

FAIR PLAY AND WRONGFUL BENEFITS

AVIA PASTERNAK

Avia.pasternak@ucl.ac.uk

Forthcoming in The Journal of Moral Philosophy

Abstract: According to the fair play defence of political obligations, citizens have a reciprocity-based duty to share in the costs involved in the production of public goods (e.g. the rule of law). But sometimes, states produce collective goods through wrongdoing. For example, sometimes, states' wrongful immigration policies contribute to the welfare of their own populations. Do citizens have duties of reciprocity for such wrongful benefits? I argue that the answer to this question is negative. Drawing on the observation that beneficiaries of wrongdoing incur compensatory duties to the victims of that wrongdoing, I argue that, rather than having a duty of reciprocity for wrongful benefits, citizens have a duty to disgorge the benefits in compensation. Furthermore, the fair play defence of political obligations entails that citizens can be justified in disobeying the law, in order to comply with their compensatory duties to victims of their state's wrongdoing.

Keywords: benefiting from wrongdoing; fair play; political disobedience; duty of resistance; political obligations.

According to the principle of fair play, cooperative schemes generate obligations of reciprocity between their participants. Those who enjoy benefits produced by the cooperation of others ought to bear a fair share of the burdens involved in the production of those benefits. The principle of fair play serves as a familiar defence of political obligations: as cooperative schemes, states (or at least reasonably just states) generate collective and public goods for their citizens, such as the rule of law, clean air and national defence. Citizens then have a duty of reciprocity to bear an appropriate share of the costs that are involved in the production of those collective goods. For example, they ought to pay taxes, obey the law, do national service and so on.¹ Evading a share of these burdens whilst enjoying the benefits generated by other

I am grateful for comments on earlier versions by Paul Bouhabib, Mathew Clayton, Bob Goodin, David Lefkowitz, Patti Tamara Lenard, Emily McTernan, David Miller,

citizens' compliance violates the basic intuition that 'it is wrong for certain people to be exempt from burdens others must bear in the absence of morally relevant differences between them'.²

The fair play defence has been subject to various objections, principal amongst them is the claim that non-voluntary cooperative schemes like the state do not generate obligations of reciprocity.³ And yet, it remains a dominant defence of political obligations today. This paper does not seek to examine the strength of the fair play defence. Rather, proceeding on the assumption that it offers a valid defence of political obligations, it raises a different challenge for it. This challenge concerns collective goods that are sourced in wrongdoing (I shall refer to such benefits as 'wrongful benefits'). It is sometimes the case that states enhance the welfare of their citizens through wrongdoing. For instance, liberal democracies (the closest thing we have to reasonably just states in the world) violate rules of *jus ad bellum* and *jus in*

Shmulik Nilli, David Wiens, Lea Ypi and anonymous referees, and for comments by audiences at the Warwick University Brave New World Conference (2014) and at workshops on benefitting from injustice at the University of Oslo and at the Carnegie Council, New York.

¹ Throughout the paper I will use the terms 'duties' and 'obligations' interchangeably.

² George Klosko, *The Principle of Fairness and Political Obligation* (Lanham, Md: Rowman & Littlefield, 1992), 34. The fair play defence of political obligations appears in Garrett Cullity, 'Moral Free Riding', *Philosophy and Public Affairs* 24, 1 (1995), Richard Dagger, 'Membership, Fair Play and Political Obligation', *Political Studies* 48, 1 (2000), Norman Davis, 'Nozick's Argument for the Legitimacy of the Welfare State', *Ethics* 97, 3 (1987), H. L. A. Hart, 'Are There Any Natural Rights?', *Philosophical Review* 64, 2 (1955). Vincent Maphai, 'The Principle of Fairness', *South African Journal of Philosophy* 6, 1 (1987), John Rawls, 'Legal Obligation and the Duty of Fair Play', in *John Rawls: Collected Papers*, ed. Samuel Freeman (Cambridge Mass: Harvard University Press, 2001), Massimo Renzo, 'Fairness, Self-Deception and Political Obligation', *Philosophical Studies* (2013).

³ For critiques of the fair play defence of political obligations see John Horton, *Political Obligations*, 2nd edition ed. (London: Palgrave Macmillan, 2010), 93-96, Daniel McDermott, 'Fair-Play Obligations', *Political Studies* 52 (2004), Robert Nozick, *Anarchy, State and Utopia* (Oxford: Basil Books, 1974), 90-95, A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), 139.

bello to enhance the safety and security of their citizens. They engage in morally dubious international trade agreements that enrich their citizens. They close their borders to the world's most needy refugees, reserving the provision of various public goods to their own populations. Of course, not all the wrongs that states commit benefit their citizens. But quite often they benefit at least some of their citizens. The principle of fair play grounds the political obligations of citizens in the collective and public goods that their state provides for them. But do citizens have obligations of reciprocity for goods that are sourced in wrongdoing? If not, what implications follow for citizens who recognize fairness as the source of their political obligations?

The question of duties of reciprocity under circumstances of wrongdoing has received surprisingly little attention in the literature on fair play. The relatively few texts that do engage with it offer two distinct answers to the problem. According to the first answer, wrongdoing does not undermine duties of reciprocity. This position is expressed for example in Garrett Cullity's observation that 'gangsters can free-ride on their extortion rackets, too: their unfairness to their associates is not dissolved by the moral objections to the schemes themselves'.⁴ According to the second and, arguably, more plausible answer, wrongdoing or injustice would undermine duties of fair play, if by cooperating with a morally wrong scheme, one is partaking in and contributing to the wrong. Given that we have a duty not to partake in wrongdoing, obligations of reciprocity are undermined in schemes that do wrong.⁵

⁴ Cullity, 'Moral Free Riding', 19. A similar view is voiced by Simmons in his *Moral Principles and Political Obligations*, 110-111.

