AARHUS UNIVERSITY

Coversheet

This is the accepted manuscript (post-print version) of the article.

Contentwise, the post-print version is identical to the final published version, but there may be differences in typography and layout.

How to cite this publication

Please cite the final published version:

Lippert-Rasmussen, K. (2017). Affirmative Action, Historical Injustice, and the Concept of Beneficiaries. *Journal of Political Philosophy*, 25(1), 72-90. <https://doi.org/10.1111/jopp.12092>

Publication metadata

Title:	Affirmative Action, Historical Injustice, and the Concept of Beneficiaries
Author(s):	Kasper Lippert-Rasmussen
Journal:	<i>Journal of Political Philosophy</i> , 25(1), 72-90
DOI/Link:	https://doi.org/10.1111/jopp.12092
Document version:	Accepted manuscript (post-print)

General Rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognize and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

Affirmative Action, Historical Injustice, and the Concept of Beneficiaries*

KASPER LIPPERT-RASMUSSEN

Philosophy, University of Aarhus

There are many arguments in favour of affirmative action. Some focus on the positive effects of diversity or the provision of role models for underrepresented groups, while others appeal to the need to overcome segregation.¹ Yet others contend that by counteracting the unequal opportunities rooted in past discrimination, affirmative action results in a job market closer to the ideal of meritocracy.² All of these arguments are forward-looking in that they appeal to the positive consequences of affirmative action schemes. This article focuses on a particular backward-looking argument based on the putative obligations of the innocent beneficiaries of past injustices to benefit the

*Previous versions of this article were presented at: University of Tromsø: the ‘Benefiting from injustice’ workshop at the Centre for the Study of Mind in Nature, University of Oslo; Nuffield Political Theory Workshop, University of Oxford; NOMOS 10th meeting, Humboldt University; and the Nordic Network for Political Theory meeting in Copenhagen. I thank the participants in these events—Gustaf Arrhenius, Christian Barry, Daniel Butt, Cécile Fabre, Bashshar Haydar, Beatrix Himmelmann, Fredrik Hjorthen, Robert Huseby, Keith Hyams, Robert Kirby, Frej Klem Thomsen, David Miller, Michael Morreau, Mike Otsuka, Zofia Stemplowska, Jørn Sønnderholm, Jens Damgaard Thaysen, Annamari Vitikainen, and Gerhard Øverland, in particular—for helpful comments and criticisms.

¹Elizabeth S. Anderson, *The Imperative of Integration* (Princeton, NJ: Princeton University Press, 2010), pp. 148–53.

²Andrew Mason, *Levelling the Playing Field* (Oxford: Oxford University, 2006), p. 38, n. 29; David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 2001), pp. 175–6.

involuntary victims of those past injustices. It is backward-looking because it applies only given historical injustices that affirmative action might rectify.

Judith Jarvis Thomson's articulation of this argument is well known. She argues that imposing costs on young white males is morally justified, even though '[n]o doubt, few, if any, have themselves, individually, done any wrongs to blacks and women', since:

they have profited from the wrongs the community did. Many may actually have been direct beneficiaries of policies which excluded or down-graded blacks and women—perhaps in school admission, perhaps in access to financial aid, perhaps elsewhere; and even those who did not directly benefit in this way had, at any rate, the advantage in competition which comes of confidence in one's full membership, and of one's rights being recognized as a matter of course.³

Others have canvassed similar arguments for affirmative action.⁴ One political advantage of such arguments is that, unlike what is the case with arguments justifying affirmative action as a means of mitigating the effects of present discrimination, its proponents need not assert that those harmed by affirmative action discriminate against, or otherwise unjustly disadvantage, those who benefit from it—claims which are often vigorously

³Judith Jarvis Thomson, 'Preferential hiring', *The Affirmative Action Debate*, ed. S. M. Cahn (New York: Routledge, 1995), pp. 45–62, at p. 61.

⁴Bernard Boxill, 'The morality of reparation', *The Affirmative Action Debate*, ed. Cohen, pp. 107–14, at p. 113. See also Boxill, 'The case for affirmative action', *Morality in Practice*, 4th edn., ed. J. Sterba (Belmont, CA: Wadsworth Publishing, 2000), pp. 260–72: 'The argument under consideration simply does not depend on or imply the claim that white people are culpable or blameable; the argument is that merely by being white, an individual receives benefits to which others have partial rights.' George Sher, 'Justifying reverse discrimination in employment', *The Affirmative Action Debate*, ed. Cahn, pp. 71–9, at p. 77, similarly writes: 'past discrimination justifies reverse discrimination only insofar as it has adversely affected the competitive position of present group members'. Likewise Carl Cohen and James Sterba, *Affirmative Action and Racial Preference: A Debate* (Oxford: Oxford University Press, 2003), p. 266: 'It is ... difficult to see how anyone could justifiably complain against an affirmative action program that aims to compensate for past discrimination or its effects when one has oneself unjustly benefited from that very discrimination.'

resisted.⁵ Moreover, affirmative action schemes motivated by Thomson-style arguments seem immune to the objection that they discriminate against white males, since costs are not imposed on them *qua* white males, but *qua* their being the innocent beneficiaries of past injustices.⁶

I will use the following argument—call it *the innocent beneficiary argument for affirmative action*—as a means of structuring my discussion:

- (1) Affirmative action imposes costs on innocent beneficiaries of historical injustices, thereby benefiting innocent victims of those historical injustices.⁷
- (2) It is not the case that affirmative action is unjust in virtue of (1).⁸
- (3) It is not the case that affirmative action is unjust in virtue of any other feature.
- (4) Thus, affirmative action is not unjust.

⁵Anderson, *The Imperative of Integration*, p. 144.

⁶Cohen and Sterba, *Affirmative Action and Racial Preference*, p. 69; cf. Anderson, *The Imperative of Integration*, pp. 162–3.

⁷Distant historical injustices raise the so-called ‘non-identity problem’. In the absence of the relevant injustice, its contemporary, putative victims might not have existed, since past individuals would have procreated at different times, thus, bringing different people into existence. Assuming it is better for the contemporary, putative victims of historical injustices to exist than not (Nils Holtug, *Persons, Interests, and Justice* [Oxford: Oxford University Press, 2010], pp. 129–50), it is thus unclear that they are *victims* of the relevant justice. Similarly, in the absence of historical injustices, none of us living lives worth living would have existed. Accordingly, all of us are the innocent *beneficiaries* of past injustices. I set aside both the victim- and the (underexplored) beneficiary-focused versions of the non-identity problem. See Daniel Butt, *Rectifying International Injustice: Principles of Compensation and Restitution between Nations* (Oxford: Oxford University Press, 2008), p. 106; Simon Caney, ‘Environmental degradation, reparations and the moral significance of history’, *Journal of Social Philosophy*, 37 (2006), 464–82, at pp. 474–6; Christopher W. Morris, ‘Existential limits to the rectification of past wrongs’, *American Philosophical Quarterly*, 21 (1984), 175–82; Derek Parfit, *Reasons and Person*, (Oxford: Clarendon Press, 1984), pp. 351–79. Even if, for this reason, there are few innocent victims/beneficiaries of past injustice, there are some, e.g., contemporary people whose existence is robust with regard to certain recent historical injustices (cf. Edward A. Page, ‘Give it up for climate change: A defence of the beneficiary pays principle’, *International Theory*, 4 [2012], 300–30, at p. 319). Hence, the non-identity problem does not rule out that (1) is true of *some* forms of affirmative action.

