

Intending to Benefit from Wrongdoing

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Abstract: Some believe that the mere beneficiaries of wrongdoing of others ought to disgorge their tainted benefits. Others deny that claim. Both sides of this debate concentrate on unavoidable beneficiaries of the wrongdoing of others, who are presumed themselves to be innocent by virtue of the fact they have neither contributed to the wrong nor could they have avoided receiving the benefit. But as we show, this presumption is mistaken for unavoidable beneficiaries who *intend* in certain ways to benefit from wrongdoing, and who have therefore done something wrong in forming and acting on such an intention

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This article is concerned with the moral assessment of agents who benefit from the wrongdoing of others. Our running example involves the assassination of the President. In the aftermath of the assassination, the Vice President automatically becomes President, and that promotion is of benefit to her. Of course assassinating the President is wrong. But suppose the Vice President was not in cahoots with the assassin, nor was there anything she could have done to prevent his dastardly deed. She simply benefits from his wrongdoing by gaining higher office, and there was nothing that she could do to avoid doing so.

Is there is anything wrong with her benefiting in that way? Many would answer in the negative. If the Vice President is merely the innocent beneficiary of the wrongdoing, and she could not have avoided benefitting

from it, then the fact that her benefit derives from someone else's wrongdoing is (they would say) no cause for moral concern. Recently, however, a different approach to such cases has been emerging. Advocates of what we will call the "wrongful benefits" principle argue that there is something wrong in enjoying the fruits of wrongdoing, and that moral duties fall upon even innocent and unavoidable beneficiaries of wrongdoing in consequence. They are under a duty to give back or to give up benefits that they hold as a result of wrongs – even if those wrongs are not their own, and even if they could not have avoided receiving the benefit. In the case of the Vice President (particularly one whose own political agenda is very different from the dead President's) that might mean that she should resign or to call early elections after an assassination, in a way she would have no reason to do had President died of natural causes.¹

The wrongful benefits principle has been defended on various competing grounds (see e.g. Butt 2007; Goodin 2013).² Various objections have also been raised against it (e.g. Fullinwader 1975; Husbey 2015; Knight 2013). For the purposes of this article, we remain agnostic as to which view is correct. Instead, our goal is to draw attention to an oversight on the part of all parties to that debate. Both defenders and deniers of the principle of wrongful benefits focus on people who are *unavoidable* beneficiaries of the wrongdoing of others, agents who have not contributed to the wrong themselves and who cannot avoid receiving the benefit (e.g. Anwander 2005; Butt 2007; Goodin 2013; Gosseries 2004; Huseby 2015). The Vice President is typical in that regard. Supporters of the principle of wrongful benefits argue that, although such unavoidable beneficiaries are not to blame for their being in their

situation, there is nonetheless something wrong about the fact of being in their situation, and the wrongness of that generates duties of disgorgement.

Deniers of the principle argue that there is nothing morally wrong about beneficiaries being in that situation, and that therefore no special duties of disgorgement arise.

What both sides of the debate ignore, however, are the *intentions* of beneficiaries with regard to their benefit and to the wrongdoing from which the benefit (unavoidably) arose. Consider again the Vice President. Suppose that she intended both the benefit (her acquiring higher office) and the President's assassination as a means to that. Indeed, suppose that she intended to hire someone to assassinate the President so she could secure his office, if necessary. It just so happened that she did not need to act on those intentions, because the benefits were anyway bestowed on her when someone else assassinated him first. Be that as it may, the fact that she harboured such intentions should, we will argue, alter our moral assessment of her. Intending that a wrongdoing occur, so that you can benefit from it (or for virtually any other reason, come to that), can be wrong in itself, in ways we shall show.

This proposition has implications for both supporters and deniers of the wrongful benefits principle. Those who oppose the principle must acknowledge there is at least one type of unavoidable beneficiary from wrongdoing whom they too should agree has done wrong – viz., unavoidable beneficiaries who had been intending the wrongdoing from which they benefit. Those who support the principle of wrongful benefits should similarly recognize that people who intended to benefit from the wrongdoing of others

are worse than people who merely find themselves in that position, and people who intended the wrong from which they benefit are worse yet again.

In short, the fact that agents are unavoidable beneficiaries of wrongdoing cannot in itself fully settle the moral assessment of those agents, as has hitherto been assumed in the literature. Rather, a full moral assessment of such agents also requires us to assess their intentions concerning the benefit and the wrongdoing from which it arises.

The article unfolds as follows. Section I explores in greater detail the problem of assigning moral responsibility to agents like the Vice President. A common objection to attributions of moral responsibility in such cases is that, since the Vice President has not *done* anything to contribute to the actual assassination as it actually transpired, she is not morally blameworthy. Our response is that, by intending that the President be assassinated, the Vice President has in fact engaged in some blameworthy "doing." Section II explains how intentions involve "doings" for which moral responsibility – and following from that, a duty to relinquish benefits – can be assigned. Section III returns to the question of benefiting from wrongdoing. We identify two types of "intending to benefit," distinguishing between those who "intend to benefit conditionally" and those who "intend to benefit *simpliciter*" (and hence who must intend the wrongdoing from which they benefit). We then examine how both defenders and deniers of the wrongful benefits principle should view people in each position. Section IV examines the problem of how to tell intentional beneficiaries apart from unintentional ones, and points to the overall implications of our account.

I. Would Have Done

Return to our running example. Suppose that, while the Vice President was in no way involved in the assassination that actually occurred, she had decided to gain higher office by arranging the President's assassination herself if necessary. She *would have* facilitated the wrongdoing, had that been necessary in order for her to obtain that benefit. She *would not* have intervened to prevent the assassination, even had she been able to do so.

