Social Justice and Wrongful Harm

by

Natasha Osben

A thesis submitted for the degree of

Doctor of Philosophy

Department of Government

University of Essex

April 2023

Acknowledgements

I am deeply indebted to key members of the School of Philosophy and Art History at the University of Essex, whose quality of teaching and research ignited a passion for studying within me when I was a taught student, which is still alight to this day. I am especially thankful to the following persons, who showed me great kindness and encouragement, and who supported me in applying to study at a postgraduate level: Cristóbal Garibay Petersen, Rosie Worsdale, Lorna Finlayson, Irene McMullin, Jörg Schaub and Fabian Freyenhagen. I was further encouraged to pursue postgraduate study by Tom Parr. Without the support and mentorship of those listed here, I would most likely not have continued studying beyond my undergraduate degree; their belief and confidence in my ability opened the door for me to believe in myself.

I could not have undertaken this journey without the support of the Consortium for the Humanities and the Arts South-east England (CHASE) Doctoral Training Partnership. In addition to their generous studentship, CHASE provided me with priceless experiences and opportunities to develop my skills as a researcher, via their biannual "Encounters" conferences, their many funded training sessions, and their researcher placement scheme. I'd like to acknowledge the team at Autonomy think tank, and especially Will Stronge, for giving me the opportunity to develop research skills through a 6-month CHASE-funded research placement. Special thanks also go to Helen Hester for her help in reviewing literature for this project.

I would like to express my deepest gratitude to my supervisors, Paul Bou-Habib and David V. Axelsen for their patient guidance and mentorship. The knowledge they have shared with me has been instrumental to my success as a doctoral candidate. Beyond this, Paul and David have been incredibly generous with their time, providing detailed written feedback on many drafts of the chapters in this thesis, as well as giving me countless hours of their time in frequent discussions, helping me to explore and develop my ideas and challenging me to question my intuitions and improve my arguments where necessary. I thank Paul and David for creating a research

environment that was stimulating and inspiring. I am especially thankful for the opportunities they created for me to share my work, and to learn from the work of other political theorists, throughout the course of my doctoral research, via regular work in progress seminars. As a single parent, I faced many challenges and obstacles to continuing my research during the Covid19 pandemic; it is fair to say that, without the kind and heartening support that Paul and David provided through these difficult times, there is a high probability that I would not have completed my doctoral studies. For all of this and more, I truly cannot express my gratitude enough.

Additional thanks are owed to James Christensen, who chaired my supervisory panel, and to my examiners Isabella Trifan and Alice Baderin. James' comments on my work during our supervisory panel meetings and Isabella and Alice's comments during my viva were all deeply insightful and constructive.

Lastly, I would be remiss in not mentioning my friends and family for the moral support they have provided me throughout the course of my studies. They have not always understood what I was doing, or why, but – unlike me – they never once doubted that I *could* do it. I am so grateful for the love, encouragement and reassurance they have provided whenever I have needed it. Special thanks go, in particular, to my 3 eldest children, who have been so patient and understanding over the last 10 years as I have tried to divide my time between caring for them and studying. For coming along with me, in the early years, to lectures during school holidays, and for cooking dinners in more recent months, so that I could work into the evenings, and most of all, for being my unwavering cheerleaders throughout this whole process, I will be forever grateful.

To all of my children: Anna, Rosie, Grace and Beau, I am endlessly grateful to you for being the richest source of inspiration – you motivate me to always do my best, because I have wanted to set you an example, which, should you follow it, I could be proud of. And in achieving this doctorate, I hope I have made *you* proud, too.

Social Justice and Wrongful Harm

Table of Contents

Chapter 1. Introduction.....1

1.1 Introduction*.....*1

1.2 A Hypothetical Case Study*.....*6

1.3 A Gap in the Existing Social Justice Literature*.....*9

1.4 Objections*.....*14

Is establishing just institutions enough?.....15

Do luck egalitarian theories already tell us what kind of compensation is owed?.....19

1.5 Contributing to Existing Literature*.....*26

The Literature on Collective Responsibility.....26

Literature on Historical Injustice.....29

Chapter 2. Disadvantage-as-Harm.....34

2.1 Introduction*.....*34

2.2 Disadvantage-as-Harm: Conceptual Elements*.....*39

2.3 Two Accounts of Disadvantage-as-Harm*.....*46

2.4 Three Objections*.....*53

2.5 Conclusion*.....*63

Chapter 3. Rectification Versus Aid: Why the State Owes More to Those it Wrongfully Harms.....64