⁵ Klosko, *The Principle*, 68, 122-124. There are other supporters of the principle of fair play who explicitly limit its application to just schemes. For instance Rawls, 'Legal Obligation and the Duty of Fair Play', 123, Dagger, 'Membership, Fair Play and Political Obligation', 113. These authors do not provide an explanation for why unjust, or morally wrong, schemes do not generate duties of reciprocity, especially

What both these answers ignore is the moral burdens that fall upon agents who *benefit* from wrongdoing. There is growing support in recent literature for the claim that agents who benefit from the wrongdoing of others have special duties to compensate the victims of that wrongdoing.⁶ As I will argue, supporters of the principle of fair play have especially strong reasons to accept this view. Furthermore, acknowledging such special obligations has important implications for the question of duties of reciprocity in wrongful cooperative schemes. For these special obligations provide an additional reason, ignored by the two positions I outlined above, for why agents who benefit from wrongful schemes do not have obligations of reciprocity to the scheme. As I will suggest, such agents have the duty to give up the benefits in compensation to the victims, a duty which undermines the ground for their obligations of reciprocity to fellow scheme members. It follows that when the state commits wrongdoing, its claim for political authority over its citizens is weakened.

The paper proceeds as follows: Section 1 examines the duties of beneficiaries of wrongdoing to the victims. Section 2 demonstrates how these duties undermine duties of reciprocity in schemes that commit wrongdoing, and situates this argument within existing accounts. Sections 3 and 4 go back to the case of states, and examine the

given that they benefit (and may well treat fairly) some of their members. A plausible explanation for this restriction is the prohibition against contributing to injustice or moral wrongdoing (this explanation is suggested, for example, by Simmons with regard to Rawls's account. See Simmons, *Moral Principles and Political Obligations*, 109.

⁶ See for example Daniel Butt, 'On Benefiting from Injustice', *Canadian Journal of Philosophy* 37, 1 (2007). Axel Gosseries, 'Historical Emissions and Free-Riding', *Ethical Perspectives* 11, 1 (2004). Bashshar Haydar and Gerhard Øverland, 'The Normative Implications of Benefitting from Injustice', *Journal of Applied Philosophy* 31, 3 (2014). Thomas Pogge, 'Severe Poverty as a Violation of Negative Duties', *Ethics and International Affairs* 19, 1 (2005). Judith Thomson, 'Preferential Hiring', *Philosophy and Public Affairs* 2, 4 (1973). For review see [reference removed].

duties that fall on citizens who benefit from state wrongdoing. Section 3 argues that citizens that benefit from state wrongdoing, ought to act against the wrongdoing and also to compensate its victims. Section 4 argues that citizens' can be justified in refusing their fair play obligations and break the law - for example evade their taxes - in order to compensate the victims of their state's wrongdoing. It then considers objections to this conclusion. Section 5 concludes.

1. The Moral Status of Beneficiaries from Wrongdoing

Recent work suggests that agents who enjoy benefits that are traceable to someone else's wrongdoing have obligations to address the plight faced by the victims of that wrongdoing. This claim does not seek to replace the standard view that compensatory duties for wrongdoing fall on the perpetrator. Rather, the idea is that at least in situations where compensation cannot be extracted from the perpetrator, beneficiaries of wrongdoing can be expected to give up their benefit in compensation (on some accounts, perpetrators and beneficiaries should both share the burden). These obligations are special, i.e. they are stronger than the general obligations people have to assist those in comparatively bad situations; and they arise even for agents who receive the benefit involuntarily and without contributing to the original wrongdoing themselves.⁷ The intuition that grounds the duties of beneficiaries of wrongdoing, as Daniel Butt explains, is that by enjoying the fruits of a wrongdoing that brought harm

⁷ Like all principles of compensation, the burdens of beneficiaries are measured against a counterfactual baseline. There are various suggestions in the literature on how to measure benefit and compensation. For discussion see Holly Lawford-Smith, 'Benefitting from Failures to Address Climate Change', *Journal of Applied Philosophy* 31, 3 (2014).

on others, one is taking advantage of their suffering.⁸ Given that the action that wronged the victim and harmed her is the very same action that delivered benefits to the beneficiary, the beneficiary is better off on the victim's account, and she ought to avoid being in that position. Clearly, beneficiaries who are unaware that they benefit from wrongdoing cannot be blamed for their position. But once they become aware of the source of their benefit, and are able to transfer compensation to the victims, they have a duty to do so, up to the level of their benefit, and assuming that they have not gained legitimate entitlement to the benefit (as may happen, for example, if a beneficiary did not know and could not have reasonably been expected to know that a benefit is sourced in wrongdoing and has become reliant upon its continuing possession).⁹

It is important to highlight that those who advocate the fair play defence of political obligations should find it hard to deny the moral appeal of the claim that beneficiaries of wrongdoing can incur special duties to the victims. First, the most prominent objection that has been raised against this claim is that the involuntary receipt of

⁸ Daniel Butt, 'A Doctrine Quite New and Altogether Untenable': Defending the Beneficiary Pays Principle', *Journal of Applied Philosophy* 31, 4 (2014), 340.