⁸This claim does not presuppose that the intention is to benefit the victims of past injustices; only that, in fact, they do so benefit.

Premise (1) might not be true in a strict sense—some who are harmed by affirmative action might not be beneficiaries of historical injustice and some, who benefit from it, might not be innocent victims of historical injustice. Still, in many instances of affirmative action (1) seems approximately true, since, uncontroversially, *many* of the individuals whom affirmative action imposes costs on, are surely the beneficiaries of historical injustices and *many* of those whom affirmative action benefits are the innocent victims of historical injustices. In any case, for the sake of argument I shall simply grant friends of the innocent beneficiary argument that (1) is true. By being an ‘innocent beneficiary’ or an ‘innocent victim’, I mean being such that one is not responsible for having received the relevant benefit or being subjected to the relevant harm.⁹ As indicated in footnote 11, this notion of innocence raises a number of complex issues, which, however, I, given the just stated assumption, set aside.¹⁰

Premise (3) is less plausible than (1). Certainly, some conceivable forms of affirmative action are unjust, for example, hiring doctors in complete disregard for qualifications and, thus, with bad consequences for patients as a result. Moreover, most instances of affirmative action harm some of those who are not beneficiaries of historical injustices and benefit some who are not victims of those injustices, and some think that

⁹Cf. Jeremy Waldron, ‘Superseding historic injustice’, *Ethics*, 103 (1992), 4–28.

¹⁰Suppose that, contrary to what Thomson supposes, contemporary white males are engaged in wronging blacks and women in exactly the same ways that white males did in the past. However, these present wrongs make no difference to the advantages enjoyed by contemporary white males; these derive solely from the similar wrongs committed by white males in the past. Either contemporary, white males are innocent beneficiaries or they are not. If the former, it cannot be assumed that because one is an innocent beneficiary of past injustice, one has a less onerous or less stringent duty to address the situation of victims of this injustice than if one is not. Arguably, racists who benefit from the racist injustices committed by others similar to those they presently exercise themselves have a duty to remedy—‘compensate’ seems the wrong word—their victim’s situation, which is no less stringent than that of the racist in the present example. If the latter, we are using ‘innocent’ in a moralized sense, since, by stipulation, contemporary white males had no influence on whether they enjoy the relevant benefits.

those instances of affirmative action are unjust to the extent that this is the case.¹¹ For the sake of focus, however, I will not dispute (3). Even if (1) and (3) are not fully satisfied by all of the actual instances of affirmative action, some come close enough to doing so that it is of interest to explore what would follow on the assumption that (1) and (3) are true.¹²

Premise (2) reflects an underlying normative principle which, as indicated by the context, is relevant to affirmative action but also relevant, perhaps in slightly revised versions, in many other contexts involving historical injustices, for example, climate justice, global poverty, and compensation for unjust war or land appropriation.¹³

While this argument is my construction, it is sufficiently closely related to arguments that others have presented to be worth rebutting. My quarrel is with premise (2), which I shall argue to be false. While in many cases it is indeed not unjust to impose costs on the innocent beneficiaries of historical injustice, thereby benefiting the innocent victims of historical injustices, this is not always so; and when it is, it is not *because* innocent beneficiaries of historical injustice have a duty *qua* innocent beneficiaries of historical injustice to benefit the victims of historical injustices. Section I argues that

¹¹E.g., Cohen and Sterba, *Affirmative Action and Racial Preference*, pp. 26–33; Alan H. Goldman, ‘Reparations to individuals or groups’, *The Affirmative Action Debate*, ed. Cahn, pp. 35–7. See also Anderson’s ‘rough justice’ defence (*The Imperative of Integration*, p. 140).

¹²If you disagree, rewrite the argument by substituting ‘putatively just instances of affirmative action’ for ‘affirmative action’, where, for an instance of affirmative action to be putatively just, it must impose costs on the innocent beneficiaries of historical injustices and only them, thereby benefiting the innocent victims of those historical injustices and only them (in which case premise (1) is true) and not be unjust in virtue of any other feature (in which case premise (3) is true).

¹³E.g., Norbert Anwander, ‘Contributing and benefiting: two grounds for duties to the victims of injustice’, *Ethics & International Affairs*, 19 (2005), 39–45; Butt, *Rectifying International Injustice*; Christian Barry and Robert E. Goodin, ‘Benefiting from the wrong-doing of others’, *Journal of Applied Philosophy*, 31 (2014), 363–7; Simon Caney, ‘Climate change and the duties of the advantaged’, *Critical Review of International Social and Political Philosophy*, 13 (2010), 203–28; Axel Gosseries, ‘Historical emissions and free-riding’, *Ethical Perspectives*, 11 (2004), 36–60, at pp. 43–6; Bashshar Haydar, ‘Special responsibility and the appeal to cost’, *Journal of Political Philosophy*, 17 (2009), 129–45; Edward A. Page, ‘Climatic justice and the fair distribution of atmospheric burdens: A conjunctive account’, *The Monist*, 94 (2011), 412–32, at pp. 420–4; Page, ‘Give it up for climate change’. I assume that the reason it is not unjust to impose costs on innocent beneficiaries (if it is not) is that they have a duty to compensate innocent victims or, absent that, that they have a duty not to resist others imposing costs on them and thereby compensating innocent victims.

Daniel Butt's arguments offered in support of premise (2) are flawed and, independently of the objections to Butt's arguments, that it is false. Section II shows that premise (2) is ambiguous between being a beneficiary relative to others and being a beneficiary relative to how well off one would have been in the absence of the relevant wrong. While friends of the innocent beneficiary argument are likely to focus on beneficiaries in the former sense, the latter offers sounder grounds for a duty of compensation. Section III explores the two additional complexities of the concept of a beneficiary of injustice casting further doubts on the innocent beneficiary argument. Section IV concludes by offering a luck egalitarian perspective on the idea that innocent beneficiaries of historical justice have remedial duties.

While this article criticizes the innocent beneficiary argument for affirmative action, my aim is not to criticize affirmative action as such. In my view, there is no sound *general* answer to the question 'Is affirmative action just?' On the grounds of *distributive* justice, some forms are just in some contexts, for some groups, while others are not. Still, as will become apparent, affirmative action is never just because of a duty for the innocent beneficiaries of past injustices to compensate their victims.