3.1. Introduction *64*

3.2. Why the Threshold Version of the Difference View Matters *73*

3.3. The No Difference View *76*

3.4. The Difference View *80*

3.5. The arguments from respect *86*

3.6 Conclusion *97*

Chapter 4. Collective Duties: Paying For Our State's Wrongdoing 101

4.1. Introduction *101*

4.2. The four arguments: an overview *103*

4.3 Complicity *104*

4.4. Benefiting *110*

4.5. Authorisation *123*

4.6. Natural duty *129*

Why is full compensation necessary? 134

4.7. Conclusion *138*

Chapter 5. "Full Compensation": 141

Problems with the Counterfactual Conception 141

5.1 Introduction *141*

5.2. Preliminaries *144*

5.3. The Impossibility Problem *147*

5.4. The Preference Problem *152*

5.5. The non-identity Problem ***156***

i) Qualitative Non-identity Cases 158

ii) Numerical Non-identity Cases 163

5.6 Conclusion ***168***

Chapter 6. The Just Shares View 169

6.1 Introduction ***169***

6.2 The Just Shares View ***171***

6.3 Why Shift from the CCC to the JSV? ***177***

6.4 The JSV as a Fully Inclusive Account of Compensation ***181***

6.5 Objections ***185***

a) Eroding the distinction between wrongful harm and bad luck. 185

b) A matter of practicality. 187

6.5 Concluding remarks ***189***

References ***191***

Chapter 1. Introduction

1.1 Introduction

What do we owe to the disadvantaged in society? The answer to this question surely depends on the cause of their disadvantage. The intuitively appealing ideal of equality of opportunity tells us that people's outcomes in life should not be determined by differences in their natural or social circumstances but may be determined by their freely chosen actions. It may be fair for some inequality to persist in a just society, where this is the result of the individual's choices, but it seems unfair that anyone should bear great disadvantages because of circumstances that are beyond their control and which are, in that sense, morally arbitrary (See Cohen, 1989; Rawls, 1999; Dworkin, 2000; Arneson, 2004; Temkin 1993; Tan 2012). So far, the literature on what is owed to those who experience disadvantage due to circumstances beyond their control has primarily focused on those who are badly off as a matter of bad luck. In my dissertation I focus on cases where people are badly off, not as a matter of bad brute luck, but as a result of wrongful harm by the state.[1]

Broadly speaking, my thesis is concerned with the question of what society owes to the disadvantaged, particularly those who are disadvantaged in terms of the development of certain

---

[1] While being a victim of wrongful harm is one type of 'bad luck' it is not what I have in mind when I refer to bad luck throughout the dissertation. I will henceforth use the term "bad brute luck" in order to refer to unchosen harmful events that are not the result of the individual's own choices or of the unjust actions of private agents or public institutions. Examples of bad brute luck are congenital disease, or a natural disaster.

skills and capacities, and subsequently in terms of their educational, socio-economic and employment outcomes. But it focuses on a specific part of that broader question, which concerns cases where the state has failed to fulfil various duties it owes to persons, and can, thus, be held responsible for their subsequent disadvantage. In this dissertation, I am not only interested in cases where the state fails in its negative duties but also in cases where it fails to fulfil various positive duties. Negative duties are duties *not to* perform an action, e.g., a duty not to commit assault. Positive duties are duties *to perform* a certain action, e.g., a duty to render assistance to persons in need. As Varden (2011) writes, "Somewhat simplified, theories that affirm the so-called negative duties conception of justice are committed to the fundamental assumption that justice primarily requires that we not harm or wrong others" (p.281). Whereas more positive duty inclusive accounts hold that justice demands more of us than this; namely, it requires that we not only refrain from wrongfully harming others, but also that we provide aid "to help others obtain a certain level of, for example, material resources, welfare, capability, primary goods, or well-being" (Varden, 2011, p.282). In this dissertation, I argue that failures in positive duty by the state should also, under certain conditions, be classed as wrongful harming.[2] That is, when persons are disadvantaged by failures in either positive or negative duties by the state and those persons are also thereby caused to suffer a deficit in their just

[2] This expansive view of wrongful harm gives rise to a concern that it may become difficult to distinguish between cases of bad luck disadvantage and cases of disadvantage as wrongful harm. Indeed, as I explain in chapters 2 and 3, I mean to suggest that many cases we might at first have thought of as bad luck should be properly understood as wrongful harm, as the disadvantages were born from failures in positive duty by the state. I discuss the difficulty of drawing a line between cases of bad luck disadvantage and cases of disadvantage as wrongful harm in more detail in Chapter 3 and Chapter 6.

shares, I consider them to have been wrongfully harmed by the state. I am interested in the content and stringency of the compensatory duties the state might owe to disadvantaged persons in such cases. In summary, I investigate the implications that follow when institutional injustice within a society is to blame for the harmful disadvantage suffered by some of its citizens.

A full exploration of this issue and its implications entails an exploration of a number of related questions. Namely: What kind of negative and positive duties does the state have? When does violation of these duties lead to duties of compensation for the state? What is the content of these compensatory duties, and how do they stand in priority with other kinds of compensation or redistribution owed by the state to its citizens? Can the costs of discharging these duties of compensation be justifiably shared collectively by all the citizens and residents of the state responsible for violating the negative or positives duties?

I will rely on existing literature for the answers to some of these questions, so that I can focus my attention on developing new answers to the others. Regarding the kinds of negative and positive duties the state has, I do not develop a new argument or account for the existence or content of these duties. Rather, I assume that the state owes a set of widely accepted negative duties, such as the duty not to subject persons to torture or inhumane treatment, not to detain persons without justification or without following due processes, and not to threaten or commit acts of violence, assault or murder against its citizens or residents. As for the positive duties the state owes to its members, these I assume are duties that are identified by theories belonging to an "egalitarian plateau" (Kymlicka, 2002, p.4). They are duties to ensure that persons have the means they need for the effective exercise of political liberties, for fair equality of opportunity in pursuing jobs and other positions of responsibility, and the avoidance of significant economic disadvantage caused by social and natural circumstances beyond their control. Theories belonging to the egalitarian plateau, which "may reasonably be seen as

affirming a basic commitment to a positive duties approach to justice" (Varden, 2011, p.282), include Rawls (1971), Sen, (1974, 1979, 2009), Dworkin (2000), Nussbaum (2007) and Cohen (2008). For the remaining questions, I aim to develop new answers regarding the compensatory duties owed by societies to victims of domestic institutional injustice in the real world.