As it turned out, however, someone else assassinated the President first. There was nothing the Vice President needed to do to ensure his death or her elevation as a result of it, nor was there (as it turned out) anything she could have done to avoid either his assassination or her elevation. But of course (or so let us suppose) she couldn't have known that someone else would assassinate the President (with any certainty, anyway) at the time she was deciding what she would and wouldn't do to secure the presidency for herself.

In describing the Vice President's intentions, we spoke of things she "would have done, if necessary." She would have, if necessary – but the blunt fact of the matter is that it wasn't, and she didn't. Can you ever be implicated in wrongdoing purely by virtue of facts about what you counterfactually *would* (or would not) have done? Does what people "would have done" morally matter, in ways that can implicate them in a wrongdoing?³

Maybe not. Recall Ronald Dworkin's story of the poker game (Dworkin 1975, 18):

Suppose you and I are playing poker and we find, in the middle of a hand, that the deck is one card short. You suggest that we throw that

hand in, but I refuse because I know I am going to win and I want the money in the pot. You ... say that I would certainly have agreed to that procedure had the possibility of the deck being short been raised in advance. [I reply:] I am lucky that you did not raise the point....

Dworkin says that, from the fact "that I would have agreed if I had been asked in advance of play[, i]t does not follow that those rules may be enforced against me if I have not, in fact, agreed to them." (Ibid.) And that is surely the correct conclusion in that case – or anyway it is in a raft of cases closely related to that one.⁴

There are other cases, however, in which what you "would have done (but didn't)" does seem – at least at first blush – to matter in ways that implicate you as a joint wrongdoer together with those who have themselves performed the wrongful action. Consider the case of the backup assassin:

Jack and Jill are partners in a conspiracy to assassinate the president. Each came to today's rally with a loaded gun. Jack will be in a good position to take the first shot (he will be in the receiving line to greet the president upon arrival). Jill serves as the backup assassin, who is firmly resolved to kill the president if for any reason Jack fails to. In the event, Jack is successful and Jill never needs to fire her weapon.⁵

Backup assassin Jill is clearly an accomplice in the assassination. She did not merely commit some other wrong related to but different than "assassination" (in the same way that "attempted murder" is a separate offence in the vicinity of "murder"). She literally *took part* in the assassination.

In the case of the backup assassin, however, what makes her part of the assassination is not what Jill "would have done," had Jack's pistol jammed. It is not that *counterfactual* that implicates her in the assassination. Instead, it is a fact about things that she *actually* did do. She participated in the conspiracy. She accepted the backup assassin role. She came on the

appointed day, pistol loaded and ready to shoot. Ex hypothesi, in our running example, the Vice President didn't do any of those things.

Let us take the backup assassin as our template, however. The lesson to be drawn from that case for the analysis of a would-be assassin – like the Vice President – is that we need to be looking for some sort of a *doing*, not a "would have done," if we are to blame the Vice President in relation to the wrong of assassinating the President.

Could a beneficiary such as the Vice President in our running example in any sense be *doing* something that implicates her in wrongdoing? She has not conspired or colluded in the wrongdoing or failed to prevent it; nor, as it turns out, could she avoid benefitting from it. Still, we will argue that she has done something that amounts to wrongdoing – a doing connected with her coming to have the intention that a wrong be done, and further doings that follow from that. And, we shall argue, those doings implicate her in the wrong of assassinating the President – in that *type* of wrong, even if ex hypothesi not in the *token* wrong of the President being assassinated at the particular moment by the particular gunman who actually assassinated him. She has done things to see to it that the President is assassinated, and those doings are wrong, even if her own doings are causally inert in the actual way in which the President ends up being assassinated.

II. Intentions and Doings

Certainly at criminal law, and some would say in morality alike, ascriptions of blameworthiness for wrongdoing require the conjunction of *mens rea* and an *actus reum*. Wrongdoings represent the confluence of intentions and actions.

Just as there can be no wrongdoing without wrongful intentions, neither on this account can there be any wrongdoing without a wrongful doing.⁶

That is contestable. But those who think that bad attitudes are enough to condemn someone as a wrongdoer will need no further convincing that the Vice President is in the wrong. So the focus of this article will be on someone who thinks that wrongful doings as well as wrongful intentions are indeed required for there to be a wrong.⁷ Our argument will be that that proposition should not lead us to absolve agents like the would-be-assassin who "merely intends to do wrong" of all moral responsibility for wrongdoing.

The reason is precisely that there are certain types of doings that the would-be assassin is actually engaged in (one of which is familiar within the philosophy of action, the other less so). Furthermore, as we will show in the next section, these sorts of doings should at least sometimes be regarded as wrong, a connection that action theorists have not heretofore drawn (e.g. Mele 2003). Identifying those wrongful doings that may be involved with intendings constitutes our answer to the challenge "where's the *actus reum*?" in intending to benefit from wrongdoing.

A. What We Do When We Intend

Intentions, like beliefs, are states of mind. As such, they do not in themselves constitute actions or hence "doings." Yet even if "having an intention" is not an action in itself, "coming to have it" and the consequences of having it will almost (if not quite) invariably involve some genuine actions.