⁹ Robert Goodin offers an alternative account of the duties of beneficiaries of wrongdoing (Robert Goodin, 'Disgorging the Fruits of Historical Wrongdoing', *American Political Science Review* 107, 3 (2013)). His account is not compensatory, and does not assume interpersonal duties between the beneficiary and the victim. Instead it suggests that beneficiaries have duties to disgorge the benefits that come to their hands as result of wrongdoing, simply because the benefit is 'in the wrong hands'. I have criticized this account in [reference removed]. Regardless of that critique, Goodin's account is of less relevance for the current analysis, since this analysis constructs an argument about the duties of beneficiaries from wrongdoing that is compatible with the principle of fair play. As I show in the next pages, the compensatory account has a special appeal for advocates of the principle of fair play. In contrast, given that Goodin's account offers an entirely different rationale for the duties of beneficiaries from wrongdoing, advocates of the principle of fair play can more easily reject it.

benefits does not generate special moral duties for the recipients.¹⁰ But those advocates of the principle of fair play who apply the principle to the state themselves argue that the involuntary receipt of benefits can generate special moral duties. Second, and more importantly, the claim that beneficiaries of cooperation have duties of reciprocity, and the claim that beneficiaries of wrongdoing have duties of compensation, are grounded in closely related intuitions. In both cases, the underlying idea is that we ought not to take advantage of others: In the case of cooperative schemes, we ought not take advantage of others in the sense of enjoying the fruits of their cooperation without sharing the burden that the cooperation involves. In the case of benefitting from wrongdoing, we ought not take advantage of others, in the sense of enjoying the fruits of an activity that delivers benefit to us whilst imposing wrongful suffering on others.¹¹ In both cases some agents end up benefiting from an activity whilst others end up bearing its costs, despite there being no morally relevant differences between them. If one finds this distortion in the distribution of benefits and burdens troubling in the case of cooperative schemes, one should find it troubling also in the case of benefitting from wrongdoing.

¹⁰ E.g. Robert Fullinwider, 'Preferential Hiring and Compensation', *Social Theory and Practice* 3, 3 (1975), 306. This objection is discussed in Butt, 'A Doctrine'. For objections to claims about duties of beneficiaries see Norbert Andwader, 'Contributing and Benefitting: Two Grounds for Duties to the Victims of Injustice', *Ethics and International Affairs* 19, 1 (2005). Robert Huseby, 'Should the Beneficiary Pay', *Politics, Philosophy, Economics* 14, 2 (2013). Carl Knight, 'Benefiting from Injustice and Brute Luck', *Social Theory and Practice* 39, 4 (2014). For replies see Christian Barry and Robert Kirkby 'Skepticism about Beneficiary Pays: A Critique' *Journal of Applied Philosophy*, 2015 Early View. DOI: 10.1111/japp.12160

¹¹ Indeed, Axel Gosseries characterises beneficiaries of wrongdoing as 'morally objectionable free riders': they enjoy the fruits of an activity that imposed costs on others, without themselves sharing in these costs (Gosseries, 'Historical Emissions', 43). One may object to this characterization, by pointing out that 'free riding' is a term that is standardly reserved to the enjoyment of a good that is generated from the willing *cooperation* of others. But the point remains that there are similarities between beneficiaries of wrongdoing and free riders as commonly understood.

To conclude, advocates of the fair play defence of political obligations should recognize that beneficiaries of wrongdoing may incur duties of compensation to the victims of wrongdoing. In the next section I turn to examine the implications of this claim for schemes of cooperation.

2. Duties of Reciprocity and Wrongful Benefits

This section explores the implications of the claim that wrongful benefits generate compensatory duties for schemes of wrongful cooperation, i.e. schemes in which the benefit is sourced in wrongdoing. Notice that we can distinguish between two types of wrongs that cooperative schemes might commit: external wrongdoing, which targets agents outside the scheme (e.g. a state engaging in an unjust war); and internal wrongdoing, which targets scheme members (e.g. an employment scheme that does not offer equal pay for equal work to its female members). In what follows I will focus on examples of external wrongdoing, but the conclusions of the analysis apply to internal wrongdoings as well.

To see the implications of the principle of wrongful benefits for duties of reciprocity, consider the following example: there are two neighbouring islands, Alpha and Beta. The populations of these islands live off their lands. To increase their income, some of Beta's farmers set up a collective fund to which each contributes. They use the money to jointly buy an airborne crop sprayer, which they use to spray their plots. Alpha's farmers learn of the scheme and some of them become envious of Beta's success. They organize a gang that raids Beta and steal the sprayer. They then spray fertilizer on Alpha, thus significantly increasing the fertility of their lands. However,

during the raid some of the gang members are wounded, and they need expensive treatment which they cannot afford. So they ask their fellow islanders to contribute money to fund the treatment. Alma is a farmer on Alpha. She did not participate in the raid. She did all she could reasonably be expected to prevent the wrongdoing. And yet, she benefits from this wrongdoing (the wind carries the fertiliser to her plot, and she cannot avoid enjoying the additional fertility of her land). The Alphas demand that Alma shares in the costs of the hospital medical treatment, given that these costs were incurred in the course of the production of a benefit that she enjoys. Their demand is grounded in the substantial benefits that Alma derives from their cooperative scheme. They claim that Alma has duties of reciprocity to those who made sacrifices on her behalf, even if she did not voluntarily take those benefits.