I argue that, in most societies, social and political institutions do not fulfil their duties to many citizens, and that institutional injustice is, thus, a significant causal factor—if not the root cause—of a great deal of domestic disadvantage. In Chapter 2, I refer to this kind of disadvantage as *disadvantage-as-harm.* When I outline the conceptual elements that constitute this idea, I explain that disadvantage-as-harm occurs when a person is made *worse off than others* due to a *violation of duty to that person,* which results in the victim being *worse off than they otherwise would have been.* Persons who experience disadvantage-as-harm can thus be said to have been wrongfully harmed by the social and political institutions under which they live.[3] In Chapter 2 I propose that most of the disadvantage that obtains in many societies is disadvantage-as-harm. Additionally, I propose in Chapter 3 that more is owed to the

---

[3] The notion of "wrongful harm" plays an important role in this thesis. In Chapter 2, I assume a notion of "wrongful harm" that ultimately rests on a counterfactual conception of "harming". According to the counterfactual conception, a person is "harmed" if they are made worse off than they otherwise would have been. "Wrongful harm" occurs when a person is made worse off than they otherwise would have been due to a violation of duty. However, in Chapters 5 and 6, I explain why – despite its being familiar and widely endorsed –we must ultimately reject the counterfactual conception of "harming" and thus also the associated notion of "wrongful harm". Instead, we must endorse a "just shares" conception of wrongful harm, according to which a person is wrongfully harmed if they are made to suffer a deficit in their just shares as a result of another person's wrongful action.

disadvantaged in society when their disadvantage results from institutional injustice than might be owed to persons who experience disadvantage that arises from other forms of bad brute luck (i.e., when "bad brute luck" does not include being a victim of institutional injustice).[4] In Chapter 4, I defend collective duties for all citizens to contribute toward the costs of providing full compensation to victims of state-caused disadvantage-as-harm. In Chapter 5, I consider what full compensation entails, and discuss some problems with a widely endorsed conception of compensation that emphasises the relevance of counterfactual comparison for establishing whether compensation is owed to persons and to what extent it is owed. I again take up the counterfactual comparative account of harm here and discuss it, finding it wanting. Finally, in Chapter 6, I explain why we should endorse what I call a "just shares" conception of harm, which defines harm as causing deficits in a person's just shares, rather than causing persons to be worse off than they otherwise would have been. With this alternative account of harm in mind, I propose an alternative to the counterfactual conception of compensation, which can overcome the problems discussed in Chapter 5.

---

[4] More precisely, in chapter 3 I develop what I call the *Threshold Version of the Difference View*, in which I propose that all victims of disadvantage, regardless of the source of their disadvantage, are owed compensation that raises them at least up to the minimum threshold, and that no priority should be given to compensating either victims of bad luck or victims of wrongful harm up to this threshold. Above the minimum threshold, I argue that there may be a difference in the compensation owed to the disadvantaged, depending on whether the source of their disadvantage is bad luck or wrongful harm by the state. To be clear, it is not my view that all victims of bad luck are only owed compensation up to the minimum threshold and nothing more. Rather, I argue that victims of wrongful harm are owed *full compensation* whereas less than this may be owed to victims of bad luck.

1.2 A Hypothetical Case Study

To illustrate the ways that disadvantage can result from institutional injustice, and how it is morally relevant for the duties that are owed to those whom it disadvantages, I will introduce a hypothetical case study here, which I will refer to throughout my thesis. I introduce the case study here for a couple of reasons. Firstly, presenting the case study at the start of this dissertation will enable me to return to it throughout the thesis. This will enable me to illustrate a number of points I will make in the course of developing various arguments. These arguments will be clearer for the reader if they can refer to the case study than they might be if discussed only in abstract or theoretical terms. Secondly, the case study enables me to explain how different kinds of institutional injustices can occur to the same person, and how they can interact to contribute to further disadvantage experienced by the victim across her lifetime. This is important because often disadvantage in adults can be traced back to harm they experienced through institutional injustice in their formative years. When somebody is harmed by institutional wrongdoing, they suffer not only the initial disadvantage that results from this, but may be further disadvantaged and suffer additional harms which are resultant from the original harm they suffered. For example, deprivation of adequate education in one's childhood may contribute to a person being particularly vulnerable to unemployment and economic insecurity in adulthood.

Thus, when deciding what compensation disadvantaged adults might be due, it will be important to look not only at their present circumstances but also to consider the various kinds of institutional injustices that may have interacted to cause disadvantages, which have accumulated and grown across their lifetime. Wolff and de Shalit (2007) refer to this as dynamic clustering of disadvantage. "An example of dynamic clustering for a single individual

would be a case where one is first unemployed, then becomes homeless, then loses one's friends, and then becomes very ill, and yet this does not all happen immediately but rather accumulates gradually over time." (p.120). Wolff and de Shalit (2007) also discuss how dynamic clustering is not only experienced by the individual across their lifetime but can also be reproduced across generations. The case study will help to demonstrate this important intergenerational feature of disadvantage-as-harm.

Sophie's story. Sophie was born to parents who lacked marketable skills, as well as a broad range of other skills that might have enabled them to give Sophie a good start in life. These include literacy and numeracy skills, as well as skills in stress and anger management, financial management, and social skills. Her parents were also disadvantaged in terms of their social capital, and they held pessimistic attitudes toward the value of education and work.

Sophie's father died when she was four years old. This left Sophie's mother to raise her as a single parent. Sophie's mother was unable to secure well-paid work and the state did not provide sufficient welfare support. Therefore, despite Sophie's mother working long hours, Sophie, nevertheless, grew up in conditions of poverty.