Confronted with the question "where's the action in intending?" Donald Davidson (1980, 89) replies, "the action is forming an intention."⁸ True,

perhaps not all intentions are self-consciously formed own (Mele 2003, chapter 9). But even where we come by intentions in ways other than by a deliberate act of will in forming them, a related mental action would be involved in "reflectively endorsing" those intentions as our own.⁹ For simplicity, we shall henceforth use the term "forming" to cover both cases. The crucial thing to note for present purposes is just this. Both forming and reflectively endorsing an intention constitute an exercise of the will. "Forming," "endorsing" and "exercising" are all active voice terms that seem perfectly apt in this context, even though no physical action has taken place.¹⁰

Intending of this sort is "practical intending" directed at an exercise of agency (Bratman 1987). Practical intending is not just "fantasizing" or "envisioning." Practical intending concerns a plan to do something, something that is intended to (and might realistically, with some non-negligible probability) happen through the agency of that agent.¹¹ Admittedly, the actions that practical intending involves (forming the intention, or reflectively endorsing it) are mental actions. Furthermore, they may be quite brief, over in an instant. But they are no less actions for either of those facts. They are the very first steps in the exercise of one's temporally extended agency (Bratman 2007, chapter 2). They are not merely a precursor toward some subsequent "genuine" doing, but rather already *part* of that doing.

A second set of actions consequent upon practical intendings involve what we call "exercises of supervisory agency." When you form or reflectively endorse an intention that something becomes the case, you commit yourself (among other things) to "seeing to it" that that happens. That "seeing to it" is what we refer to as the "exercise of supervisory agency."

In some cases, that might entail taking some overt actions of a physical sort. For example, an agent who forms the intention to assassinate the President might "see to it" that the assassination happens by purchasing a gun herself, attending the election rally pistol at the ready, and so on. In other cases it might involve encouraging or facilitating others in doing it, or simply getting out of their way. But in some cases, "seeing to it" might involve no more than checking that someone else is doing the job. It is in the nature of supervisory agency that, if all is proceeding as they wish, supervisors need not intervene actively in the course of affairs.

Suppose that the Vice President, immediately upon forming the intention that the President die, learns that unidentified others are planning to assassinate him. She keeps an eye on the newspapers to make sure they have not been arrested yet; she bides her time, standing ready to kill the President if they do not; but the others soon succeed, rendering her redundant. In one sense, the Vice President did not have to do anything. But in another clear sense, she already has done something, in checking to make sure that the plans of the other assassins had not been thwarted before the assassination occurs. She has "turned her attention" to the matter, she has opened the newspaper, and so on. The actions, mental or otherwise, involved in such exercises of supervisory agency constitute a second *actus* grounding the agent's moral blameworthiness for wrongdoing.

Of course, "just checking" is not necessarily wrong in itself. It depends on the purpose. Checking to see if wrongdoing of others is going to occur can be the right thing to do (as it is, when it is the precursor to taking steps to prevent such wrongdoing, for example). Whether the checking is right or

wrong depends on the future details of the larger plan – the larger exercise of temporally extended agency – within which the checking is embedded. That is the sense in which "checking to see if there's anything I can do to prevent it" is morally importantly different from "checking to make sure there's nothing else I need to do to make sure it will happen."

Relate this, now, back to the Dworkin-inspired argument against basing moral culpability on counterfactuals. "What someone would have done," without any actual "doing," is indeed insufficient to ground moral culpability in that person (At least in the sense we are interested in here). That the Vice President would have arranged the President's assassination herself if someone else hadn't is not what gets her into moral trouble. Instead what gets her morally into trouble is what she *has done*, in forming the intention that the President be assassinated, and checking whether or not she needs to act further on those intentions.

B. Moral Responsibility for Intending

Where exactly is the wrong in that? Clearly, in the case of the Vice President, it is not the wrong of actually herself assassinating the President. That came about, in the end, wholly through someone else's deeds. Nevertheless, we assign moral responsibility not only for doings that actually result in wrongs. We also assign moral responsibility for doings that run an unacceptable (i.e., morally unreasonable) risk of resulting in a wrong, even if in the end that does not eventuate in a wrong.¹²

Morality is not only supposed to provide us with post hoc assessments of fault and responsibility, credit and blame for what has already actually happened. Paradigmatically, morality is supposed also to be action-guiding. It is supposed to tell us how we should act at the time of acting, and in a world where we cannot know for certain what results our actions will yield. Rather than restricting our moral concern to retrospective reckoning of responsibility for the bad outcomes that an agent's actions have actually caused, we should extend it prospectively to all the outcomes that their actions could (with appreciable probability) have been expected to cause at the time those actions were undertaken.

One way of thinking about that is to ask whether the agent's actions supplied a NESS condition for the occurrence of a bad outcome.¹³ By definition, ξ is a NESS condition of wrongdoing φ if and only if ξ is a necessary element of a sufficient set of conditions for wrongdoing φ to occur. There may be other necessary elements of the set of conditions required for φ to occur in that particular way; and there may be other ways (other sufficient sets of conditions) for φ to occur.

Still, supplying a NESS condition such as ξ makes a *modal* difference. It makes it possible for wrongdoing φ to occur, which would be impossible (along that particular pathway anyway) in the absence of ξ . That makes the agent supplying the NESS condition ξ potentially causally responsible for wrongdoing φ occurring, and morally responsible for that.¹⁴

We assume here, of course, that the agent in question is capable of knowing that what she is doing does indeed constitute a necessary condition for a bad outcome to occur, in one of the possible ways it might occur. If there

is no way she could or should have known that, then she is excused moral responsibility on grounds of "unavoidable ignorance."¹⁵

Crucially, we take it as axiomatic that any real-world agent almost invariably acts in circumstances of uncertainty (not least because of uncertainty surrounding what other human agents will do). An agent whose action supplies one of the necessary conditions for some bad outcome occurring typically does not know at the time of acting whether all the rest of the conditions that are required for that outcome to occur will also be present. Nor does she does not know at the time of acting whether some other sufficient set of conditions will causally pre-empt the one to which her action contributes a necessary element. All she can do is assess a probability distribution over all those eventualities: how likely it is that the set of sufficient conditions to which she contributes one necessary element will actually end up producing the bad outcome in question.¹⁶

Depending on the probability of that (and of course on how bad the outcome would be), we might judge her to have run an unacceptable risk of becoming causally, and hence morally, implicated in a bad outcome.¹⁷ Forming an intention positively related to wrongdoing might, depending on that calculation, count as wrong in just that way.

