still the case that the agent in question is morally bound to repair, apologise or explain (Gardner 2015).²³ And this recognition that we are morally bound to offer some justification must lead us to admit that morally blameless actions are capable of having "unwelcome moral consequences for their agents" (Gardner 2015). There are different possible interpretations of what ultimately supports Gardner's view.²⁴

One possible interpretation of Gardner's view is linked to Gardner's conception of reasons. In *Wrongs and Faults*, Gardner claims that:

Reasons await full conformity. If one does not fully conform to a reason—if one does not do exactly what it is a reason to do—the reason does not evaporate. It does not evaporate even though one was justified in not conforming to it. It does not evaporate even though it is now too late fully to conform to it. Instead, it now counts as a reason for doing the next best

²² The remedy principle: If and only if *x* holds vis-à-vis *y* a moral right against *y*'s phi-ing, *y*'s phi-ing will place *y* under a moral obligation to *x* to remedy the resultant situation in some way.

²³ "Morally blameless actions often do change their agent's moral situation for the worse. Often their agent is morally bound to repair, to mitigate, to apologize, or to explain. Explaining includes offering a justification or excuse." (Gardner 2015, p. 3).

²⁴ One possible interpretation that I won't discuss here is that this normative claim ultimately relies on Gardner's conception of 'responsibility in the basic sense' as the 'ability to offer justifications and excuses- or alternatively the ability to explain oneself, to offer an account of oneself, to answer for oneself' (Gardner 2007). I won't discuss this possibility further here, as this conception of responsibility is not widely supported but it could ground the claim that morally blameless actions can have an effect on the agent's moral situation as individuals are responsible in this sense even when they are not substantively responsible.

thing, and failing that, the next best thing again, and so on. (Gardner 2005, p. 103)

On this view, if a duty is violated, and an injustice is committed, the same reason that counted against violating the duty would now count in favour of the provision of reparations, justifications, excuses or apologies. So Strict Liability might be due to the fact that reasons do not disappear but remain to count ‘as a reason for doing the next best thing’. The holding of remedial/disgorging duties might just be a way of responding to these reasons.

Third, another possible basis for claiming that there is a normative connection between an agent and her faultless deeds is to see if it appeals to our considered judgments about cases.²⁵ Consider, for example, the following case: if I lose my balance in the bus because of a sharp turn and, despite holding myself steady with my two hands on a bar, fall upon another fellow passenger harming him on the way, I would be expected to apologise and help in caring for his injury. The fact that we have the considered judgement that we feel obligated to repair, apologise or explain in similar cases suggests that, despite having taken all the possible measures to avoid causing the harm in question, there is something owed to the victim.

Both Gardner and Kramer have suggested that we owe something to those we have blamelessly harmed. But this presupposes the normative relevance of causal relations: something is owed towards the victim when I blamelessly harm her *because there is something special about the relation I have towards the consequences of my actions*. In order to capture this more fundamental intuition, consider Bernard Williams’ case of the lorry driver who *innocently* runs over a child:

[He] will feel differently from any spectator.... Doubtless, and rightly, people will try, in comforting him, to move the driver from this state of feeling, move him indeed from where he is to something more like the place of a spectator, but it is important that this is seen as something that should need to be done, and indeed some doubt would be felt about a driver who too blandly or readily moved to that position. We feel sorry for the driver, but the sentiment co-exists with, indeed presupposes, that there is something special about his relation to this happening, something which cannot merely be eliminated by the consideration that it was not his fault. (Williams 1981, p. 28).

By appealing to our emotions, this illustration could be used to directly defend the normative relevance of mere causal relation, although in doing so we might be departing from Williams’s own purposes. And the sense that we owe something towards the victim derives from this more fundamental sense that an innocent causer is normatively linked to the causal consequences of her action. If this attempt to show the normative significance of causal relations is successful, it might help

²⁵ The justification of such considered judgments can be understood in several ways—as based in their intrinsic plausibility upon reflection, as based on prior intuitions or sentiments that survive critical scrutiny, or as the customary inputs to reflective equilibrium. For my purposes, it is enough that such appeals to our considered judgments are in line with standard practice in moral and political philosophy—including in the debates on the BPP and Strict Liability.

constitute the Normative Connection Argument in defence of the BPP. These cases suggest that the consequences of our faultless action might still be ours to remedy, simply in virtue of our standing to them in a certain causal relation. If this is accepted, then one worry about the BPP is already weakened. I will now turn to consider more directly whether similar ideas can be applied at the other end of the causal chain.