Due to her low income, Sophie's mother had no choice but to rent a property where prices were lowest. This meant that Sophie and her mother had to live in an area with high levels of socio-economic disadvantage and poor provision of public services, including education. Sophie attended the schools in her local catchment area, which were inadequate. Sophie's mother lacked the skills necessary to secure Sophie a place in an adequate school outside of their local area. At home, Sophie lacked the resources and encouragement to study, in large part due to the effects of poverty; her home was often unheated, there was little food and as a result Sophie was often cold and hungry. Her mother was often at work, so she was unable to discuss schoolwork with her. Sophie had no computer, internet connection, or books

at home, and could not afford the bus fare to the library. Furthermore, as Sophie's mother had herself had difficult experiences at an inadequate school, she was not well-equipped to instil a positive attitude to learning in Sophie. Like many of the other children from low-income families in her area, Sophie thus left school with no good qualifications and a similar lack of marketable skills and talents as her parents.

On leaving school, Sophie came to rely on very low-paying work and was thereby compelled to continue living in a socioeconomically deprived neighbourhood, due to the high cost of rent in other areas. She lacked the skills and capacities to improve her own situation. Furthermore, even if Sophie would have had the inclination to do so, institutional arrangements in her society made this very difficult. Due to the insufficient provision of welfare benefits, Sophie was unable to reduce her working hours to return to education as an adult or to gain vocational skills through an apprenticeship. Additionally, Sophie was left with little occupational choice and flexibility, because the conditions attached to the receipt of welfare benefits for jobseekers stipulate that claimants may not decline offers of work for which they are qualified, or leave a job "without good reason". Sophie found herself, much like her mother, working long hours in dead-end jobs for very low-income wages.

Sophie's story, or, more specifically, the fact that it depicts the experiences of many disadvantaged persons, demonstrates the plausibility of the claim that a great deal of disadvantage in society cannot reasonably be attributed to either the personal responsibility of those who are disadvantaged or to *mere* bad brute luck. Instead, their disadvantage is to an important extent the result of unjust arrangements in the basic structure of society, i.e., its main social and political institutions, including those that provide welfare support, education and public health care). For example, when considering children who do not perform well in school, we might be tempted to think of this as a case of personal responsibility or bad brute luck; we

might think that children who perform badly in school do so as a result of poor behaviour or imprudence; perhaps they refuse to pay attention in class or lack the self-discipline to complete homework; alternatively, we think their poor performance is due to the fact that they lack the innate intellectual ability to excel academically. What Sophie's story demonstrates, however, is that for children like Sophie, educational outcomes can be determined, not by bad brute luck or personal responsibility, but rather by the failure of the state to fulfil a duty to provide an adequate education. This failure then leads these children to enter adulthood with limited qualifications and low income-earning potential. This helps us to appreciate that disadvantage also in the job market, and not only in education, cannot be explained properly by appealing to personal responsibility or bad brute luck. It is often the result of the fact that the disadvantaged were deprived of the opportunities and resources in their formative years to develop the skills and characteristics that are crucial to success. Importantly, these kinds of barrier to success that arise as a result of failures in positive duty by the state are not uncommon. Rather, and as I will show in Chapter 2 of my dissertation, disadvantage-as-harm, i.e., disadvantage that results from domestic institutional injustice, is very pervasive in most societies. By this I mean that, in many societies, of those who suffer disadvantage, most are victims of disadvantage-as-harm.

1.3 A Gap in the Existing Social Justice Literature

Once we notice how widespread disadvantage-as-harm is within many societies, it becomes apparent that the existing social justice literature has not fully developed the insights we need in order to identify what is owed to many of the disadvantaged in society. This gap in the existing social justice literature can be illustrated by looking at a very influential family of

theories about social justice, namely, luck egalitarianism.[5] Luck egalitarianism is concerned with mitigating the differential effects of luck on persons' outcomes in life. These distributive theories tell us that a society's duties to the disadvantaged should be informed by whether the disadvantaged are personally responsible for their poor lot in life or have suffered from differential bad luck.

While luck egalitarians have had much to say about the duties that are owed to persons who experience disadvantage due to natural or social circumstances for which no one is responsible ("wrongless" bad luck), and to persons who are personally responsible for their disadvantage, they have had relatively little to say about disadvantage that is due to the bad luck of being a victim of wrongdoing. The luck egalitarian focus on individual responsibility and wrongless bad luck has been criticized from several directions. Most prominently, by two groups. First, by relational egalitarians, who argue that equality is best understood as a way in which citizens treat and relate to each other (Anderson 1999; Scheffler 2003). They hold that the luck egalitarian emphasis on holding people responsible for past choices can lead to interpersonal disrespect and undermine relations of equality (Scheffler 2005; Wolff 1998). Second, by sufficientarians, who argue that distributive justice need not entail that everyone has an equal share of society's resources. What matters is that everyone has enough (Crisp 2003; Huseby 2010). If someone does not have enough, it does not matter whether this is due to bad luck or bad choices (Anderson 1999; Axelsen & Nielsen 2015; Axelsen & Nielsen 2020). In this thesis, and especially in chapter 3, I draw on both responses to luck egalitarianism. More importantly, I go beyond these criticisms by adding that a normatively relevant distinction must also be made *within* those that are disadvantaged through bad luck.

---

[5] For key texts on luck egalitarianism, see Arneson (1989); Cohen (1989); Dworkin (2000), Hurley (2003); Knight and Stemplowska (2011); LippertRasmussen, (2015).