Return now to the case of the Vice President with which we began. There may be other ways (other sets of sufficient conditions) whereby the President's assassination might occur; and there may be other necessary elements missing that in the end preclude the assassination from occurring, even if the Vice President supplies that one necessary element for its occurring in some way involving her. Nonetheless, if by forming the intention

to assassinate the President, the Vice President provides one NESS condition for the assassination occurring in one way it might, she has done something that could well have made all the difference to the wrongdoing occurring. Of course, in the scenario that we are here envisioning, it turns out in the end that the assassination would have happened whatever the Vice President's intentions. In retrospect, she can look back and say: "It was inevitable; there was nothing / needed to do to make it happen." But in prospect – at the time of acting – that is almost never something of which she could have been at all certain, and if there was a sufficient probability of her contribution being crucial then she is morally blameworthy.

The same is true of exercises of supervisory agency. Pursuant to her intention that the President die, the Vice President checks. Upon checking, she sees that she doesn't presently need to do anything further to ensure the President's death. But she checked, she had no way of knowing with confidence whether she needed to check – whether she is in a world in which she needs to do nothing further, or one in which she needs to make alternative arrangements or to take matters into her own hands. In that latter case, which is not at all unlikely (Presidents are not assassinated every day, after all) her checking would have been a necessary element of a sufficient set of conditions for bringing about the assassination and she would have been taking a morally unacceptable risk of contributing to the President's being assassinated through her checking.

Obviously, the moral assessment of an agent who is in the very early stages of wrongdoing – merely intending to do wrong – should be different from that of an agent who has already gone much further towards executing

that wrongdoing (e.g. buying a gun). Both should be different, again, from the assessment of the agent who has actually executed the wrongdoing in full.

Yet even early-stage contributions to wrongdoing can clearly be wrong, when there is unacceptable risk the wrongdoing will ensue as a result.¹⁸

We freely admit that there are evidentiary problems in getting reliable access to what happens almost wholly inside someone else's head. For that reason, the law probably ought not take cognizance of all of early-stage wrongdoings of the sort we have here associated with "merely intending."¹⁹ But they certainly are matters of *moral* concern, even if they are not legally actionable. And they remain of moral concern, even if something later averts the wrongdoing (be it some other agent's action or inaction, or the agent's own change of mind). Creating an unreasonable risk of a wrongdoing's occurring is wrong, even if in the end that risk is averted.²⁰

III. The Wrongness of Intending to Benefit

So far we have shown that intendings almost invariably involve doings in at least two ways. First is in forming the intention. Second is in exercising supervisory agency pursuant to that intention. In both cases, you have *done* something. In both cases you have exercised your will, even if you have not yet lifted a finger (although in "seeing to it," you typically will have done so). Such doings enable wrongdoing to occur, or at least provide one necessary condition of it occurring along one possible path by which it might occur. Given that wrongdoing is wrong, risking contributing causally to it can be

wrong, depending on the heinousness of the wrong and the probability of its occurring along the path your contribution enables.

Let us now turn to apply those general propositions to the particular case of principal concern in this article: benefiting from the wrongdoing of others. As we said in the outset, supporters of the wrongful benefits principle think that it is wrong to benefit from the wrongdoing of others. Importantly, they do not suppose that the recipient of those benefits has herself *done* something wrong. But they think that being in that position is wrong, and she ought to do what she can to avoid it (e.g. by giving up the benefits) (e.g. Butt 2007; Goodin 2013). Deniers of the principle argue that there is nothing wrong in that position (e.g. Fullinwader 1975).

Both sides focus on "unavoidable beneficiaries" – agents who did not play any role in the wrongdoing themselves, and who could not have avoided receiving the benefits. But they neglect the intentions of those agents, and the wrongful doings associated with forming and exercising supervisory agent in relation to those intentions. As we now show, the fact that you are an intentional beneficiary of wrongdoing can be an important moral fact for both supporters and deniers of the wrongful benefits principle.

A. Two Kinds of Intending to Benefit from Wrongdoing of Others

We now turn to distinguish between two ways of intending to benefit from wrongdoing: "intending to benefit conditionally" and "intending to benefit *simpliciter*." In both cases, we suggest, the intending agent may be

implicated in a wrongdoing – but as we go on to show in the next section, she would be implicated in a different sort of wrongdoing in each of those two cases.

Sometimes "X intends to benefit from φ " refers to a case where "X intends to benefit *if* φ ." X does not intend that wrongdoing φ occurs, necessarily. Nor is X committed in any way to seeing to it that wrongdoing φ occurs. Rather, X's intention is purely conditional: if φ , then X intends to benefit from φ .

"If" is perhaps an unduly forward-looking way of putting the point, implying that φ has not yet come to pass. A more general way of describing the case might be "X intends to benefit *given* φ ," leaving open the question of whether φ is in the past or in prospect.

In the case in which φ has yet to occur, to say "X intends to benefit given φ " suggests that X forms the intention or sees to it that X benefits from φ , should φ come to pass. While X does not form the intention or plan to do anything to see to it that φ does come to pass, X nonetheless makes sure that she is in a position where she benefits from φ , if φ does indeed come to pass.²¹

In the case in which φ has already occurred, to say "X intends to benefit given φ " is to say that X forms the intention and sees to it that X will benefit, given the fact that φ has come to pass. Here too, there is no implication that X had formed the intention or seen to it that φ came about. She merely forms the intention or sees to it that she is the position where she benefits from the existence of φ .