I. Butt's Arguments

Daniel Butt has influentially defended the claim that 'agents can acquire rectificatory obligations through involuntarily benefiting from acts of injustice'.¹⁴ In this section, I

¹⁴Daniel Butt, 'On benefiting from injustice', *Canadian Journal of Philosophy*, 37 (2007), 129–52, at p. 130; cf. Butt, *Rectifying International Injustice*, pp. 119–20; Daniel Butt, "'A doctrine quite new and altogether untenable': Defending the beneficiary pays principle", *Journal of Applied Philosophy*, 31 (2014), 336–48, at p. 336.

assess his arguments for this claim and propose an objection of my own against it and, by implication, premise (2) in the innocent beneficiary argument.

Butt's most discussed argument—call it *the intuitive argument*—rests on a desert-island example involving four farmers. *A* is hardworking and produces 700 units of resources, which suffices for comfortable living. *B* and *C* are laid back but just, and put in enough working hours so that they can each produce 200 units provided *D* does not intervene. Unfortunately, *D* is laid back and unjust. *D* unjustly tries to divert the water from *B*'s and *C*'s plots of land onto his own. *D*, however, is incompetent and ends up diverting water away from *C*'s and his own land and onto *B*'s. Consequently, *B* produces 400 units and *C* and *D* produce nothing.¹⁵ In despair, *D* hangs himself. *C* is now starving and someone should help him. *A* has more resources than *B* and can better afford doing so than *B*. However, Butt thinks it is counterintuitive to let the remedial duties fall on *A* on account of his greater capacity to help. Instead, he canvasses the following principle (henceforth: *the beneficiary principle*):

If *B* benefits—however involuntarily—from an injustice being committed against *C*, then *B* has a compensatory obligation to *C* to pay *C* compensation up to the point where [*B* is] no longer [beneficiary] of the injustice in question.¹⁶

¹⁵Some people's assessments of this example might be influenced by the notion that the water in question is collectively owned in a (quasi-)legal sense.

¹⁶Butt, 'On benefiting from injustice', p. 142. Cf. Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974), pp. 93–4 (who would reject Butt's principle), and Gosseries' ('Historical emissions and free-riding', p. 47) 'no net cost proviso'. When one is 'no longer beneficiary of the injustice in question' depends on whether we have counterfactual or group-comparison beneficiaries in mind (see section II). For the present purposes, we can leave open whether the obligation in question is one that other agents are morally permitted to enforce, cf. Butt, 'A doctrine quite new and altogether untenable'.

I side with Butt's claim that *B* has duties to starving *C*. However, the intuitive argument does not show that the beneficiary principle is true. First, luck egalitarians can explain the relevant distribution of remedial duties without appealing to the putative duties of innocent beneficiaries. This explanation appeals to the fact that *A*'s superior position at 700 relative to *B*'s—had *B* ended up at 200—reflects nothing but their respective choices. If *B* ends up at 400, however, he has enjoyed good brute luck relative to *A* and *C* and there is a luck egalitarian reason to transfer his brute luck benefits to *C*, who suffered bad brute luck. The upshot is that, to the extent we share Butt's intuition, we cannot know if this supports the beneficiary principle or luck egalitarianism. Further cases, to which I will turn shortly, are required to test which.

Butt also offers another argument—henceforth: *the conceptual argument*—for the beneficiary principle: 'The individual's duty not to benefit from another's suffering when that suffering is a result of injustice stems from one's moral condemnation of the unjust act itself ... We make a conceptual error if we condemn a given act as unjust, but are not willing to reverse or mitigate its effects on the grounds that it has benefited us.'¹⁷

In response to this argument, I make four observations. First, on the proposed rationale, an innocent beneficiary's duty to compensate is grounded in their own views as to which actions are unjust.¹⁸ By implication, if, falsely, I do not consider the relevant act unjust, as far as the conceptual argument goes I have no duty to compensate its victims even if I am an innocent beneficiary of the relevant injustice. However, Butt presumably thinks that an innocent beneficiary of slavery is under a duty to compensate those harmed

¹⁷Butt, 'On benefiting from injustice', p. 143; Butt, *Rectifying International Injustice*, pp. 127–8; cf. Butt, 'A doctrine quite new and altogether untenable', p. 340.

¹⁸Butt supposes that the ground one refuses to mitigate the effect is that one benefited from them. However, this need not be the case. One's reason might simply be that, as one sees it, one has no duty to mitigate them.

by it, even if this person does not think slavery is unjust. Accordingly, he must retract or supplement the conceptual argument.¹⁹

Second, an injustice need not involve the *suffering* of the victim, for example, I unjustly overrule someone's autonomy, thereby promoting this person's interests overall, and some might think that there is a duty not to benefit from the suffering of others even when that suffering is not unjust, for example, a duty not to benefit financially from the just and painful killing of unjust combatants. Hence, the duty not to benefit from the suffering of others is different from the putative duty not to benefit from injustice.

Third, the conceptual argument applies to an innocent *victim* of a historic injustice who is not willing to reverse or mitigate its effects on the ground that it has benefited others whom the victim cares about no less than it applies to an innocent beneficiary. Yet it is difficult to see that a *victim* who is not willing to reverse or mitigate the effects of a past injustice is violating any duty.

Fourth, the claim that it is a *conceptual* mistake to condemn an act as unjust and not be willing to compensate the party who was harmed by the injustice from which one innocently benefited is too strong. There are several factors determining what is just, all things considered, such that the beneficiary principle is only one among several (see my response to Butt's 'distortion argument' below). Moreover, what one ought to do, all things considered, depends on many moral factors other than justice. Some theorists, including G. A. Cohen,²⁰ are pluralists thinking that justice is one value among others and

¹⁹Many of the historic injustices cited in defence of affirmative action schemes are widely acknowledged as such by the innocent beneficiaries of these injustices, e.g., slavery and sexist discrimination. That the conceptual argument applies in such cases is consistent with my claim that the rationale cannot account for the duty of innocent beneficiary to compensate *as such*. In any case, there are historical injustices, e.g., global warming, that are not widely recognized as such by innocent beneficiaries.

²⁰G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), p. 83; G. A. Cohen, *On the Currency of Egalitarian Justice and Other Essays in Political Philosophy* (Princeton, NJ: Princeton University Press, 2011), pp. 7–8; Kasper Lippert-Rasmussen, *Luck Egalitarianism* (London: Bloomsbury, 2015), pp. 211, 231–8.

that the latter are sometimes more weighty. Accordingly, in the light of these two sources of pluralism regarding what one ought to do, all things considered, Butt's claim should be weakened so that it says that, in the kind of case he has in mind, there is a conceptual confusion in not acknowledging *some*, perhaps overridden, reason for one to compensate the victim of injustice. Even that claim, I think, is too strong. Consider the following series of three cases:

The first case is like Butt's.