Specifically, as Sophie's case illustrates, in the real world many disadvantages are due neither to personal responsibility nor to "wrongless" bad luck. Sophie's lack of marketable skills and talents as an adult is largely attributable, rather, to the fact that the state has failed to fulfil many of its positive duties to Sophie. For example, it failed in its duties to provide Sophie with access to adequate schools and welfare support in her formative years. She was thereby deprived of both the education and socioeconomic circumstances necessary for the development of certain skills and capacities. What a society owes to a person who has suffered from bad luck may well differ from what it owes to a person who is disadvantaged due to institutional injustice. Luck egalitarianism does not register the difference between various types of unchosen disadvantage. The disadvantages it addresses are restricted to those caused by personal responsibility and bad brute luck and it does not consider (because this is not the aim of writers who defend luck egalitarianism) what it is that is owed to people who experience disadvantage-as-harm.[6]

---

[6] Another important strand in the existing social justice literature goes further back to John Rawls. As noted above, Rawls also deals with ideal theory. As he writes, "for the most part I examine the principles of justice that would regulate a well-ordered society. Everyone is presumed to act justly and to do his part in upholding just institutions." (Rawls, 1999, p.8) However, since ideal theory, by its very nature, assumes strict compliance with the demands of justice, it cannot tell us how we are to respond when the demands of justice go unmet. In other words, the existing social justice literature in ideal theory cannot guide us on what is owed to the victims of disadvantage-as-harm.

Why has this question been overlooked by luck egalitarianism? One reason that may explain it is that much of social justice literature[7], including the luck egalitarian literature, has, over the last few decades, tended to deal in ideal theory and therefore has not discussed what is owed to victims of disadvantage-as-harm. This literature has been preoccupied with the aim of identifying what a just society would look like if everybody complied with the demands of justice; the main questions have been these: under these quasi-utopian circumstances, what would a just distribution of resources look like? How would the institutions of a perfectly just society be arranged? Once it is assumed that everyone complies with their moral duties, the question of what is owed to those who are disadvantaged as a result of institutional injustice does not arise and need to be addressed. The only disadvantages that arise are restricted to those caused by personal responsibility and by wrongless bad luck.[8]

---

[7] Social justice literature is literature that aims to identify the requirements of social justice, i.e., the guiding principles necessary for achieving a just society. A just society might be required, for example, to ensure fair distributions of income and wealth, fair equality of opportunity, and to structure relevant economic, social, legal and political institutions to minimise power disparities and maximise fairness and equality in society.

[8] Another important strand in the existing social justice literature goes further back to John Rawls. As noted above, Rawls also deals with ideal theory. As he writes, "for the most part I examine the principles of justice that would regulate a well-ordered society. Everyone is presumed to act justly and to do his part in upholding just institutions." (Rawls, 1999, p.8) Since Rawls also assumes strict compliance with the demands of justice, his work doesn't tell us how we are to respond to people who are disadvantaged when the demands of justice go unmet.

There are good reasons to pursue work in ideal theory; unless we know what a just society would look like, i.e., the institutional arrangements and action-guiding principles that would exist in an ideal world, it is difficult to assess our current non-ideal circumstances and make plans to move toward a more ideal world (Stemplowska, 2008; Rawls, 1999, pp.6-9). As Swift (2008) notes, in order to judge what we ought to do here and now in the real world, we need input both from political scientists to inform us on the way the world currently is and what our feasible options are, and from political philosophers – including those engaged in ideal theorising – to "evaluate and rank options – which include the actions that produce states of affairs – within the feasible set." (p.364) Ideal theory is valuable because it can help us to evaluate our available options in terms of whether they will move us closer or further away from perfect justice. As Rawls (1999) notes, "the reason for beginning with ideal theory is that it provides … the only basis for the systematic grasp of these more pressing problems" i.e., the problems of "how we are to deal with injustice" (p.8)

Nonetheless, despite the value of ideal theories, they leave a gap in our understanding of what is owed to disadvantaged individuals in the real world. If many of the disadvantaged in society are victims of state-caused wrongful harm, then ascertaining what the disadvantaged are owed requires us to investigate not only what an ideal distribution of resources looks like, but also how the state ought to rectify the wrongful harms that it has perpetrated against its citizens and residents.[9] This dissertation contributes to a growing body of literature in non-ideal theory, which starts by observing the pervasiveness of unjust institutions and structures

---

[9] Pogge (2005) has recognised the issue that I am addressing here; he makes the argument that many of the globally worst off are victims of wrongful harm caused by the imposition of an unjust and coercive global institutional order. I discuss Pogge's argument in detail in Chapter 2 of the dissertation; I explain on p.21 of this chapter how my approach differs from Pogge's.

in society, and seeks to draw out the normative implications for citizens and states (See Shelby, 2016; Sen, 2009; Wolff, 2015, Fishkin, 2014).