For conceptual clarity, let's assume that the sprayed fertilizer is the only collective good that the said cooperative scheme generates (I shall discuss the more complex case of the state in sections 3 and 4). The principle of wrongful benefits gives Alma a reason to reject the Alphas' claims. For, assuming that Alma is able to transfer funds to Beta's farmers, Alma's duties to the Betas, as a beneficiary of wrongdoing, undermine any obligation of reciprocity she might have had to the Alphas, in the following sense: As we saw earlier, according to the principle of wrongful benefits, Alma has an obligation to transfer the benefits she knowingly accrues from wrongdoing (i.e. crops or money equivalent), in compensation to the victims. The Alphas' demands on Alma are made in light of the benefit she enjoys as result of their cooperation. However, once Alma has given up her share of this benefit, she would no longer be a beneficiary of the Alphas' cooperative scheme. At this point the Alphas would have no claim against her. Thus it transpires that Alma faces a choice: first, she

could hold on to the benefit, and ignore her duties to the victims. In that case, she would be under an obligation of reciprocity to the Alphas. Alternatively, she could choose to ignore the Alphas' demands for reciprocity, and give up the benefit in compensation to the Betas. In that case she would not be under a duty of reciprocity to the Alphas. When she considers these two options, weighing the Alphas' demands for reciprocity against the compensatory demands of the victims, it is clear that the latter should come first. After all, they are innocent victims, who suffer harm that is brought upon them through to no fault of their own. The Alphas, on the other hand are participants in a wrongful activity. As such, they can be expected to bear the cost of that activity, certainly in comparison to the victims of that activity.

We can conclude, then, that the fact that a cooperative scheme brings wrongful benefits to its members eliminates the grounds for their duties of reciprocity within that scheme.¹² How does this conclusion bear on the two existing approaches to duties of reciprocity under circumstances of wrongdoing, which I mentioned in the Introduction? To recall, the first approach suggested that that wrongdoing does not, in itself, undermine obligations of reciprocity within a cooperative scheme. But the analysis above poses an important challenge to this approach, as it shows that in the case of wrongdoing, the grounds for obligations of reciprocity are eliminated by the victims' entitlement to compensation. Given that advocates of the principle of fair play have especially good reasons to acknowledge the compensatory duties of beneficiaries from wrongdoing, they have reasons to reject this approach in cases where one benefits from the wrongdoing. That said, it should be noted that, partially

¹² Notice that it may still be the case that Alma has general humanitarian duties to contribute to the treatment fund, given the plight of the wounded Alphas. But these would not be duties of *reciprocity* and therefore fall outside the scope of the principle of fair play.

in line with the first approach, the analysis above does not amount to a *tout court* rejection of duties of reciprocity under circumstances of wrongdoing. There may be cases where there are no identifiable victims to whom compensation is owed;¹³ or cases in which beneficiaries have gained entitlement to the benefit in the course of time; or cases in which, even after they have compensated the victims, they remain net beneficiaries of the scheme.¹⁴ In those cases, given that the scheme's members do not have obligations of compensation to the victims, or have fulfilled these obligations, they remain beneficiaries of the scheme and therefore under duties of reciprocity.

The second and, as I noted, more dominant approach to the question of wrongful benefits suggested that duties of reciprocity for wrongdoing are undermined, in light of the duty not to contribute to the wrongdoing. The analysis above is sympathetic to this viewpoint, but adds to it in several ways. First, it points to a wider set of cases in which duties of reciprocity for wrongdoing would be undermined. After all, it is not always the case that by reciprocating for wrongdoing, one is also contributing to that wrongdoing. Consider again the case of Alma: even if she contributes money to fund the medical treatment of the injured Alphas, she would not be contributing to or perpetuating the original wrong they inflicted on the Betas. So, while according to the contribution-based approach she would still have duties of reciprocity, according to the account provided here she would not. Similarly, consider the idea of intergenerational fairness, according to which current generations have duties of

¹³ For various complexities that surround the identification of victims of wrongdoing, and helpful solutions, see Robert Goodin and Christian Barry, 'Benefitting from the Wrongdoing of Others', *Journal of Applied Philosophy* 31, 4 (2014).

¹⁴ This could happen, for example, if the harm suffered by the victim as result of the wrongdoing, and for which she is entitled to compensation, is smaller than the benefit that the beneficiary enjoys as result of the same wrongdoing.

reciprocity, directed at current or future generations, in light of benefits bestowed upon them by past generations.¹⁵ Assume, for example, that the current generation of a wealthy family enjoys financial advantage as result of wrongdoings that were committed by family members in the past (e.g. the family accrued wealth by taking part in the slave trade). It seems that the contribution-based rejection of duties of reciprocity would not deny that duties of intergenerational reciprocity remain in that family, since by reciprocating for the benefits bestowed by past wrongdoings, current generations would not be contributing to the original wrong. In contrast, the analysis of this section suggests that such obligations could be undermined by the duty not to benefit from wrongdoing. Accordingly, prior to any obligations of reciprocity, current generations have obligations to give up a share of the benefit that is required to compensate those who were harmed by the original wrong (in this case, it would likely be the descendants of the original victims).¹⁶

Another way in which the analysis here adds to the contribution approach is that it provides an additional reason to think that participants of wrongful schemes are not under duties of reciprocity. If an agent finds herself in a situation where she *benefits* from the wrongful cooperation of others, and also that by reciprocating she would be contributing or perpetuating the wrong, then she would have two independent reasons to deny duties of reciprocity to the scheme: first, because she ought not cooperate with an injustice, and second, because whatever wrongful benefits the scheme bestows on her, she ought to give up in compensation to the victims (assuming, again,

¹⁵ For discussion see Axel Gosseries, 'Three Models of Intergenerational Reciprocity', in *Intergenerational Justice*, ed. Axel Gosseries and Lucas H. Meyer (Oxford: Oxford University Press, 2009).