7.2 The Normative Connection Argument for the Beneficiary Pays Principle

I have just described above the view that there could be moral consequences in causing harm innocently. Now I wish to consider whether parallel arguments could be used to support the BPP. To the extent that beneficiaries are causally connected to an injustice, could there be similar moral consequences for being at the receiving end of the causal chain? If both benefiting and causing are relevant forms of causal connections, then it seems reasonable to inquire whether we could acquire remedial/disgorging duties by benefitting from injustices as well as by causing injustices.

Again, there are three ways one could argue for the claim that the causal connection in cases of innocent benefitting matters normatively. The first two ground it in an argument along the lines of those put forward by Kramer and Gardner. The other approach would be to ground it more directly in our considered judgments about relevant cases.

First, following Kramer, one might venture that when fundamental rights are violated, it is in the nature of rights that they generate duties to remedy the violation of these rights. Now in George's case of wrongful incarceration, the court is held accountable for the wrong done to George and at least owe him an apology. But in a case in which the individual who violated the right is not longer around, one might venture that, in the absence of someone identifiable as responsible for this right violation, those who benefitted from this right violation could legitimately be asked to hand back their benefits. Take the case of a painting stolen during the Second World War and now in the possession of someone who bought it off someone else. Although the buyer is not at fault, the painting is a benefit that accrued to him as a result of substantial right violations. This could ground a duty on his part to hand the painting back to the descendants of the victims of these right violations. The initial right violation might thus generate duties to remedy the violation, even in the absence of fault, and these duties might be attributed to those who innocently benefitted from the violation. The limitation of this argument (if it is a limitation) is that it restricts the relevant injustices to those involving right violations.

Second, a similar argument that would avoid this limitation would appeal to the claim about reasons underlying Gardner's argument for Strict Liability. If there was a reason against committing certain injustices, then, if these injustices are nevertheless committed, the same reasons might ground a duty to remedy them. And, if those who committed the injustice can't uphold this duty (because they are not around any more or because they are not in a position to), then the reasons for this injustice to be remedied subsist and need to be 'transferred' to someone else. The fact that some have benefitted from the injustice would identify these

beneficiaries as the relevant duty holders to remedy the injustice in question. After all, they only possess these benefits *because* the injustice had occurred. In support of this view, consider the fact that the benefits are often described in the literature as ‘tainted’. These benefits are considered to be morally tainted because of their causal source in an injustice (Goodin 2013; Pasternak 2014; Parr 2016). These specific benefits thus seem an appropriate source for a remedy for that very injustice given that the wrongdoer can’t remedy the injustice herself.²⁶

Third, one could ground this argument on our considered judgments about relevant cases. Consider, for example, the following case:

Benefitting from Terrorism Terrorists decide that, if they succeed in severely injuring a certain number of individuals, ten cheques of 10,000 euros will be randomly sent to individuals. Now, imagine that you happen to be one of the ten individuals who receive a cheque of 10,000 euros. Would you feel entitled to keep part of this money? Or would you rather feel that you owe at least part (if not all) of the money to the victims?

It would be odd to deny that being the beneficiary of terrorist acts connects you (albeit involuntarily) to those terrorist acts. And, it would be implausible for you not to judge that you owe *something* to the victims. Imagine an encounter between yourself and one of the victims. Even in the case in which you had strong moral grounds for keeping the money (say, because you intend to give it to society’s worse off), wouldn’t you feel that you at least owe the victim a strong justification? If you would feel morally bound to offer such a justification as a result of your benefitting in this and similar cases, this strongly suggests that innocently benefitting from injustice, like causing harm without fault, also affects the moral situation of the beneficiary. Or, at least this seems to follow from accepting the validity of Gardner’s analogous claim in favor of the principle of Strict Liability. So this example, like Williams’s case of the lorry driver, seems to point to a strong conviction that we *can* become involuntarily connected to an injustice and accrue remedial/disgorging duties by merely passively benefitting from it. Or at least, if you find that examples such as Williams’s offer support to Strict Liability then you also have prima facie reasons to accept a version of the BPP.

These considerations might thus lead us to endorse the claim that we can be normatively connected to an injustice and accrue remedial/disgorging duties by merely passively benefitting from injustice. If that is the case, attributing remedial/disgorging duties to the beneficiary would appear to be a natural consequence of this change in moral situation. And we may need to own up to things that we are

²⁶ It is not clear that these arguments adapted from the arguments articulated by Gardner and Kramer can be made without any reliance on some considered judgments about what kinds of connection is normatively relevant. In these arguments, there is an implicit assumption that the beneficiary is the fitting duty-holder. Let us assume that you accept the claim that it is in the nature of rights to demand remediation when they are violated or that you accept Gardner’s claim that the reasons that stood against the violation of certain rights are still pressing us to do the ‘next best thing’. Either way, the argument assumes that the beneficiaries (or the causal agents in the original arguments) are the relevant duty-holders. This assumption is ultimately based, it seems to me, on our considered judgments about the relevant cases.