Sometimes however "X intends to benefit *simpliciter*." That is importantly different. There, X's "intending to benefit from φ " includes, as a crucial component of that intention, X's "intending the existence of φ from which X will benefit."²² That latter intention is not just some abstract logical corollary or causal consequence that the agent may or may not notice and internalize. Rather, it is *part and parcel* of "intending to benefit from φ *simpliciter*" that, in intending that the benefit occurs, one intends for φ (the source of that benefit) to occur.

Once again, that intending involves doings. In the first instance, it involves forming the intention that φ and the resulting benefit occur. In second instance, and pursuant to that, it involves taking up a supervisory role in the present to do something further (if necessary) to see to it that those things (φ and the resulting benefit) actually occur.

The agent who is intending to benefit *simpliciter* is already involved in a doing that is aimed towards some further wrongdoing. She is, for example, checking whether more needs to be done to ensure the occurrence of the wrongdoing from which she intends to benefit. Furthermore, those doings are oriented towards potentially involving her agency further in wrongdoing (doing something further, as necessary, to facilitate the wrong taking place so she will attain the benefit). By intending that the wrong take place, the agent who is intending to benefit *simpliciter* is thereby implicated in wrongdoing.

To reiterate, both types of beneficiaries are, in the cases under discussion, unavoidable beneficiaries. That is to say, as it turns out in the end, there is nothing they needed to do to ensure that they benefited, and there was nothing they could have done to avoid benefiting. But crucially for our

purposes, they could not know that for sure at the time. *Ex hypothesi*, they formed intentions and engaged in supervisory doings pursuant to them to benefit from wrongdoing, supposing that there is some real chance that what they were doing might make a difference. That is what grounds their moral responsibility, and hence moral liability to being required to relinquish the benefits they received as a result of the other's wrongdoing, in the ways we now turn to discuss.

B. Two Kinds of Wrongdoing

We have identified two types of unavoidable beneficiaries from wrongdoing. Let us now turn to assess how these beneficiaries should be regarded in the debate on the principle of wrongful benefits. Let us call φ the "principal wrongdoing," and denote it as "Wrong(φ)." In our running example, that would be the President's being assassinated.²³ The separate wrong (if a wrong it be) of benefiting from Wrong(φ) we will call "Wrong(β)."

Supporters of the wrongful benefits principle find something wrong with someone's benefiting from the wrongdoing of others, even if she cannot avoid so benefitting. So they definitely think that Wrong(β) is indeed wrong. If as they suppose unavoidably finding oneself in that position is wrong, then intending (even just conditionally) to put oneself in that wrongful position is even worse. Even if in the end the agent receives benefit β in some way she could not avoid, her forming the conditional intention to receive the benefit if Wrong(φ) occurred and taking actions pursuant to that intention makes those *actions* Wrong(β) – as well as of course of being in receipt of the benefits of others wrongdoing a Wrong(β) *situation*.

The agent's conduct is worse, yet again, if she formed and perhaps exercised supervisory agency with respect to an intention to benefit *simpliciter* from $\text{Wrong}(\varphi)$. In that case, she intends not only $\text{Wrong}(\beta)$ but also $\text{Wrong}(\varphi)$ from which β flows. Even if in the end her intentions prove to be causally inert – even if it turns out in the end that the benefit flowed to her unavoidably and through some path wholly independent of her own intentions – in forming and exercising supervisory agency with respect to the intention to benefit *simpliciter*, the agent had done something in furtherance of both $\text{Wrong}(\beta)$ and $\text{Wrong}(\varphi)$. Advocates of the principle of wrongful benefits would regard both types of wrong as wrong. Hence someone who intends to benefit *simpliciter* is doubly in the wrong, from their point of view.

Deniers of the wrongful benefits principle deny the existence of $\text{Wrong}(\beta)$, at least as regards unavoidable beneficiaries of $\text{Wrong}(\varphi)$. If you do not think that a person who benefits unavoidably from the wrongdoing of others is in any way in the wrong, then you do not think $\text{Wrong}(\beta)$ exists, at least so far as unavoidable beneficiaries are concerned.

Still, even deniers of the wrongful benefits principle regard $\text{Wrong}(\varphi)$ as wrong. So even they should acknowledge beneficiaries are implicated in that type of wrongdoing if they intend to benefit *simpliciter* from $\text{Wrong}(\varphi)$. The reason is, as we have said, that intending part and parcel of what is to intend to benefit *simpliciter* from $\text{Wrong}(\varphi)$ is to intend the existence of that $\text{Wrong}(\varphi)$ which is required to yield you that benefit.

Forming or exercising supervisory agency pursuant to an intention to benefit *simpliciter* implicates the Vice President in a wrong of type φ – there, a presidential assassination. It does so even if, in the end, there was nothing

further that the Vice President actually needed to do to ensure that the token Wrong(φ) occurred. She has done something to ensure that a wrong of type φ occurs, something that (for all she knew at the time) might have been essential to that wrong's occurring. That is sufficient to implicate her in a wrong of type φ . How much moral responsibility follows from being implicated in a type of wrongdoing should, we suggest, be based on the similarity of the wrong actually done to the wrong risked; and the quantum of benefit she should be required to relinquish should be based on the quantum of benefit that she could have expected objectively expected from the wrongdoing to which she risked contributing.²⁴

Deniers of the wrongful benefits principle might also see something wrong with "intending to benefit conditionally if Wrong(φ)," even if they do not see anything Wrong(β) with benefiting from φ if it does occur. At least some deniers of the principle would agree that it is wrong to *seek out* benefits from the wrongdoing of others, even if there is nothing wrong with unavoidably coming into possession of them (Fullinwader 1975, 318). *Ex hypothesi*, the innocent beneficiary has not instigated Wrong(φ). Nevertheless, those whose denial of the wrongful benefits principle turns heavily on the stipulation that the benefits were unavoidable might still find something morally objectionable about the beneficiary maneuvering herself into a position to benefit, if that wrongdoing does occur (which is of course precisely what someone who is "intending to benefit conditionally" does).