¹⁶ cf. Bernard R. Boxill, 'The Morality of Reparations', *Social Theory and Practice* 2, 1 (1972).

she has not gained entitlement to them). The fact that one benefits from a wrongful cooperative scheme then has a multiplicative effect, significantly increasing the strength of the claim that she has no duties of reciprocity, and gives us more reasons to censor agents who do reciprocate for wrongdoing on account of their duties to its victims.¹⁷

Finally, as I now go on to argue, acknowledging the duties of beneficiaries from wrongdoing to the victims provides us with interesting new action-guiding recommendations for agents who find that they are benefitting from the wrongful cooperation of others.

3. Back to the State

The previous section outlined how wrongful benefits limit duties of reciprocity in cooperative schemes. To recapitulate, it suggested that duties of reciprocity do not arise in situations where an agent enjoys benefits that are traceable to wrongdoing,

¹⁷ Christian Barry and David Wiens have recently argued that beneficiaries of wrongdoing incur compensatory duties to the victims only in cases where, by retaining the benefit, they sustain wrongful harm. On their account, while duties of beneficiaries of wrongdoing are triggered by the wrongful benefit, they are not grounded in it (Christian Barry and David Wiens, 'Benefiting from Wrongdoing and Sustaining Wrongful Harm', *Journal of Moral Philosophy* forthcoming (2015), 3-4). One might argue that, if we accept this claim, benefitting from wrongdoing collapses into contributing to wrongdoing, and hence does not offer a separate reason against reciprocating for wrongdoing. However, against this objection I would argue that, even if one accepts Barry and Wiens's claim that beneficiaries' duties are benefit-related rather than benefit-grounded, acknowledging these duties offers a distinct and important addition to the standard contribution-based account. For this account is focused on the wrongdoing of contributing *to the original wrong* (e.g. Klosko, *The Principle of Fairness*, 64, 124). In contrast, Barry and Wiens's account would clarify how retaining a benefit may constitute a separate wrong, which in itself would ground compensatory duties to the victims, even if by reciprocating the benefit one does not contribute to the original wrong.

and to which she has not gained legitimate entitlement, and which she can transfer to the victims in compensation. And they can also be undermined if, by reciprocating the benefit, the agent contributes to the wrongdoing. Notice then that given the conditionality of these two arguments, they do not rule out entirely the possibility that duties of reciprocity will arise in circumstances of wrongdoing. There may be scenarios in which participants of a cooperative scheme that commits a wrong would not contribute to the wrong by reciprocating, or whose benefit from the wrong does not give rise to duties of compensation. In such cases, Cullity's position would prevail. Perhaps there are reasons to deny duties of reciprocity from wrongdoing that go beyond benefit or contribution. But, if they exist, they lie beyond the scope of this paper.

That said, at a more practical level, it would be the case that in many real world cases, the benefit and contribution arguments combined impose serious limits on the existence of duties of reciprocity for wrongdoing. I now turn to examine the implication of this conceptual framework for the case of citizens who enjoy state benefits that are sourced in wrongdoing. The current section explains how citizens ought to respond to the fact of their benefitting from wrongdoing. In section 4 I will explore the tension that these recommendations exert on citizens' political obligations of fair play.

As noted in the introduction, it can be the case, and often is the case, that citizens of liberal democracies (the closest thing we have in the world today to just states, to which the fair play account could in principle apply) enjoy benefits that are sourced in wrongdoing. These wrongdoings can be committed by the state itself, or by agents

within the state. Consider for example the tax revenues the state collects from companies in the oil, high-tech, garment or private arms industry. If the profits that these companies make are wholly or partly generated by involvement in crimes against humanity, human rights violations, or wrongful exploitation, then the additional collective goods that the government is able to provide for its citizens, using that tax money, are traceable to wrongdoing. For simplicity's sake, in what follows I will focus on benefits that are derived from state wrongdoing, but the conclusions apply to wrongful tax revenues as well.

As an example of state wrongdoing, consider the highly restrictive asylum admittance policies that many liberal democracies in the world today adopt. Assume there is a liberal democracy, which, like many liberal democracies in the real world, refuses to grant asylum to vulnerable people who are fleeing a war zone, and who clearly fall under the standard definition of refugee status in international law. Assume further that, given the severity of these refugees plight and the relative capacity of the state in question, its refusal to open its borders is a blatant failure of compliance with its humanitarian duties. Finally, assume that the citizens of this state benefit, in a sense, from their state's lack of compliance with its basic humanitarian duties, since resources that should have been directed towards admitting and integrating refugees, are instead used to provide state services to the existing population.¹⁸ What

¹⁸ The final claim is empirically controversial, given that refugees also contribute to the receiving states' economy, so it is not at all clear that their exclusion benefits the state citizens. But given the controversy that surrounds this issue, we can proceed on the assumption that there will be some cases to which this empirical observation applies. For example cases involving countries with high unemployment rates, or cases involving refugee populations with a very high percentage of young children.

conclusions should citizens draw when they learn that they benefit from wrongdoing in this way?¹⁹

Recall that my interest here is in citizens who recognize that their political obligations are grounded in the principle of fair play. As we saw in section 1, such citizens have especially good reasons to recognize the force of the claim that they ought not benefit from state wrongdoing on account of its victims, and that they should do what they can to avoid being in that position. Two action-guiding conclusions follow. First, such citizens ought to do whatever can be reasonably expected of them to reverse the wrongful policy, in order to persuade the state or the public to change its mind. This is likely to involve legal protest, as well as, at least under some circumstances, illegal protest in the form of civil disobedience. Notice that some fair play theorists already argue that citizens ought to engage in protest against state wrongdoing, in light of the fact that they indirectly contribute to these policies.²⁰ But if citizens also *benefit* from the wrongful policy, that gives them an additional reason to engage in protest, thus significantly increasing the strength of the duty to act for a change of policy, and also giving third parties additional reason to censor them, if they fail to protest against the injustice.²¹

Secondly, these citizens ought to compensate the victims of the wrongdoing from which they benefit. As in the island case, they ought to give up whatever benefit they

¹⁹ Of course, not only the citizens of this state benefit from such policies. Residents without citizenship status, for example, might benefit from them as well. These individuals would also incur the set of duties I suggest here. Furthermore, assuming that residents have duties of reciprocity to their ‘host’ state, these obligations will be put under pressure in the way I suggest in the next section.