The second case differs from Butt's case in the following way: *D* manages to divert half of the underground water supply so that, in the absence of any other intervening events, *C* would harvest 100. However, torrential rains wash away the crops from *C*'s lands, but the downpour flows onto *E*'s land, enriching *E*'s crops, who has neither worked less nor more than *B* and, thus, like *B*, *E* enjoys a plentiful harvest of 400.

If there is a remedial duty in Butt's original case, there is also one in this case. However, pace Butt, *B*'s and *E*'s moral duties to transfer resources to *C* are equally strong.²¹ True, *E* is not a beneficiary of unjust actions carried out by anyone, but he is the beneficiary of an event—torrential rainfall—that, like *D*'s unjust diversion of underground water, left *C* 100 units worse off through bad luck. This suggests that the presence or absence of such an unjust *act* makes no difference.

²¹I am not saying that it makes a moral difference that *E* benefits from the event that causes *C* to be harmed. My point is comparative: the case for *E* having a duty to transfer resources to *C* is as strong in this case as in the previous one.

The third case differs from the second in that the rain that ruins *C*'s limited crops does not flow onto *E*'s lands. Unlike everyone else, however, *E*'s land benefits from the unexpected and plentiful precipitation, enabling him to harvest 400 units despite having worked no harder than *B* and *C*. Unlike the previous case, there is no causal connection between *E*'s plentiful harvest and *C*'s poor situation.

The new twist introduced in the third case does not make it morally different from the second. As I see it, *B* and *E* have equally strong remedial duties towards *C* in the second and third cases.²² Given that *B* in case 1 and *E* in case 2 have equally strong remedial duties towards *C*, it follows that *B* in case 1 and *E* in case 3 have equally strong remedial duties towards *C*. Hence, what really matters is neutralizing differential, bad luck; the fact that someone benefits from injustice is irrelevant.²³ Note, incidentally, that Butt's

²²Cf. Axel Gosseries, 'Should they honor the promises of their parents' leaders?' *Ethics and International Affairs*, 21 (2007), 99–125, at p. 119; Kasper Lippert-Rasmussen, 'Are some inequalities more unequal than others? Nature, nurture, and equality', *Utilitas*, 16 (2004), 193–219; Larry Temkin, 'Justice and equality: Some questions about scope', *Social Philosophy and Policy* 12 (1995), 72–104. By 'equally strong', I mean that there is no morally relevant difference between *B* and *E* or between their relations to *C*, such that *B* and *E* ought to address *C*'s plight differently, e.g., one is required to accept greater costs than the other to improve *C*'s plight. An anonymous reviewer noted that the present case—like Butt's own desert island case (but see Butt, 'On benefiting from injustice', pp. 135–6)—is one where it is given that *someone* has a duty to help the worse off person, the only question being to whom this duty falls. He or she suggested that in cases where it is not given that someone has remedial duties, there might be duties of innocent beneficiaries that appear plausible and cannot be accounted for on luck egalitarian grounds. In the last paragraph of this section, I discuss a case where the person to whom the duty of the innocent beneficiary is owed is better off due to good brute luck than the putative duty-holder in order to test this suggestion.

²³Cf. Robert Huseby, 'Should the beneficiaries pay?' *Politics, Philosophy, and Economics*, (2013), 1–23, at p. 9; Carl Knight, 'Benefiting from injustice and brute luck', *Social Theory and Practice*, 39 (2013), 581–98. Haydar, 'Special responsibility and the appeal to cost', p. 142, offers an example which he thinks supports the duties of innocent beneficiaries but which I think is best interpreted differently. He imagines a case where *B* steals *A*'s nice car and, since he no longer needs his own car, gives it to *C*. However, *B* crashes in *A*'s car, destroying it completely. Haydar thinks *C*, i.e., the innocent beneficiary, has a stronger duty to compensate *A* than mere bystanders. Consider, however, the following variation on Haydar's example: The facts are as before except for this one: *C* gives his car to *D*, whose car—one similar to *A*'s—was destroyed by lightning. *C* now learns that the car he gave away was the car of a thief. Has *C* any reason to regret that he gave his car to *D* rather than to *A*? I do not think so, nor do I think *D* has reason to compensate *A*. If so, what explains our discomfort about *C*'s keeping the car cannot be the beneficiary principle—the relevant duty applies in my case as well—rather than a reluctance to benefit from injustice in general—this reluctance would apply in my case as well as Haydar's. Cf. Bob Goodin, 'Disgorging the fruits of historical wrongdoing', *American Political Science Review*, 107 (2013), 478–91; Bashar Haydar and Gerhard Øverland,

conceptual argument, *mutatis mutandis*, supports this claim. If, as he contends, it involves a conceptual error to regard an act as unjust and yet not be willing to reverse, and so on, its effects because it has benefited us, then we also ‘make a conceptual error if we condemn a given *state of affairs* as unjust, but are not willing to reverse or mitigate its effects on the grounds that it has benefited us’.

Inspired by this last observation, some might object that it *is* an injustice that *E* has better brute luck than the others. Hence, both *B* and *E* are beneficiaries of injustice, although they are not both the victims of unjust *acts*. As a luck egalitarian, I cannot reject this. However, if someone can be an innocent beneficiary of injustice by being the beneficiary of differential, non-human-agency-involving brute luck such that ascribing special duties of compensation to such people amounts to subscribing to the beneficiary principle, this principle takes on a different sense than the one its defenders normally ascribe to it. Normally, it is seen as a ‘secondary principle of corrective justice’²⁴—‘secondary’, because the primary duty of compensation falls on the perpetrator of injustice—that is, a violator of a ‘primary’ principle of justice—and ‘corrective’ because the principle does not specify what a just distribution is and can be combined with many different such views.²⁵ Understood along the lines suggested here, however, the principle amounts to a full-blown primary theory of distributive justice; that is, one that enjoins the neutralization of the effects of differential brute luck.

Butt offers a third justification of the beneficiary principle—henceforth: *the distortion argument*: ‘Being a moral agent means being committed to the idea that justice

‘The normative implications of benefiting from injustice’, *Journal of Applied Philosophy*, 31 (2014), 349–62, at pp. 358–60.

²⁴Huseby, ‘Should the beneficiaries pay?’ p. 3; cf. Anwander, ‘Contributing and benefiting’, p. 45; Butt, ‘On benefiting from injustice’, p. 135; Butt, ‘A doctrine quite new and altogether untenable’, p. 337; Page, ‘Give it up for climate change’, p. 306.