blamelessly connected to, whether these are the deeds of our ancestors or of our contemporaries, if these deeds have benefitted us.²⁷

7.3 First objection to the Normative Connection Argument: the specialness of agency

It might be objected that there is an important disanalogy between our convictions about cases relevant to Strict Liability and those relevant to the BPP. Judith Jarvis Thomson has argued that our inclination to judge that causality matters in cases invoking Strict Liability could be explained by reference to the value of freedom of action (Thomson 1984). And the insightful remarks of Kramer, Gardner, and Williams are all about the relation between an *agent* and her action. But, innocent benefitting seems to be passive. And, if that is the case, this would introduce a major difference between the BPP and Strict Liability. This major difference might lead us to think that benefitting and causing are two very different kinds of causal connections and therefore have different normative implications.

There are two answers that can be given to this objection. First, it is not necessarily the case that those who are at the beginning of a causal chain are more active than beneficiaries. In order to show this, we can design scenarios in which one passively causes something to happen and in which one benefits by actively doing something. Take the following example: I could be sitting on a bench, while you jog past me. Because you were immersed in your thoughts, as you jog along, you get scared by suddenly seeing another person and fell, badly hurting yourself. I am definitely one of the causes of your harm, but I was not actively *doing* anything. Inversely, consider a scenario in which the more an individual acts in a certain way, the more he benefits from an injustice. Imagine the case in which there are two citizens of a well-to-do nation, each working at the same job. Whereas A is working 7 h a day, B is working 9 h a day and is remunerated extra for these two extra hours. Suppose that the well-to-do nation they are both citizens of, has waged an unjust war, which benefitted the economy of this nation. By being citizens of this nation, they both benefit (let us assume innocently) from this war. If we assume that the benefits to them deriving from the unjust war is proportional to their salary, B would benefit more from the war than A. But B would get this extra benefit through his extra hours of active work. As these illustrations show, we cannot thus assume that beneficiaries are passive, or that causal agents are necessarily active.

Second, to the extent that the Normative Connection Argument is ultimately based on our considered judgments, then it is sufficient that such convictions arise in response to cases such as *Benefitting from Terrorism*. What is crucial is whether in *Benefitting from Terrorism*, one would feel morally bound to offer apology,

²⁷ An implication of the non-identity problem is that in many cases, current people can't be said to be benefitting from past injustices if these injustices are also conditions for their existence, as there is no alternative world in which they exist but don't benefit (Caney 2006). Some have suggested that the BPP isn't entirely vulnerable to that objection as it could merely limit its application (Barry and Kirby 2017). Others have suggested possible ways of avoiding the problem altogether (Butt 2007). However, I am putting aside the controversy related to this issue.

explanation or justification. If one does, then this supports the claim that being at the incipient end of a causal chain is not necessary for a normative connection to be established.

Finally, recall that, even in cases where a beneficiary benefits passively, once considered cross-temporally, being a beneficiary is not constituted merely by the actions and decisions of others: the beneficiary at t_2 , *decides* to retain or repudiate the benefits. At t_2 , the beneficiary is thus not merely a passive beneficiary but a beneficiary who has made a decision and is thus ‘active’ in this sense.

7.4 Second objection to the Normative Connection Argument: the content of the moral debt

Another objection would point out that the crucial question is not *whether* an innocent beneficiary from injustice would feel morally bound to say or do something towards the victim of the injustice but *what* she would feel morally bound to do. After all, even innocent bystanders might have duties towards victims of injustice, so the proponents of the BPP need to show that beneficiaries’ duties differ significantly from those of mere bystanders. In cases such as *Benefitting from Terrorism*, *what* the beneficiary would feel morally bound to do might help indicate whether or not the duties that a beneficiary has towards the victim of an injustice differ from the duties that a bystander has. If our considered judgments about this case attribute the same duties to both beneficiaries and bystanders, this would undermine the claim that beneficiaries have the special duties the BPP attributes to them.

I will focus here on whether beneficiaries have a duty to regret that differs from those of mere bystanders. One might wonder first, why I focus on regret, as the ultimate function of the BPP is to ground *compensatory* duties. It is not my intention here to suggest that, only regret is owed towards victims of injustice. What I want to establish is whether beneficiaries have *special* duties in virtue of the fact that they are beneficiaries (duties that the bystander doesn’t have). If beneficiaries have special duties, we can then investigate what they are. And what they are might differ depending on the specific cases at hand. But the first thing to be established is that there are such distinctive duties that only beneficiaries have.