²⁰ Klosko, *The Principle*, 123.

²¹ Cf. Candice Delmas ‘Political Resistance: A Matter of Fairness’ *Law and Philosophy* 33, 4 (2014).

derive from their state wrongdoing, and transfer it to the refugees who are refused asylum. For example, they ought to send relevant amounts of money to the refugees (e.g. via aid organizations).

But one immediate problem with this latter recommendation concerns calculations of benefit from wrongdoing. Compensatory duties of beneficiaries from wrongdoing are limited to the level of the benefit they derived from the wrong. In the simple island case I discussed earlier, the level of wrongful benefits Alma derives from the Alphas' cooperative scheme could be calculated, and so could what she owed in compensation to the Betas. But the modern state is a much more complex cooperative scheme. For one thing, unlike the Alpha gangsters, states engage in a multiplicity of policies and activities and generate a bundle of collective goods. So even in cases where the state commits a serious wrong that benefits some or all of its citizens, it is impossible to isolate the benefit that this specific policy generates, or to gauge with any level of precision how much each citizen benefits from it. Perhaps this implies that citizens have a reason to strive to design the institutions of their state in ways that enhance, in as much as it is possible, their ability to trace wrongful benefits. A hypothecated tax system, for example, has the advantage of reducing the state's ability to 'launder' wrongful activities, and wrongful tax contributions, and so enhances citizens' ability to gauge the extent to which they are benefitting from wrongdoing. But even in a hypothecated tax system it will be impossible to map the sources of all specific governmental expenditures. Furthermore, hypothecated taxation has important limitations (e.g. wastefulness), which could reduce its overall attractiveness. Given these constraints, citizens are unlikely to be able to calculate the compensation they owe the victims of their state's wrongdoing. Perhaps, then, it follows that they should

abandon the notion of compensation, and instead concentrate on their general humanitarian duties to assist those in need?²²

However, the fact that citizens cannot determine the exact level of compensation they owe is not a reason to entirely forgo the framework of compensation. For this framework has important implications, both in terms of the strength and direction of the duties in question. Consider first the strength of the duties: we generally think of duties of assistance as relatively weak duties, certainly in comparison to duties of compensation (all else being equal). To assume that citizens of states that commit wrongdoing have only humanitarian duties of assistance misses the fact that the wrongdoing committed by their state places a greater moral burden on them, and that ignoring that burden is a greater moral wrong than a violation of duties of assistance (all else being equal).

Next, consider the direction of the duties in question. Humanitarian duties of assistance are general duties, i.e. they are owed to all those who are in need. It follows that citizens have a rather wide margin of discretion in choosing the agents towards which they will discharge these duties. In contrast, the principle of wrongful benefits suggests that citizens should direct their aid efforts specifically at those who are harmed by their state, and that the claims of these victims take priority (all else being equal) over the claims of other needy people in the world.

These important considerations suggest that the humanitarian duties framework gives an unsatisfactory account of what we may expect of citizens who benefit from their

²² I thank an anonymous referee for presenting me with this objection.

state wrongdoing. The fact that these citizens cannot determine with precision what the content of their compensatory duties are does not imply they may simply ignore this category of duties. Rather, they should acknowledge the pressing duty that they owe specifically to those who are wronged by their state. Where they can, they should gauge their approximate gain from the wrongful policy. Where they can't, they may use discretion in deciding how much they ought to give in compensation, acknowledging their contribution is very likely to be too high or too low, but that even under conditions of uncertainty, doing something to discharge this duty is better than not discharging it at all.

To conclude this section, citizens who recognize the force of the principle of fair play should also recognize the force of the claim that they ought not benefit from state wrongdoing. This claim gives them an additional powerful reason to oppose the wrongful policy. Furthermore, what fair play accounts so far have not pointed out is that benefitting from wrongdoing grounds a duty to directly compensate victims. In the next section I explore how these considerations bear citizens' political obligations of fair play.

4. Wrongful benefits and Political Obligations

As we saw in section 2, duties of reciprocity in cooperative schemes are undermined by wrongful benefits: beneficiaries owe duties of compensation to victims, which eliminate the grounds for their duties of reciprocity to fellow scheme members. What implications follow for citizens' political obligations?

In order to answer this question, consider the case of Becky, a citizen of the liberal democracy that violates its humanitarian duties towards refugees. As a keen supporter of the principle of fair play, Becky recognizes that she has duties of reciprocity to her fellow citizens. And she also recognizes that she has duties of compensation to the refugees who are refused asylum by her state. However, Becky has limited resources, and it is hard for her to find the money to send in compensation to the refugees. At least under those circumstances, Becky is justified in compromising her duties of reciprocity to her fellow citizens, in order to be able to comply with her duties to the victims of her state's wrongdoing. More specifically, I contend that Becky would be justified in breaking the law in order to comply with her duties to the refugees. Becky's permissible unlawful actions could be directly related to the wrongful policy. For example, Becky would be justified in directly disobeying state regulations against assisting asylum seekers to cross the state border, or in disobeying the state regulations against offering work to illegal asylum seekers. This type of direct violation of the law is bound to be costly for Becky (in terms of the risk, time or money that such violations may involve). By incurring such costs, Becky would be discharging her compensatory duties to the refugees.