²⁵Accordingly, the relevant duties are perhaps best labelled ‘the duty of innocent beneficiaries of unjust, historical *acts* (or ‘historical *wrongdoing*)’. I owe this observation to an anonymous reviewer.

should prevail over injustice. Losses, which others suffer as a result of the unjust actions of other persons, cannot be dismissed as arbitrary or simply unfortunate: they create distortions within the scheme of fair distribution. If no one else is willing or able to make up these losses, then the duty falls to those who are benefiting from the distortions in question'.²⁶ Suppose justice has two components: a deontological restriction on theft and telic luck egalitarianism. Suppose that *A* is worse off than *B* through no fault or choice of his own. Suppose that *C* steals from *B*, thereby benefiting *A* without any foreknowledge and so on, on the part of *A*. According to justice, presently construed, *C*'s theft is an injustice. However, the resulting distribution is just—it was unjust in the first place that *B* did not freely share some of his goods with *A* to bring about an equal distribution. So whatever we can say of any duty *A* might have to compensate *B*, it cannot be that it is a duty to see to it that 'justice prevail[s]' or to eliminate a distortion 'within the scheme of fair distribution'.²⁷

In any case, it is possible to imagine cases in which luck egalitarianism and the duty of innocent beneficiaries to compensate innocent victims give diverging recommendations and where, so I claim, those of luck egalitarianism are more plausible. Suppose *A* unjustly stole some of *B*'s money and thereafter used some of his own gold honestly hoarded to build a precious piece of art, which he buried in the sand on some

²⁶Butt, 'On benefiting from injustice', p. 143; cf. Butt, *Rectifying International Injustice*, pp. 121–2. Huseby ('Should the beneficiaries pay?' p. 12) offers a putative counterexample, where *B* and *D* are harmed unjustly by two different agents, *C* and *E*, both of whom are unable to provide compensation. A fifth person, *A*, innocently benefits from *B* being unjustly harmed, but not from *D*'s being unjustly harmed. Huseby thinks that this demonstrates the beneficiary principle to be wrong because it implies, implausibly, that 'A should only compensate *B*' (ibid.). However, the quoted passage, as well as the beneficiary principle which, as Huseby (ibid., p. 2) defines it, is consistent with there being other grounds or justifications for compensation than the one offered in the quoted passage. (It simply states a sufficient condition for having a duty to compensate.) Note also that Huseby's counterexample does not work against all versions of the beneficiary principle, e.g., it does not work against views according to which beneficiaries have such a duty to *any* victim of injustice.

²⁷Butt, 'On benefiting from injustice', p. 43; cf. Alejandra Mancilla, 'Noncivil disobedience and the right of necessity: a point of convergence', *Krisis*, 3 (2012), 3–15.

desert island. *A* would not have done so, had he not robbed *B*. *B* and *C* come to hear of the buried treasure not knowing the history of its creation. They have equally good opportunities to acquire the treasure. *B*, who is much better off than *C* having been blessed with good brute luck in terms of his genes and upbringing, decides not to search for the treasure while *C* does, thereby succeeding in making himself better off than he was before—though still worse off than *B*. Because *C* is the innocent beneficiary of an injustice done to *B*, he has a duty to compensate *B*, if such duties exist. However, *C* has no such duty on luck egalitarianism, since, after all, he is worse off than *B* as a result of his having bad brute luck. This shows, unsurprisingly, that the two views have different implications. It also provides a counterexample to the view that innocent beneficiaries have a duty to compensate innocent victims, since in the case at hand I do not think that the worse off, innocent injustice beneficiary *C* has any duty to compensate better off *B*.²⁸

I conclude that not only is Butt's defence of the beneficiary principle weak, the principle is counterintuitive.²⁹

II. Interpreting Premise (2) and Affirmative Action

²⁸Butt could not say that, while *C* has a *prima facie* duty to compensate *B*, the fact that *C* is worse off than *B* means that there is another morally relevant factor present that defeats this duty and, thus, *C* owes *B* nothing at all (cf., 'On benefiting from injustice', p. 133). First, this claim clashes with his own claim about the compensatory obligation of *B* in his desert island case. More generally, it implies that duties of innocent beneficiaries are extremely weak—they make a moral difference to what agents ought to do only in the absence of luck egalitarian reasons favouring alternative actions. Second, assuming that moral intuitions about cases where different moral considerations clash are more likely to be reliable than moral intuitions about cases where a moral consideration serves as a tie-breaker, the present response would deprive the duty of innocent beneficiaries-view of any strong intuitive support over the luck egalitarian view.

²⁹Others have offered qualified defences of the beneficiary principle (roughly), which, for reasons of space, I have not addressed. In 'The normative implications of benefiting from injustice', Haydar and Øverland defend the view that duties of beneficiaries exist, but only in the presence of certain 'boosting conditions', e.g., that the wrongdoer intended the beneficiary to benefit; see also Parr, ***title***, ***journal***, forthcoming. They mistakenly contend that such boosting conditions cannot be present in cases of bad brute luck (Haydar and Øverland, 'The normative implications of benefiting from injustice', p. 360); e.g., I allow someone to be prevented by some natural disaster from attending a job-interview in order to benefit another applicant. However, the complexities that I describe below apply to these arguments as well.

Even if we set aside the objections in the previous section, there is an additional problem with an appeal to the duties of innocent beneficiaries in the context of the arguments for affirmative action. The problem is that when interpreted in a manner that makes it more likely to be true that such duties exist, it is less likely that they will support the policies favoured by those supporting affirmative action. This section and the next explore this problem.

Premise (2) (and the beneficiary principle which entails it) refers to the ‘beneficiaries’ and ‘victims’ of historic injustices. However, when sorting people into beneficiaries and victims, one might have different baselines in mind and, thus, sort people in different ways. Suppose that as a result of past injustice a greater proportion of European-Americans than of African-Americans applies for admission to a university and that the former generally apply with better test scores than the latter. Accordingly, European-Americans are overrepresented, statistically speaking, among the university students relative to African-Americans. Had there been no past injustice, the former would not have been overrepresented, and given a fixed number of university admissions and the same pool of university applications, a lower percentage of European-American applicants would have been admitted. In short, European-Americans are the—innocent, let us assume like Thomson—*group-comparison beneficiaries* of the relevant past injustice. This is the kind of beneficiaries that Thomson has in mind in the quotation presented in the introduction, given that she stresses the ‘advantage in competition’ enjoyed by innocent white males, that is, ‘advantage’ means advantage relative to those who are not white males (cf. the quote from Cohen and Sterba in footnote 5).

Suppose, however, that the number of university admissions is not fixed. Had there been no past injustice, America would now be a much richer society. While, for

present argumentative purposes, I can stipulate this to be the case, the assumption is plausible. One reason is that slavery and all its evils resulted in a sub-optimal use of the large pool of talents present among African-Americans.³⁰ According to Ralph Anderson and Robert Gallman, another reason is that slavery was a hindrance to trade in Southern states and, thus, inhibited urban and economic growth there.³¹ A third reason is that, according to one study, slave-owners were more concerned with the size of their plantations and the number of slaves owned than with maximizing profits.³² Accordingly, in the absence of any past injustice, there would have been a greater number of university places—also a plausible assumption—and more European-Americans and, in particular, more African-Americans would have been admitted to university. Indeed, we can assume (implausibly, admittedly) that anyone who is admitted under the present circumstances would have been admitted in the hypothetical, no-historical-injustice scenario. Hence, if beneficiaries are those individuals who are better off given the relevant past injustice than without it—call them *counterfactual comparison beneficiaries*—then there *might* be no beneficiaries of past injustice, even if some contemporary people have been harmed less than others.³³

³⁰Presumably, this claim is congenial to those who endorse diversity-based justifications of affirmative action. In the absence of slavery, arguably, fewer people from Africa would have come to the USA, so I should restrict my claim such that it pertains to the time after the end of the transatlantic slave trade, i.e., 1807, only. Even so, European-Americans are still group-comparison beneficiaries, since European-Americans would not have had a higher chance of admission to university than Afro-Americans under the relevant counterfactual. However, because the African-American proportion of the US population would have been smaller, the proportion of European-American students might have been even higher than today, see Kasper Lippert-Rasmussen, *Born Free and Equal?* (Oxford: Oxford University Press, 2013), pp. 193–216.