1.4 Objections

I can imagine two objections that might be raised in opposition to my claim that there is a worrying gap in the existing social justice literature. Firstly it might be argued that, assuming, as I am maintaining, that Sophie has been harmed by institutional injustice, the injustice that I am pointing to is merely the failure of her society to implement the kind of institutions that literature defends. Consider again the example of luck egalitarian theories of social justice. The injustice I am pointing to, so proponents of those theories might say, is merely the failure to implement luck egalitarian institutions, and thus to properly eliminate the effects of bad luck on people's outcomes in life. If this is so, then luck egalitarians may think that they can advise on what is owed, i.e., that those who have been disadvantaged because of bad luck, which has not been properly addressed thus far, should have those negative luck-mediated outcomes ameliorated moving forward. In other words, if people have been harmed by the lack of luck egalitarian institutions in their society, then it might be thought that what their society owes them is merely the introduction of those just institutions.[10] Thus, luck egalitarians may contend that my argument implies nothing more than this: the state owes it to victims of disadvantage-as-harm to fulfil its positive duties to ameliorate the impact of bad luck on people's outcomes. Existing luck egalitarian theories already say that in order to fulfil the demands of justice, the state must fulfil positive duties to its members that ensure that no one is unfairly disadvantaged

[10] For a specifically institutional account of luck egalitarianism, see Tan (2012)

due to differential bad luck (see Cohen, 1989 and Dworkin, 2000). They will already agree that if the state has failed to alleviate Sophie's childhood poverty, it should provide her and her parents with the relevant support right away.

The second objection that might be raised against my claim that there is a significant gap in the literature is this: I claim that – as existing theories of justice only tell us what is owed in cases of bad luck or personal responsibility, and do not address what is owed in cases of wrongful harm – the existing literature cannot tell us what is owed in cases of disadvantage-as-harm. However, it might be said, those who are disadvantaged by institutional injustice *are*, in fact, victims of bad luck. After all, and as we have already noticed, being a victim of wrongdoing is a kind of bad luck. A proponent of luck egalitarianism might therefore claim that luck egalitarianism does, in fact, supply us with a convincing account of what persons like Sophie, who suffer disadvantage-as-harm, are owed. Luck egalitarians might object that there is nothing special about this kind of disadvantage compared to "mere" bad luck. The disadvantage is (distributively) the same, so there is no reason to treat it differently because it has a different source.

Is establishing just institutions enough?

I will first respond to the objection that my argument fails to demonstrate a gap in the literature because all it is pointing to is simply the need to establish the kinds of institutions that this literature defends – say, luck egalitarian institutions. While it is true that I am concerned with the wrongful harm that persons suffer when states fail to comply with the demands of justice, I maintain that luck egalitarianism does not provide an answer to the question of what we ought to do for disadvantaged persons who have been harmed by the lack of luck egalitarian institutions throughout their lives. Furthermore, introducing luck egalitarian institutions from

now on will not adequately compensate this group of people. Even if we were to implement luck egalitarian institutions from now on, there would still be many people who are the victims of disadvantage-as-harm. Thus, a theory that would tell us how we should treat them and what they are owed in rectification is still required.

To see this more clearly, we can distinguish between what one might call "primary" and "secondary" duties. Luck egalitarians agree that the state owes a range of positive primary duties to its members. However, when the state fails to fulfil these primary duties, and persons subsequently suffer from disadvantage-as-harm, those who have been harmed are not only owed the fulfilment of the state's primary positive duties going forward; they are now owed a secondary duty of compensation by the state for the harm they have suffered. Consider the following hypothetical example as an illustration of this point.

> *The negligent doctor*. A cardiac surgeon performs open heart surgery on a patient suffering with congestive heart failure. While carrying out the procedure the doctor becomes distracted; he does not take appropriate care to ensure that all surgical instruments and gauze are removed from the surgical site before closure; a piece of gauze is negligently left inside the patient's chest cavity. Following the operation, the piece of gauze left in the chest cavity leads to a severe infection and sepsis.

In this case, the negligent doctor has failed in his primary duty to properly complete the operation to resolve the patient's heart failure, which includes a duty to take necessary and appropriate care to remove gauze from the surgical site before closing the patient. If the hospital were to recognise the failure of these primary duties and to subsequently recommend the fulfilment only of these primary duties going forward, this would clearly not be a sufficient fulfilment of all its duties. Fulfilment of the primary duties would involve its surgeons performing surgery to fix heart failures, and taking care to remove all instruments including

any gauze left in patients' chests following the surgery. However, fulfilment of these primary duties would still leave the patient suffering from infection and sepsis. Intuitively, it seems clear that, in light of the failure in their primary positive duties and the harm this has caused the patient, the hospital now has secondary duties to rectify the harm caused to the patient; it must readmit the patient to carry out a further surgery to remove the foreign body, provide intravenous antibiotics to treat the resultant sepsis, and support and care to facilitate full recovery.

Returning to Sophie's case, assuming the state has a primary positive duty to ensure that children do not live in conditions of poverty, the state harmed Sophie in the very non-fulfillment of that positive duty. It left her to experience avoidable childhood poverty, e.g., feeling hungry and cold, experiencing stress and anxiety due to persistent insecurity, lacking access to learning resources, etc. This species of harm to Sophie is *inherent to* the state's non-fulfillment of its positive duties to her. This inherent harm could have been rectified by the state's prompt fulfilment of its primary duties to Sophie, if the state had immediately furnished her with adequate education and other resources that would have promptly ended her childhood poverty. This case and the duties owed by the state differ, I argue, from one in which a person was made equally badly off—hungry and cold, stressed and anxious, lacking security and education, etc.—through a stroke of bad fortune. Luck egalitarian theories are not attuned to the ways in which disadvantage-as-harm differs from mere bad luck.

As I explain in the case study, as a result of growing up in poverty and the impact this had on Sophie's development of certain capabilities, Sophie is unable to find rewarding or well-paying work as an adult. This is a *resultant* harm from the non-fulfillment of the state's positive duties to her. If the state were only to fulfil its primary positive duties to Sophie, this would not address the compensation she is owed for the resultant harm she has suffered. Luck egalitarian

theories are usually silent on the topic of resultant harm and compensation. Partly, of course, because they do not capture the distinctiveness of harm in the first place.