Of course, in the scenarios here in view, the benefit turns out in the end to come to her unavoidably, and her maneuvering was unnecessary. But as we have argued above, an agent's actions should be assessed from the

perspective of what she could and should have known at the time of action; and she could not be sure at the time of acting that her benefit would be unavoidable. So even those who deny there is anything wrong with unavoidably benefiting from the wrongdoing of others might find something wrong about taking steps to benefit from the wrongdoing of others when such benefits might well have been avoidable.

C. Implications for Beneficiaries of Historical Wrongoings

Consider the implications of our argument for beneficiaries of historical wrongoings. Much (although by no means all) of the debate about benefiting from wrongoings concerns the duties of current generations who benefitted from wrongoings committed in the distant past (e.g. colonialism, racial discrimination or greenhouse gas emissions). What does our analysis have to say about such cases?

On the face of it, it may not seem to add much beyond what can be had from the "wrongful benefits" principle itself. The reason is this. Intendings are always forward looking. They are intentions to do, have or be something, sometime in the future. You cannot therefore be properly said to presently "intend" a wrongdoing that has already occurred – especially not, if it occurred before you were born. Hence all intendings to benefit from things that have already occurred are, from that time forward, necessarily "conditional intendings" – intendings to benefit, given that ϕ has occurred.

Defenders of the "wrongful benefits" principle would still be troubled by those, of course. But they would be in favor of rectification of historical

wrongdoings on the basis of the "wrongful benefits" principle, already. Those who deny the principle of "wrongful benefits" are the ones in need of further persuasion. We had hoped to provide it through our analysis of "intending to benefit *simpliciter*," and the "intending the wrong that is required to produce the benefit that they intend to receive" that is part and parcel of that. But since intending is forward-looking, and you cannot intend what already exists, that analysis would seem to be inapplicable to wrongdoings that occurred long before today's agents were born.

There is, however, one important way in which our analysis of "intending to benefit *simpliciter*" can apply to cases involving historical wrongdoings. Suppose that the only way in which you can benefit in the present from some wrongdoing in the past is to commit a wrong in the present. Suppose, for example, that constant efforts are required to protect and sustain the wrongful patterns initially put in place by some wrongdoing long ago, and suppose that protecting and sustaining wrongful patterns is itself wrong (Barry and Wiens, 2014). Then intending that wrongdoing in the present would be part and parcel of what it is to "intend to benefit *simpliciter*" from the past wrongdoing. And intending a wrongdoing in the present is something that you can indeed intend, in a suitably forward-looking way.

In that way, our analysis can indeed give even deniers of the "wrongful benefits" principle reason to worry about people's intending to benefit from historical wrongs. If there is some wrong that needs to be committed in the present to ensure that the wrongful states of affairs are *perpetuated* in ways that benefit them, then in "intending to benefit *simpliciter*" from the historical wrong an agent intends for the present-day wrong to occur. And even those

who deny that there is anything wrong about merely being in receipt of wrongful benefits have to agree that intending a present wrongdoing is indeed both coherent and itself wrong.

The wrongs of racial or colonial or indigenous oppression are arguably all like that. The "founding acts" of oppression are all long in the past. But much needs to be done in the present to protect and sustain the patterns to which they have given rise (Lu, 2011; Young 2004, 2011). Anyone who "intends to benefit *simpliciter*" from those past wrongs *ipso facto* intends the present wrongs regularly required to renew, protect and sustain the wrongful patterns to which they have given rise. Intending for those wrongdoings to occur should be troubling even for those who see nothing wrong in merely being in receipt of wrongful benefits.

V. Disavowing Wrongful Benefits

Those who intend to benefit, either conditionally or *simpliciter*, from someone else's wrongdoing should be differentiated from the Unintentional Beneficiary. Consider again our Vice President. This time, suppose she has no intention for the President to be assassinated, she is deeply abhorred and upset by the assassination, and yet she benefits from it. Such an Unintentional Beneficiary is the beneficiary who would not contribute to ϕ , even if ϕ would not happen unless she contributed; nor would she seek to enjoy the benefits of ϕ , even if she costlessly could. The Unintentional Beneficiary does not form the intention to benefit, nor does she see to it either that ϕ occurs or that she benefits from ϕ if it does occur. Therefore, the Unintentional Beneficiary is not

implicated in either of the wrongs under discussion. She is not implicated in a principal "Wrong(ϕ)," nor is she guilty of "Wrong(β)."

The proper moral evaluation of beneficiaries of the wrongdoing of others thus depends upon which type of beneficiary they are: Unintentional or Intentional, and if Intentional whether Conditional or *Simpliciter*.²⁵ To assess the moral status of beneficiaries from wrongdoing it is not sufficient to know that they are unavoidable beneficiaries: we also need to know their intentions.

But this conclusion opens up a further challenge. As we indicated earlier, telling the three types of beneficiaries apart may prove to be difficult, since the differences are not externally easily observable. Not only may the forming of an intention be extremely hard for outsiders to detect. So too may be the exercise of supervisory agency. Even when "checking" involves more physical doings like opening the newspaper, the purpose for which she is reading the paper will often be opaque.