³¹Ralph V. Anderson and Robert E. Gallman, ‘Slaves as fixed capital: slave labor and southern economic development’, *Journal of American History*, 64 (1977), 24–46.

³²Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Random House, 1976); Genovese, *****, (*****, 1961).

³³Butt, *Rectifying International Injustice*, p. 110, argues that the morally relevant possible world that determines whether *A* has been harmed by an unjust act done to him by *B* is not ‘the possible world whereby *B* does not approach *A* at all’ or the one that is most probable in the absence of the relevant injustice, but, roughly, one in which *B* treats *A* justly. The present example retains its force on this moralized view of harm, i.e., when the relevant possible world which determines whether African-

The distinction between innocent group and innocent counterfactual comparison beneficiaries is important, because it is less plausible that the former beneficiaries as such have remedial duties. After all, in the absence of historical injustice, the beneficiaries of the first kind might have been better off. It seems harsh that, on top of this harm, they should also incur additional duties of compensation. One indication of the counter-intuitiveness of the duties of innocent group comparison beneficiaries is that all of the examples adduced by the friends of the duties of innocent beneficiaries involve counterfactual comparison beneficiaries.³⁴

It might be argued that, given my previous appeal to luck egalitarianism, I cannot employ the present harshness consideration. From a luck egalitarian point of view, since innocent group comparison beneficiaries may be better off than group comparison victims of past injustice as a result of differential brute luck, according to this view, it might be just to redistribute benefits from the former to the latter. In response, I should clarify that what I find implausibly harsh is not this kind of redistribution, but the view that, relative to bystanders, group comparison beneficiaries have *additional* duties of compensation. Suppose that Asian-Americans are neither the victims nor the beneficiaries of past injustice. For reasons of brute luck, they are as well off as European-Americans. *Ceteris paribus*, luck egalitarians would favour transferring benefits from these two groups to African-Americans to the point where differential brute luck has been eliminated such that, absent relevant differences in choice, members of all three groups are equally well off. The harshness lies in the view that European-Americans, who, *ex*

Americans were harmed 'without the relevant injustice' is one in which they did deal with European-Americans, but one in which the latter treated the former justly.

³⁴Thomson's point in relation to affirmative action, if it is to succeed, must be that the situation of white males even after policies of affirmative action have been put into place is better than it would have been had past and recent injustice not occurred; they derive a net benefit from their social position even when such policies have been enacted' (Butt, 'On Benefiting from Injustice', p. 141).

hypothesis, are *innocent* beneficiaries of past injustice, have additional duties of compensation on account of their so being—duties the fulfilment of which would leave them worse off than the members of the two other groups in question.

Second, if agents can have duties of compensation on the grounds of being group-comparison beneficiaries, it would seem most natural that the content of the relevant duty is not to make the victims of past injustice better off than the victims would have been in the absence of compensation, but to eliminate the relevant group inequality. After all, the ground of the duty is the group inequality and not any benefits received relative to the absence of the relevant injustice. The possibility of levelling down shows that this could be done without benefits to the victims. In the case Thomson discusses, the relevant remedy would be to lower the overall number of university admissions by admitting fewer white males, thereby eliminating the group comparative disadvantages of women and African-Americans. Yet this is not the sort of remedy that Thomson—or other friends of affirmative action—seek, namely, an increase in the absolute number of women and African-Americans admitted.

Finally, we can describe counterexamples to premise (2) and the underlying beneficiary principle when they refer to group-comparison beneficiaries. Suppose white slave owners could enslave 100 Africans for 30 years and another 100 for 60 years, but could not enslave all 200 of them for 60 years. Suppose all white slave owners suddenly die due to natural causes. Do those African slaves who have been enslaved for a shorter period of time have a remedial duty to compensate those African slaves who were enslaved for a longer period of time on account of their being innocent beneficiaries of the latter's longer period of enslavement? Relative to the latter, the former is an innocent, group-comparison beneficiary, so the beneficiary principle, when read in the indicated manner, implies such a duty. This is implausible. The group of Africans who were

enslaved for a shorter period of time do not owe a particular duty of compensation relative to the innocent bystander groups who were unaffected by the relevant historic injustice.

In response, it might be said that they were not beneficiaries of the injustice in question, since the injustice in question is the injustice of enslaving people, whether for life or for 30 years. Once we adopt a sufficiently fine-grained view of injustices, we see that there is no injustice such that it harmed Africans enslaved for a longer period of time *and* benefited Africans enslaved for a shorter period of time. Call this the *individuation of injustice response*. To see how this response goes, suppose slave-owners are sexist as well as racist and enslave all African women among the group of 200 and let all African men go. On the pertinent fine-grained view, this situation involves *two* injustices—first, the enslaving of every second African in the group and, second, the enslaving of every second African in the group in a sexist manner. African women were victims of the former but not the latter. What harmed them is the fact that they were enslaved. They would have been harmed no less—set aside the significant, but compared to enslavement less serious, harm of sexist, symbolic messages and so on—if the enslavement had not been sexist. Moreover, while African males are innocent group comparison beneficiaries relative to that particular injustice—the enslavement of every second African in a sexist manner—they were not the beneficiaries of the event that harmed African women—the enslavement of every second African. Accordingly, since the duty of innocent beneficiaries kicks in only when they benefit from the numerically identical event as the one that harmed the victims of the historic injustice, it does not kick in here.³⁵

³⁵Cf. the distinction between ‘fruits of wrongdoing’ and benefits obtained ‘in consequence of’ wrongdoing, Goodin, ‘Disgorging the fruits of historical wrongdoing’, p. 486. As I see it, Goodin’s distinction (legitimately) points out the need for a certain distinction without explicating it.

Whatever the merits of the individuation of injustice response are in relation to the correctness of the identification of the events from which innocent beneficiaries benefit, the response does not align well with the moral intuitions of the friends of the beneficiary principle. Consider again Butt's desert island case. According to the present line of argument, *B* can point out that the event that harmed *C* was *the diversion of water away from C's plot of land*. This event, however, was not the event from which *B* benefited. He benefited from *the diversion of water way from C's plot of land onto his own*, this event being different from the former. The former event could have taken place without the latter taking place. The individuation of injustice response confronts a dilemma here. Either the fine-grained individuation of historic injustice, to which the response appeals, is warranted or it is not. If the latter, the response is flawed. If the former, then the innocent beneficiaries of historic injustices can have duties to victims of different, but suitably related, historic injustices. In neither case does the individuation of injustice response work.