The concern that my account implies only that the state should fulfill positive duties that are already endorsed by many existing theories of justice arises only if we assume that: a) the compensation Sophie is owed is equal in content and form to that of a person who has been similarly disadvantaged as a result of mere bad luck, and b) compensation is only owed for inherent harm, and not for resultant harm. So, for example, my claim that persons like Sophie have experienced disadvantage-as-harm implies not only that the state must provide people like Sophie with the relevant support right away, but that it must fulfil secondary duties to compensate also, for all the resultant harm that Sophie and others like her experience as an adult. These demanding duties of rectificatory compensation would not be supported by existing theories of social justice. This is partly, I take it, because Sophie's disadvantage does not register as the result of wrongful harm by the state. Mere compensation isn't sufficient, because this doesn't capture the particular wrongness of harm. If a person is unable to find rewarding or well-paying work, as a result of the state having wrongfully harmed her in a way that damaged her capacities, it should be clear that this person is owed help to restore her capacities and to secure rewarding, well-paid work as well as income support. Establishing just institutions from now on isn't sufficient, because this won't compensate for resultant harm. Whereas a person who lacks marketable skills and talents due to bad luck might just be owed income support. Thus, my argument support far more demanding duties of compensation to the disadvantaged, than existing theorists might endorse if we did not correctly diagnose their disadvantage as wrongful harm, but rather as the result of bad luck.

In summary, this first objection mistakes my claim that there is a gap in the existing literature for the claim that existing theories do not provide an adequate or convincing account of the state's primary duties. This is not what I am arguing. My argument is that the existing

literature does not provide an explanation of the duties the state owes to victims of disadvantage-as-harm, in light of the fact that they have been harmed by the state's non-fulfilment of their primary positive duties. Once we recognise that many victims of disadvantage-as-harm suffer from resultant harm, we should see that establishing just institutions isn't enough to rectify this; victims will still require the fulfilment of secondary duties. This includes compensation for resultant harm, which would not be provided through the implementation of just institutions moving forward.

Do luck egalitarian theories already tell us what kind of compensation is owed?

Let us now consider the second objection to my claim that there is a worrying gap in the literature. This objection, recall, is that luck egalitarianism can tell us what kind of compensation the victims of disadvantage-as-harm are owed; they are owed compensation for bad luck. Luck egalitarians may make this objection on the basis that suffering from institutional injustice is a kind of bad luck, and that luck egalitarianism can tell us how to address the bad luck of suffering from disadvantage-as-harm, so there is no gap in the literature. This objection is mistaken. While suffering from wrongful harm is a kind of bad luck, we have reason to think that its perpetration generates different duties of compensation than other kinds of bad brute luck might. This is one of the central claims of my dissertation, which I defend in Chapter 3. As I will argue in that chapter, there is reason to think that victims of wrongful harm are owed more compensation than is owed to victims of natural bad luck. Therefore, if disadvantage that comes about through institutional injustice should be understood as a kind of wrongful harm, then the victims of disadvantage-as-harm may be owed more than luck egalitarianism would advise. Luck egalitarians would therefore be mistaken if they were to recommend treating victims of disadvantage-as-harm in the same way as they recommend

treating victims of natural bad luck, because – although suffering from wrongful harm is a kind of bad luck – as I argue in Chapter 3, the victims of wrongful harm are owed *full* compensation, whereas the victims of other kinds of bad luck are not necessarily owed as much as this.[11]

While some theorists hold that the state owes very demanding duties of compensation to individuals who are disadvantaged by bad luck (e.g. Cohen, 1989), in the sense that their disadvantage should, as far as possible be entirely eliminated, this is not the predominant view in writings on social justice (for alternative views, see Anderson, 1999 and Dworkin, 2000). On the other hand, it is commonly accepted that victims of wrongful harm are owed very demanding duties of compensation. Indeed, many think that compensation for wrongful harm should leave the victim no worse off than they would have been if they had not suffered the harm in the first place. According to George Sher, (cited in Roberts, 2006), this is "both the official view and the standard interpretation of compensation" (p.415). Therefore, even if we see disadvantage-as-harm as a kind of bad luck, luck egalitarianism still cannot provide us with the correct insight into what victims of disadvantage-as-harm are owed by society.

I therefore maintain that the existing social justice literature cannot tell us what is owed to the victims of disadvantage-as-harm. The above objection to this claim would lead to the

---

[11] To put it simply, full compensation should ensure that all of the harmful effects of an action are rectified in full and therefore cannot persist in the victim's future. In Chapter 5 I explore in detail what this means. I reject the notion of compensation that says victims should be left no worse off than they would have been if they had never suffered the harm, and instead endorse, in Chapter 6, an account of compensation that I call the Just Shares View. According to this account of full compensation, we should rectify in full any deficits in a person's just share, for which we are responsible.

mistaken recommendation that we should treat victims of disadvantage-as-harm and victims of bad luck in the same way.

Indeed, this is a mistake that is made in the existing literature; this is evident, I believe, in the way in which Ronald Dworkin (2002) applies his account of social justice in order to determine what is owed to disadvantaged persons. To explain why this is so, I first need to provide some background.

Luck egalitarian theories are not necessarily committed to levelling out all inequalities that arise from any or all kinds of bad luck. Within the literature the distinction is often drawn between the outcomes of "brute luck" and "option luck".[12]

> Option luck is a matter of how deliberate and calculated gambles turn out—whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined. Brute luck is a matter of how risks fall out that are not in that sense deliberate gambles. (Dworkin, 2002, p.73)

Since option luck is, at least in part, the result of a person's choices, those who are sympathetic to the idea that distributive theories of justice ought to be sensitive to persons' choices but not to their natural endowments or social circumstances may well think it is fair if some, if not all, inequality that results from bad option luck should remain. Indeed, it might be thought to be unfair if – assuming background conditions of fair equality of opportunity and resources exist – society was required to level inequalities resulting from differential option luck.