Despite these evidentiary problems, our conclusions can be useful in various ways. First and foremost, it is useful for purposes of moral self-assessment.²⁶ Agents can reflect upon their own intentions with regard to wrongdoings – ones that they might undertake, ones that they might supervise, and ones from which they benefit – in order to judge for themselves whether or not they were in the wrong. Prospectively, by pointing out the wrongs involved in intending to do wrong, our framework can guide morally conscientious agents away from certain sorts of intendings – however hard it may be for *other* agents in the world to detect the moral wrongdoings in question.

Finally, and practically perhaps most importantly, consider what would be the pragmatic effects of a social practice (were one to grow up) of blaming people who wrongly intend to benefit from wrongdoing. Precisely because an unintentional beneficiary could easily be mistaken for morally blameworthy beneficiaries of other sorts, there would be a natural social expectation that such a person would go to some lengths to disassociate herself from these wrongdoings. The fact that *de facto* she enjoys a benefit – cheap petroleum that came from invading some other country without cause, for example – is likely to make people not unreasonably suspicious of her intentions with regard to that benefit and/or wrongdoing that generated it, and to hold that against her.

To prevent such confusions, she should naturally be expected to remonstrate – with whatever evidence she can muster – that, even though she is benefitting from wrongdoing, she is doing so unintentionally and against her will. Of course, *ex hypothesi* in the sorts of cases under discussion, she cannot avoid benefiting. But she could at least express her dismay and abhorrence of the fact that she is being put in the position where she benefits from the fruits of wrongdoing, unavoidably and *against her will*.²⁷ For that protest to be persuasive, it would ideally come at some cost to herself – otherwise it will just count as “cheap talk.”²⁸ The fact that she is prepared to bear a cost to protest the wrongdoing and/or her benefiting from it would count as evidence that she is an unintentional beneficiary, who should therefore not be deemed to be implicated in wrongdoing.²⁹

Suppose that protesting in that way does become the norm among Unintentional Beneficiaries. Then failure to take even low-cost opportunities

to protest the wrongdoing would presumably mark someone as an intentional beneficiary from wrongdoing and render them liable to moral criticism. Given that fact, Intentional Beneficiaries would then have incentives to masquerade as Unintentional ones by bearing some (perhaps even substantial) costs in protesting against the wrongdoings from which they benefit. Notice, however, that even "false signals" of that sort serve a useful social function.

The stronger the protest against wrongdoing is, the greater will be the disincentive for such wrongdoing. Providing incentives to make protests – even insincere protests – against wrongdoing is thus likely to have positive consequences. Even if no single unavoidable beneficiary can prevent the wrongdoing from occurring or recurring, if enough people protest against it then that could eventually help curtail the wrongdoing or prevent its recurrence. Highlighting the wrongness in merely intending to benefit from wrongdoing is therefore an important exercise. The more widely recognized the wrongness of intending to benefit from wrongdoing is, the more likely that that realization is to reduce wrongdoing in the world.

¹ The significance of the parenthetical, in terms of the wrongful benefits principle, is that she would in that case have benefited more from the assassination. Of course, there still could be other reasons that would tip the balance against resignation or new elections.

² The different accounts of the principle set different limits to its applicability and scope. For example, Butt (2007) argues that the principle is triggered only with regard to 'automatic benefits'. Overland and Haydar (2014) suggest that the principle is triggered only if the wrongdoer intends to benefit the beneficiary. While we do not discuss such variations here, we think it is fairly easy to tailor the example to whichever version of the principle one favours.

³ Maybe counterfactual propositions about what someone "would have done" sometimes provide information about the agent's state of mind. And maybe it is morally bad in some sense or another to take a pro-attitude of any sort

toward wrongdoing – welcoming it, being glad it happened, being glad that you benefited from it, or whatever. (A virtue ethicist would take it as evidence of your bad character, for example.) But however bad a sheer bad attitude is in itself, it is even worse to do something.

⁴ Some may challenge Dworkin's example, saying that by agreeing to play *poker* each player implicitly commits herself to the rules of that game, and the rules of poker specify a deck of 52 cards. While the specific example may be problematic in that way, the basic point remains. For example while it is true that I *would have* paid much more for the painting that I bought from you yesterday had we both realized that it was a Cezanne at the time, the fact that that I "would have done" does not imply that I must now send you a cheque for the difference.

⁵ This case is adapted from Lepora and Goodin 2013, 56-8.

⁶ The legal maxim "no punishment for intentions alone" dates back at least to the sixteenth century, when the court held in *Hales v. Pettit* that "imagination of the mind to do wrong, without an act done, is not punishable"; quoted in Abbate 1974, 301.

⁷ Our focus more specifically is on those who doubt that, in the cases in view, there are "doings" of the requisite sort. It is familiar from the law of negligence that there can sometimes be wrongs without "intentions." However, the cases in view, such as the back-up assassin, would not fall under that category.

⁸ That, Davidson continues, "is an event, ... an action, or at least something the agent does".

⁹ Mele (2003) refers to such endorsement as "deciding." Having an intention need not necessarily involve a mental action of forming or reflectively endorsing; but in much the most common cases, we think, some such mental action is present, and those are the cases with which our analysis is concerned. Perhaps agents also have the duty to reflect upon their intentions with regard to wrongful actions, and that failure to do so amounts to culpable ignorance; but we will not pursue that point in this article.

¹⁰ Brink (2013) similarly treats "thinking" as a first step in "acting" (even if, for evidentiary reasons, we might not want to criminalize it).