Assuming my dismissal of the individuation of injustice response is satisfactory, the wider upshot of this section for the innocent beneficiary argument for affirmative action is the following: Affirmative action is often called for when one group is doing much better relative to other groups in a wide range of different contexts. However, such measures are difficult to justify by an appeal to the duties of innocent beneficiaries of injustice, because such a duty is best construed as one that falls on counterfactual comparison beneficiaries and many groups that do better in comparison with other groups are not counterfactual comparison beneficiaries.

III. Benefitting from Injustice

Premise (2) concerns the beneficiaries of injustice. But what is it to be a beneficiary of injustice? As we saw in section II, this question is intricate. In this section, I explore two additional intricacies: 1) actual versus counterfactual sequence accounts of innocent beneficiaries and 2) the upstream versus downstream location of the benefit relative to the historic injustice.

Consider, first, the difference between an actual and a counterfactual sequence account: Country *A* invades oil-producing country *B* and, in the course of doing so, destroys all of the latter's oil wells. Oil prices rise and oil-producing country *C* benefits innocently as a result. Immediately before the invasion, however, environment-friendly country *B* had decided to halt oil production. Hence, *B*'s oil production would have dropped to zero even if *A* had not unjustly invaded *B*. On a counterfactual sequence account, *C* is not an innocent *beneficiary* of injustice, because even if the unjust action had not taken place, oil prices would still have risen and, accordingly, *C* would have been just as well off. On an actual-sequence account, *C* is an innocent beneficiary, because the relevant effect of the decision of the environment-friendly parliament was pre-empted by the unjust invasion, and that event was the one that actually brought about the benefits enjoyed by *C*. Since these two accounts give different answers, friends of the duty of innocent beneficiaries must say whether these align with counterfactual or actual sequence beneficiaries.³⁶ It is not immediately clear what one should say here, because the arguments offered by Butt (see section I) support conflicting answers. The distortion argument suggests that we should focus on counterfactual-sequence beneficiaries: If the same distribution would have resulted in the absence of the relevant injustice, fortunately it did not distort the distribution. However, the incoherence argument fits an actual-

³⁶Cf. Avia Pasternak, 'Voluntary benefits from wrongdoing', *Journal of Applied Philosophy*, 31 (2014), 377–91, at pp. 385–6.

sequence account most naturally: If I enjoy a certain benefit as a causal result of what I consider an unjust act, the relevant duty still applies if I somehow would have enjoyed a similar benefit via a different causal route had the relevant injustice not taken place. This indicates that a satisfactory solution is not a conjunctive one according to which the relevant duty applies both to actual and counterfactual-sequence beneficiaries and, thus, that Butt's arguments discussed in section I point in different directions.

Consider, next, the causally up versus downstream issue.³⁷ Defenders of the duty of innocent beneficiaries have considered cases where the benefit is causally downstream from the unjust act, for example, Butt's desert island case above. However, benefits could also be causally upstream. Suppose *A* sells various components to *B*, *B* makes a gun out of them, and sells the gun to *C* who uses it to rob *D*. Here, *A* innocently benefits from selling the components to *B*. *A* had no way of knowing that the components could be made into a gun. The benefits *A* innocently enjoys are not causally downstream to the unjust act. The question then becomes whether upstream, innocent beneficiaries also have duties. It is unclear what a friend of the beneficiary principle should say. On the one hand, she could say that while *A* benefited from doing something non-wrongfully, which ultimately rendered it possible for *C* to wrongfully harm *D*, *A* did not benefit from *C*'s wrongfully harming *D*. Once the trade was made, it would have made no difference to *A*'s level of benefits if *B* had stored away the components, in which case *C* would not have wronged *D* (let us suppose). On the other hand, the view that *A* has no special duty to compensate *D* is counterintuitive. Suppose that, having robbed *D*, *C* gives unsuspecting *E* a certain sum of money which equals *A*'s profit from selling the components. On the suggested view, *E*—but not *A*—has a special duty to compensate *D*.

³⁷Presumably, the relative locations time-wise of the unjust act and the benefit are morally irrelevant.

However, it is unclear why different duties should apply to these two innocent beneficiaries given that both are causally related to the wronging of *D* in a way that was beneficial to them.

Some might accept that *A* and *E* are not differentially related to *D* in terms of duties to compensate but deny that this shows that the distinction between upstream and downstream benefits is irrelevant, since the relevant equivalence might be explained by the following: While *E* has a duty to compensate *D* by virtue of being an innocent beneficiary, *A* has a duty to compensate by virtue of contributing causally to the unjust harming of *D*.³⁸ I have two responses to this challenge.

First, compare a case that is similar to the one I have described in all respects except for the fact that *A** did not benefit from selling the components. Most would not think *A** has as strong an obligation to compensate *D* as *A* has. If so, causal contribution cannot explain the moral equivalence in my original case. Similarly, most would not think that *A** has a duty to compensate *D* that is as strong as *E*'s duty to compensate *D*. Again, if that is the case, causal contribution cannot explain the moral equivalence in my initial case. By way of further support for this claim, note that it is extremely common for people to innocently contribute causally to unjust acts; for example, I innocently give a lift to a hitchhiker, who then robs a bank, which he would otherwise not have been able to do. In such a case, hardly anyone would think that I am under a duty to compensate.

Second, the objection assumes that causal contribution grounds a duty of compensation. That might be fine, but that view does not explain why, independently of benefits, the relation that I shall label 'causal reception' does not similarly ground a duty of compensation. An agent is a causal receptor of an unjust, harmful action if that event

³⁸I thank an anonymous reviewer for this challenge.

contributed causally to the agent having the goods that the agent has. Since a causal receptor might have had more goods in the absence of the unjust, harmful action, a causal receptor need not be a beneficiary. The question—‘Why are the duties of innocent causal contributors more stringent than the duties of causal receptors?’—is not answered simply by saying that the latter did not causally contribute to the unjust, harmful event, since the former was not—at least not *qua* causal contributor—a causal receptor of that event. Arguably, both the goods of the contributor and the receptor are ‘tainted’ by virtue of the causal connection to the unjust, harmful event.

While the considerations adduced in this section do not show that the beneficiary principle is false, together with arguments in the previous section, they show that the forms of affirmative action that the innocent beneficiary argument can justify might differ radically from those forms normally favoured by its proponents. If, for instance, upstream beneficiaries of unjust acts have duties to compensate victims and if such duties are passed on to descendants who benefit innocently from the gains of the original upstream beneficiaries, Thomson’s focus on European-Americans is too narrow, for example, the descendants of European shipbuilders, who innocently benefited upstream from US slavery, are beneficiaries of historical injustice. Also, if the beneficiary principle pertains to counterfactual beneficiaries, European-Americans might have no duties of compensation *qua* beneficiaries of past injustice.