A second type of law breaking Becky can justifiably engage in (if, for example, direct violation of the said policies is impossible or too risky) would be indirect. For example, Becky would be justified in partially violating her duty to pay income tax: she may under-report her income, and avoid paying some of her income tax to the state, thus freeing up resources to be sent in compensation to the victims of her state wrongdoing. The justification for these recommendations follows from the argument I offered in Section 2 regarding Alma's duties of reciprocity to the Alphas. To recall,

Alma had no duties of reciprocity, because she was under a prior duty to shed the benefit she derived from the illicit raid, in compensation to the Betas. Once she has done so, she was no longer a beneficiary of the Alpha scheme and hence, under no duties of reciprocity. Similarly, Becky is under a duty to compensate the refugees for the wrongful benefit she enjoys on their account. Subsequently, she is justified in refusing to fully comply with her state's demands that she reciprocate for the collective goods she enjoys by obeying its directives and, for example, paying her taxes in full.²³

Of course, the case of Becky is far more complex than the island case. As already noted, the state is a complex apparatus that mixes together various types of activities, and generates a bundle of collective goods. Unlike Alma, Becky cannot trace the various collective goods her state provides (roads, schools, defence etc.) to specific wrongdoings, such as her state's wrongful refusal to admit refugees. Nor can she withdraw her taxes in a way that corresponds in any meaningful sense to the wrongful benefits: the reduction in tax revenue that her tax evasion would cause may have some impact on the bundle of public goods and services the state provides but not, specifically, on the provision of goods and services that are traced to wrongdoing, and which Becky would like to reject. Nevertheless, the fact that some of these benefits are sourced in wrongdoing throws a shadow over Becky's duty of reciprocity to her state. After all, if, like Alma, Becky could have traced the benefit to wrongdoing, then clearly she would not have had duties of reciprocity for it. This shadow gives Becky

²³ Becky has a duty to compensate the victims of her state's wrongdoing even if she belongs to the class of the least well off citizens. That there are other citizens who are better well off than her does not undermine her duties of compensation to the victims. Of course, if Becky is treated unjustly by her state, then those who benefit from the injustice (e.g. better off citizens) would have duties of compensation to her. I thank an anonymous referee for raising this objection.

sufficient reason to refuse full compliance with her state, if that is what is necessary in order to comply with her duties as a beneficiary of wrongdoing. To put this idea differently, a cooperative scheme that provides its participants with a bundle of benefits, some of which are wrongful, and some of which are legitimate, cannot justifiably argue that, given the entanglement of these legitimate and wrongful benefits, its participants cannot be expected to continue and benefit from wrongdoing, and not do anything about it. A citizen like Becky has the right to lead a moral life and comply with the moral demands that being a beneficiary of wrongdoing make of her. If the only available way for them to do so is by partially disobeying their duties of reciprocity to the state, they are justified in doing so, given that these duties are partly undermined by the presence of wrongful benefits.

It's important to note here that the argument I offer in favour of direct violation of an unjust law, and for indirect tax evasions is not an argument for civil disobedience.

Civil disobedience is a public act of illegal protest, which aims to change or end what the protestor takes to be an unjust policy. I have already suggested that citizens who benefit from wrongdoing may be required to engage in this sort of protest, if it is necessary to reverse the wrongful policy, and if the costs it involves are not too high. But in addition, and independently of that, they can also be justified in engaging in personal, non-public direct violation of the law, or evasion of tax payment.²⁴ Of

²⁴ On the other hand, my justification of direct violations of the law is, in a sense, a justification of conscientious refusal. Conscientious refusal is commonly defined as a direct evasion of a law for conscientious reasons. This definition fits the example of Becky assisting refugees to cross the border, or providing them with work. Standard defences of conscientious refusal ground it in the refusal to *participate* in wrongdoing (e.g. Henry David Thoreau, 'Civil Disobedience', in *Civil Disobedience in Focus*, ed. Hugo Adam Bedau (London: Routledge, 1991). The current paper provides an additional argument for conscientious refusal, grounded in the duty not to benefit

course, as noted before, discharging duties to the victims of wrongdoings is wrought with uncertainty. But the fact that we cannot execute our duties in a precise manner does not imply that we should not try to do *something* to balance our duties to the victims of wrongdoing, and that sometimes we may do so on account of our duties of reciprocity to our fellow citizens.

I will now turn to examine three objections to the suggestion that citizens are justified in breaking the law - either directly or by evading their taxes - in response to an unjust policy. The first objection concerns the problem of political disagreement. In any democratic polity there are bound to be disagreements about the extent to which some policies are wrong. What some comprehensive doctrines would take to be benefits that are sourced in wrongdoing, others would see as benefits that are generated from perfectly legitimate policies. Given the extent of democratic disagreement, a politically viable account of political obligations must demand of citizens that they accept the authority even of laws that they find unjust. But the recommendations I just gave may seem to be giving citizens permission to break the law and, e.g. evade taxes, whenever they find that, in their view, the state commits a wrongdoing for which they have duties of compensation. Such permission is likely to undermine the state's ability to provide collective goods.