¹¹ This, we take it, is what distinguishes "fantasizing" about killing the President from "practically intending" it. Of course, she might have mistaken beliefs about that; we return to that in footnote 17.

¹² The standard legal gloss is "unreasonable risk." We shall use "unacceptable risk" to mean the same thing – i.e., "unreasonable, from a moral (or societal) point of view." We eschew the term "unreasonable" in this connection simply because, given an agent with morally perverse goals, a course of action that is morally perverse may nonetheless be seen as pragmatically "reasonable" from that agent's point of view.

¹³ See further the discussion of "potentially essential contributions" in Lepora and Goodin 2013, 61-5.

¹⁴ Perhaps if the probability of her being causally implicated is vanishingly small we might excuse her of moral responsibility altogether. Alternatively, perhaps in that case we should say that she is morally implicated but only a tiny bit of blame attaches because it was so unlikely that any bad consequences would follow.

¹⁵ Thus, we are not concerned here with agents who unwittingly provide a NESS condition for the wrong; for example, someone who bends down to tie her shoe, which was unbeknownst to her is a NESS condition for the assassin to get a clear shot at the President, bears no responsibility for the murder.

¹⁶ By which we mean in this context of course "epistemic probability". That relates to the evidence available at the time of action.

¹⁷ A person might have mistaken beliefs, believing a wrongful outcome to be either more or less likely than the available evidence shows it to be. For example, she may over- or underestimate her capacities to carry out her intentions. Insofar as the person could and should have known about that evidence, we deem her ignorance culpable and blame her for taking risks of wrongdoing on the basis of it. We may also blame her for taking risks that she incorrectly believed to be larger than best available evidence shows them really to be.

¹⁸ In criminal law, much is made of the fact that an agent might always change her mind before acting on her intention to contribute to a wrong. See e.g. Yaffe, 2010, chapter 2 and Rome Statue of the International Criminal Court, Article 25, 3. We remain agnostic as to whether that is the right approach for criminal law. But morally speaking, there is inevitably a real risk that the agent will not change her mind – and again, she might rightly be blamed for running that risk. And even if she did change her mind, that does not wipe out the fact that, at the time she took that early step toward producing the wrong, she could not count on the fact that she would subsequently change her mind and not go through with it.

¹⁹ Notice, however, that early-stage wrongdoings sometimes are legally actionable. In the law of criminal complicity, the contributions of accessories-before-the-fact to the principal wrongdoing are called "inchoate offences." They are things like conspiring, instigating, facilitating. They precede the principal wrongdoing. They pave the way for the principal wrongdoing. They are part of or a contribution to a "principal wrongdoing in the making." Indeed, they are steps toward making that wrongdoing occur. See American Law Institute 1960, Article 5, T.D. No. 10; Ashworth 1995 chapter 11. These are offences, even if the principal wrongdoing doesn't take place: they are offences precisely because they could have caused a wrong (even if they didn't); they provided a NESS condition of the wrong occurring.

²⁰ If it is averted through her own agency then perhaps she should get some moral credit for that – but that is (we would insist) at the same time as still being held to blame for creating the risk in the first place.

²¹ Maybe there is a limited number of people who could benefit from ϕ should ϕ come to pass, for example, and X sees to it that she will be among them if ϕ does come to pass.

²² Since the wrongfulness of this stance derives wholly from the wrongness of "X's intending the existence of wrong ϕ ," everything we say here about the wrongfulness of "intending to benefit simpliciter" will also be true of someone who intends the wrongdoing ϕ , actually benefits from the wrongdoing ϕ , but did not intend to benefit from the wrongdoing ϕ .

²³ Understood as the type rather than the token (as "the President's being assassinated" rather than as "the president's being killed in this particular way, by this particular person, on this particular day").

²⁴ Among other things, that would suitably disincentivize socially harmful risk-taking.

²⁵ The latter alone matters to those who deny the wrongful benefits principle, whereas both of the latter two matter to those who endorse that principle.

²⁶ Or evaluating and counselling others, on those (possibly rare) occasions in which an outsider does learn about an agent's mental stance toward a wrongdoing. Consider a priest who hears the confession of a businessman who would have bribed the planning committee to approve of a new shopping mall (of which he will benefit), but was overtaken in the deed by another businessman. The priest should conclude, per our analysis, that the confessor is a beneficiary *simpliciter*, and has committed a moral sin.

²⁷ In disavowing, it is up to her to specify what exactly it is she is disavowing (the wrongdoing, or her benefiting from it, or both).

²⁸ For a formal model of how even cheap talk can be revealing over a protracted period, see Aumann and Hart 2003). While we think the unintentional beneficiary can be expected to bear a cost, clearly that has to be a cost morally acceptable. It is beyond the scope of this paper to define what that is. Factors that should be taken into account in the calculation include the severity of the wrong, the extent to which one benefits from it and one's capacities to bear the cost. If an agent finds herself Unintentionally Benefitting from multiple wrongdoings, then in principle she ought to disassociate herself from all of them. Maybe at some point doing so would entail an unacceptable cumulative cost and become over-demanding (cf. Goodin 2009). That doesn't mitigate the agent's duty to act up to that point. We thank an anonymous referee for pressing us to clarify this point.

²⁹ Some would like to make the stronger point that beneficiaries from wrongdoing have a duty to protest against the wrongdoing of which they benefit, and do what they can at reasonable costs to themselves to prevent the wrongdoing. Accordingly, the beneficiary who fails to protest is guilty of failing to comply with her moral duties (a wrong of omission). But our point here is more modest. We merely suggest that protest would be prudent, in order to distinguish oneself from those who are involved in wrongdoing.

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