It does seem plausible that the innocent beneficiary doesn’t need to apologise but merely to express regret. And if one accepts this claim, then it isn’t clear to what extent an innocent beneficiary could be distinguished from an innocent bystander, as he too could feel the need to express regret when witnessing an injustice. So even if the thought experiment shows that something is owed to the victim, as long as this is merely, say, the expression of regret, this fails to show that the beneficiary has a *special* relation towards the victim.

In response to the objection, one could say the following. Even if we grant that regret might be the only thing owed by the beneficiary, one could still argue that there are nevertheless three significant differences between the bystander’s expression of regret and the innocent beneficiary’s expression of regret. First, the beneficiary might have a duty to express regret, whereas the innocent bystander doesn’t have such a duty. It is merely supererogatory of him to express such regret.

Moreover, the duty, which the beneficiary might have is second-personal: he ought to express regret *to* the victim, whereas the bystander could express regret to anyone. In other words, there is a difference in the addressee of the regret. Finally, the innocent beneficiary and the bystander would express different kinds of regret. The beneficiary would express a form of regret that is intimately connected to her life; she would look at parts of her life (at least those parts that were affected by the benefits in question) in a different way. The regret in question would permeate the content of her own life. In contrast, the bystander would express a form of impersonal regret, a kind of regret that is detached from her life. So even if the objection might reject the claim that the innocent beneficiary ought to apologise, it still doesn't actually undermine the main claim that the innocent beneficiary has duties to do certain things as a result of her being the beneficiary of some event or action, even if she is not culpable for it.²⁸

7.5 What kind of Beneficiary Pays Principle does the Normative Connection Argument lead us to endorse?

If we accept the claim that causal connection is normatively relevant, then what kind of BPP should be endorsed? First, if benefiting from injustice is a normatively relevant connection between an injustice and a beneficiary, then the argument might favour a beneficiary-centred version of the principle. On this principle, there is a reason to disgorge the benefits even in the absence of an identifiable victim, as it would be wrong to keep benefits connected in this way to an injustice.

Second, if we endorse the Normative Connection Argument, would intentions to benefit matter? If the normative relevance of causal relations is primarily based on our considered judgments about relevant cases, then the response to that question will depend on whether or not intending to benefit a third party has an impact on these considered judgments. And it would seem that it does (Haydar and Øverland 2014). If one endorses the argument, the normative connection could possibly be said to be strengthened by the presence of an intention to benefit the beneficiary on the part of the wrong-doer. Thus the Normative Connection Argument could support giving normative significance to a wrongdoer's intentions to benefit a third party when committing a wrongdoing.²⁹

²⁸ Moreover, once again, although the beneficiary is not responsible for receiving the benefits at t1, she is responsible for keeping the benefits received at t2 and, to that extent, contributes directly to an unjust distribution of goods. From this perspective, apologies, compensation or punishment might thus still be required.

²⁹ But if the normative relevance of causal relations is based on the claim that we have reasons to remedy injustices, then intentions might matter less. But, as mentioned above, it is not clear to me that the claim can identify beneficiaries as the fitting duty-bearers without ultimately relying on certain considered judgments.

8 Conclusion

I have argued here that there is an important parallel between the principle of Strict Liability and the BPP as they both take special kinds of causal relationships to be sufficient to incur remedial/disgorging duties. Drawing on this parallel, I have examined whether two positive arguments previously introduced in support of Strict Liability could be adapted to ground a defence of the BPP.

I pointed out that these two arguments, the Minimising Injustice Argument and the Normative Connection Argument, are committed to support two different versions of the BPP. To the extent that these two versions of the BPP differ at a very fundamental level, proponents of the BPP might thus endorse views that might be much more at odds than previously imagined—views that differ both in content and in their underlying justification, if they rely –implicitly or not- on one of these arguments.

I have also argued that the Minimising Injustice Argument fails to give, on its own, specific support to the BPP. At best it could only exclude one alternative distribution of remedial duties, that of leaving the burden to fall on the victim alone. Given that I suspect that the Minimising Injustice Argument is what actually motivates many of the proponents of the BPP who support a victim-centred version of the principle, this conclusion might lead them to endorse the Normative Connection Argument and a beneficiary-centred version of the principle, to look for another normative ground for the victim-centred version of the principle or even potentially to give up on the BPP. Moreover, this means that the most prevalent version of the BPP, the victim-centred version, is still on the lookout for a convincing normative ground.

The Normative Connection Argument, in any of its different versions, however, offers a promising and hitherto unexplored normative foundation to the BPP. The force of this argument may depend on whether the relevant considered judgments about the normative significance of faultless causal connection to injustice are widely shared and on whether these judgments ultimately survive critical scrutiny. At the very least the following is true: that if you endorse a version of the Normative Connection Argument for Strict Liability broadly along the lines of the arguments examined here by Kramer and Gardner, then you have a strong *prima facie* reason to also endorse the parallel argument for the BPP.

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