IV. Conclusion

This article has explored the innocent beneficiary argument for affirmative action. I have shown that its crucial premise (2) cannot be grounded on Butt’s three arguments in defence of the beneficiary principle. Furthermore, I have offered positive reasons to reject

the beneficiary principle. In sections II and III, I charted three ambiguities hidden in ‘beneficiary’, arguing that once they are resolved, the innocent beneficiary argument yields conclusions different from the ones its proponents favour. In closing, I would like to say something about luck egalitarianism and its relation to the beneficiary principle and, more generally, to corrective justice, as well as something about how luck egalitarianism relates to the three complexities discussed in sections II and III. In part, this is motivated by my claim that luck egalitarianism explains the intuition appealed to in Butt’s intuitive argument (see below).

Luck egalitarianism is a view about distributive justice. The beneficiary principle is a principle of corrective justice. I am sceptical of the beneficiary principle. However, luck egalitarianism is compatible with corrective justice.³⁹ First, as already mentioned, luck egalitarians can be pluralists about justice. They might say that luck egalitarianism captures one among two or more determinants of what justice requires, all things considered, another determinant being corrective justice. This view is not *ad hoc*, since luck egalitarians are pluralists about morality in general and no luck egalitarian has ever suggested that it replaces corrective justice.⁴⁰

Second, while pluralists acknowledge that different fundamental moral concerns often cannot be maximally realised together, at least some claims of corrective justice are co-realizable with the demands of luck egalitarianism. In a recent article, Robert Goodin defends disgorgement as a response to past wrongdoings, which is proper in many contexts.⁴¹ Disgorgement takes place when beneficiaries relinquish their tainted goods, for example, by transferring them to society’s common pool. Suppose we have an initial

³⁹Cf. Gosseries, ‘Should they honor the promises of their parents’ leaders?’ p. 119.

⁴⁰Cf. Cohen, *On the Currency of Egalitarian Justice*; Larry Temkin, *Inequality*, (Oxford: Oxford University Press, 1993); Gosseries, ‘Historical emissions and free-riding’, pp. 49–50.

⁴¹Goodin, ‘Disgorging the fruits of historical wrongdoing’.

distribution, which is just by luck egalitarian standards. Suppose also that an innocent beneficiary voluntarily disgorges a certain value, the possession of which by her is tainted by past injustice, and as a result ends up worse off than others. The resulting inequality is nevertheless not unjust by luck egalitarian standards, since the innocent beneficiary's being worse off results from her own choice. This is so, even if disgorging is morally required.⁴² Some might regard this view as too lax, but, interestingly, in a recent article, Butt 'sidesteps' the question as to whether duties of innocent beneficiaries should be enforced by the state.⁴³

Turning now to my second task—about how luck egalitarianism relates to the three distinctions drawn in sections II and III—I argued that once we are clear about these three distinctions, we see that, on some understandings, the principle has implications very different from those its friends take it to have. On other understandings it does not cohere well with the arguments offered in its support and fails to explain the intuitions taken to support it. If the same is true of luck egalitarianism, the part of my critique of the beneficiary principle, where I appeal to luck egalitarianism, is weakened. Fortunately, none of the three distinctions drawn need worry luck egalitarians.

Consider, first, the distinction between counterfactual- and group-comparison beneficiaries. Since luck egalitarianism is only concerned with how people's distributive positions relate, it is not concerned with whether anyone is a counterfactual comparison

⁴²This generalizes to cases involving initial inequality. To the extent that, from an initial unjustly unequal distribution, someone affects her relative distributive position by voluntarily disgorging fruits of past injustice, her being worse off than others to a degree corresponding to the disgorged benefits is just. At this point, I am not claiming that someone's being worse off as a result of doing what she is morally required to do is never unjust by luck egalitarian standards, cf. Kasper Lippert-Rasmussen, 'Luck egalitarianism: faults and collective choice', *Economics and Philosophy*, 27 (2011), 151–73. I am sketching the implication of a standard way of understanding luck egalitarianism, cf. Larry Temkin, 'Justice, equality, fairness, desert, rights, free will, responsibility, and luck', *Responsibility and Distributive Justice*, eds. C. Knight and Z. Stemplowska (Oxford: Oxford University Press, 2011), pp. 51–76, at p. 68.

⁴³Butt, 'A doctrine quite new and altogether untenable', pp. 336, 346.

beneficiary, for example, whether, in a non-relational sense, someone would have been better off had certain historical injustices not taken place.⁴⁴ Also, standard luck egalitarianism is unconcerned with who are group-comparison beneficiaries *per se*. Its concern lies with inequalities between individuals, and though the presence of group-comparison beneficiaries and group-comparison victims it is a reliable indicator of unjust inequalities between individuals, the two can diverge as when the elimination of *intergroup* inequalities requires greater *intragroup* inequalities.

The distinction between actual- and counterfactual sequence beneficiaries should not unsettle luck egalitarians, either. As drawn here, the distinction concerns benefits in an absolute sense and, as noted in the previous paragraph, luck egalitarians as such are only concerned with people's relative distributive positions.⁴⁵ A similar point applies to my third and final distinction: the one between down and upstream beneficiaries. Moreover, since both innocent up and downstream beneficiaries benefit from good brute luck and since, for luck egalitarians, the distinction between brute and option luck is crucial, this distinction cuts no ice for them.

In conclusion, luck egalitarianism is untroubled by the three distinctions my critique of the beneficiary principle in sections II and III draws upon. Furthermore, luck egalitarianism explains the core intuition, which Butt and others appeal to in motivating the beneficiary principle. Admittedly, other cases can be devised where the two views have conflicting implications, for example, cases where the possessions of someone who

⁴⁴While luck egalitarianism is not interested in counterfactual benefits, pluralist luck egalitarians can be.

⁴⁵Admittedly, the distinction between actual-and counterfactual sequences (and, for that matter, the distinction between up and downstream) beneficiaries cut across the distinction between group-comparison and counterfactual beneficiaries, e.g., a group can be made better off than another group as a result of a certain political decision even though, had this decision not been made, a different political decision would have been made that would have made it even better off. I ignore this complexity, since friends of the beneficiary principle will have little interest in the concept of counterfactual sequence, group-comparison beneficiaries.

is worse off than another purely as a result of bad brute luck are the fruits of past injustice (see end of section I). In such cases, however, the implications of luck egalitarians are more credible and, as we have seen, luck egalitarianism does not rule out all forms of responses to historical injustice, for example, excuses or even voluntary disgorgement. This adds up to a strong case for rejecting the beneficiary principle. Moreover, even if it were true, for reasons that came out in sections II and III, it serves very poorly as a justification for standard schemes of affirmative action.