In response to this challenge I acknowledge that a practical account of political obligations should be able to accommodate democratic disagreements. But, on the other hand I would insist that no plausible account of political obligations can demand that citizens accept the authority of all laws, regardless of their content. Indeed, all

from wrongdoing, and the subsequent duty to incur the costs of conscientious refusal as way of compensating the victims of wrongdoing.

contemporary theories of political obligations, including the fair play defence, acknowledge there can be cases where the state commits injustices that are sufficiently serious, or sufficiently ‘intolerable’, to undermine the authority of their directives.²⁵ Undoubtedly it would not always be easy to ascertain when the threshold of intolerability has been crossed, but we can nevertheless assume that there would be cases where citizens have good enough reasons to assume that a state decision, of which they benefit, is egregiously wrong, and that the state, or the majority which supports the policy, cannot provide sufficiently reasonable justifications for it. Probably many liberal democracies’ current immigration policies are examples of such intolerable wrongdoings. My suggestion that citizens can be justified in directly violating wrongful policies, or in evading their taxes in response to them, is limited to such cases. Furthermore, my account does not give a free hand to break the law even in those cases. For example, if citizens have sufficient resources to continue and obey the tax law *and* to send compensation at reasonable cost to themselves, then morally speaking that would seem to be the safer option, *inter alia* given the calculation problems I highlighted earlier on. But, if doing both proves to be too burdensome, citizens are justified in prioritizing their duties of compensation.

A second challenge to the violations of the law my account permits would deem them as morally objectionable free riding. According to this objection, Becky, the citizen who under-reports her income, is enjoying the various benefits her states bestows on her, whilst at the same time evading her taxes. So she benefits from the cooperation of her fellow citizens, whilst not doing her share in contributing to the costs involved in their production. In response to this objection I would point out that Becky is not

²⁵For discussion with regard to the fair play defence see Klosko, *The Principle*, 122.

deriving any material benefit from her lack of compliance. She declares a lower income than she actually earns to the tax authorities, but she then sends the money that she would have paid in taxes, to a refugee aid organization. In that sense she is not in a better position than other citizens of her state, as a free rider would have been. Furthermore, Becky's acts are permissible only with relation to injustices that are sufficiently serious, or intolerable. In such cases, it is clear that Becky would want other citizens to act as she does. Therefore she is not granting herself a benefit that she would deny her fellow citizens. That picture would change if Becky were to violate a law in response to a relatively minor wrongdoing. As noted before, given the scope of moral disagreement in democratic communities, stability cannot be maintained if citizens allow themselves to refuse compliance in light of more minor political wrongs. Assuming that Becky does not wish for the breakdown of law and order when she avoids taxes in response to minor wrongs, she is relying on other citizens to behave differently from her, and to incur the burden of compliance even in light of laws they disagree with. Were Becky to exempt herself from this burden, she would be free riding on her fellow citizens. The duty not to free ride then gives us another reason to restrict the permission to violate the law in response to serious, intolerable wrongdoing alone.²⁶

A final worry connected to the above recommendations is the potentially corrosive impact of political disobedience, which can lead to general lack of adherence to the law.²⁷ But one can question whether conscientious disobedience of the type I described is likely to have a corrosive impact. Recall again that Becky is acting on a

²⁶ On my account, Becky may be acting wrongly even if she thinks she is acting rightly: Becky may be mistakenly perceiving a minor wrong as an intolerable wrong. If she is mistaken in her beliefs, then her violation of the law is not justified.

²⁷ See for example Klosko, *The Principle*, 103.

valid moral principle, seeking to mitigate the wrongdoing done by her government, and that she is not better off as result of this action. Quite possibly, this type of principled disobedience, which does not promote the self-interest of the disobedient citizen, is less likely to have a corrosive effect on other citizens, since, presumably, the corrosive effect is generated by their desire to also enjoy 'free' benefits. And even if principled disobedience has effect of generating more such disobedience, that may have a beneficial effect overall if governments know that seriously unjust policies may be met with tax evasion, they may be more hesitant to pursue them.²⁸

5. Conclusions

This paper examined the impact of wrongful benefits on the fair play defence of political obligations. It suggested that citizens who acknowledge the power of the principle of fair play even in non-voluntary cooperative schemes like the state, and who take themselves to be under the duties of reciprocity to their fellow citizens, have especially strong reasons to be concerned about their status as beneficiaries from state wrongdoing, and especially strong reasons to respond to that wrongdoing. I proposed

²⁸ Suppose that Charles refuses to comply with his duties of compensation to victims of his state's wrongdoing. May Becky steal from him, and send the money in compensation on his stead? My answer to this question is negative. Granting Becky the right to enforce duties of compensation on other citizens raises a host of concerns that do not apply to the case of self-enforcement. First, Becky can certainly tell whether she herself has already acted to discharge her duties of compensation. But can she know for certain that Charles has not yet acted? Second, can Becky trust herself to calculate (in as much as it is possible) the level of Charles's duties of compensation, avoiding bias and information problems? Third, can Becky be certain that other citizens have not already stolen from Charles and discharged his duties of compensation? Such concerns imply that granting citizens the moral permission to personally enforce duties upon each other is likely to be ridden with suspicion and mistrust and to be overall unstable. I thank an anonymous referee for pressing me to deal with this objection.

several action-guiding recommendations for such citizens. First, they should resist and protest against the wrongdoing. Second, they should compensate, as accurately as they can, the victims of that wrongdoing. Finally, I argued that such citizens' political duties of reciprocity can be undermined, to an extent, by the presence of wrongful benefits: when citizens weigh their duties to their fellow citizens against their duties to the victims of their state wrongdoing, the latter can take precedence over the former.