The option luck / brute luck distinction is a key aspect of Dworkin's luck egalitarianism. For Dworkin, low levels of marketable skills and talents should be seen as a kind of bad brute luck. In other words, where people have unequal access to income-earning skills, as a result of

---

[12] For discussion, see Lippert-Rasmussen (2001); Knight (2021a).

innate inequality in marketable talents, we should think of such people as having suffered from bad brute luck, in a similar way to how we might think that people who have disabilities have suffered from bad brute luck (Dworkin, 2002). While people's natural endowments cannot be equalised, resources can nonetheless be redistributed to counteract inequalities that result from the unequal distributions of natural talent and ability. Dworkin suggests that we should model the kinds of welfare provision that the state should provide as the kind of protection against such bad brute luck that might be offered by a particular kind of hypothetical insurance. It should be based, Dworkin says, on the kinds of insurance that people would be likely to take out if they did not know what their individual risk of having low-earning potential or being unemployed was, and if they assumed that they would have the same risk as everyone else in their society. This is referred to as the 'hypothetical insurance market' market' (see also Bou-Habib, 2013).[13]

Dworkin proposes that in this scenario, insurance brokers could offer insurance policies that individuals could take out to cover themselves in the eventuality of it transpiring that they have very low earnings potential due to the lack of talent or the presence of a natural disability, or that if this is not practically possible, social welfare systems should model as closely as possible the kinds of insurance that most people would be likely to take out to protect themselves against low income or unemployment. The underlying concept behind the hypothetical insurance model is that if there is a general consensus that most people would

---

[13] As Knight (2013) explains, "Some kinds of brute bad luck in personal resources, especially serious congenital disabilities and low-native talent, cannot be insured against by their victims. Dworkin proposes that the appropriate level of compensation for a disability is set by the level of protection that would have been bought had all individuals faced identical antecedent risks of developing it." (p.927)

want a particular type of insurance against a particular kind of risk, and the welfare state provides them with that same protection from that particular risk, then citizens should not envy each other's respective risks. This envy-free distribution is said to amount to a fair equality of resources.

Is Dworkin's hypothetical insurance approach a good way of devising a scheme for supporting the disadvantaged? Consider Sophie's case. Sophie's lack of marketable skills is not the result of bad brute luck in the form of low native talent. Rather, Sophie is foreseeably and avoidably deprived, through institutional wrongdoing, of the resources and opportunities that would have enabled her to develop her natural talents and abilities. Sophie is not owed compensation, therefore, for lacking natural skills and talents; rather, she is owed compensation for having been unjustly disadvantaged and deprived, by the social and political institutions of her society, of her just share. In light of this, it is hardly sufficient for the state to provide compensation to Sophie in line with the kinds of insurance she might have bought to cover the eventuality that she might naturally suffer from low native talent. Intuitively, it seems that Sophie is owed a different kind of assistance from the state than the assistance Dworkin's hypothetical insurance model suggests.

In Chapter 3, I fill out the reasoning that supports this intuition by explaining why it makes a difference to what the state owes the disadvantaged, whether their disadvantage results from bad luck or from the state's own wrongdoing. I make two arguments for this conclusion that are rooted in the idea that we owe respect for persons. First, and briefly, when we wrongfully harm others, we owe them an apology. I argue that it is not possible to sincerely apologise to someone for the wrongful harm we have caused them, if we could rectify any remaining amount of that harm and yet fail to do so, thus leaving some of the wrongful harm intact. Apology entails regret; it is incoherent to think that one could express regret for their wrongful actions, if they could rectify the wrongful harm they caused but choose not to do so.

The second argument that I make is also rooted in the idea of respect for persons. Briefly, again, I note that when we leave intact wrongful harm that we have caused, this harm can persist and compound over time so that the victim of our wrongdoing experiences further harm, as a result, in their future. We can thus owe full compensation if and when this is necessary in order to prevent our wrongful actions harming the victim in their future. For these two respect-based reasons, I argue, victims of wrongful harm are owed full compensation.

Conversely, these reasons do not apply to cases of bad luck. The hypothetical insurance model is mistaken, I suggest, as it fails to recognise the importance of these respect-based arguments for full compensation; the hypothetical insurance market is purely distributive and, so, does not capture non-distributive aspects of compensation. It suggests that societies should treat those who struggle to compete in the job market, such as Sophie, as victims of bad luck, and that we should design the welfare system to provide the kind of assistance people would take out to protect them from a lack of innate skills and talents. However, this recommendation does not recognise that many unemployed and low-income people are in fact victims of wrongful harm by the state, and that respect thus requires that they are owed *full* compensation for the reasons that I give in Chapter 3.

One contribution my thesis makes – i.e., to show that many of the disadvantaged in society are victims of institutional injustice, and that society owes more demanding duties of compensation in such cases – is thus that we should identify compensation for a great deal of disadvantage in society in a different way from how Dworkin proposes we should identify it. If it is the case that many people who lack marketable skills and talents might not just be victims of bad luck but of institutional injustice, then Dworkin's hypothetical insurance model is mistaken in suggesting that the welfare system for the unemployed and low-income should reflect the kind of insurance people might have bought to cover the eventuality that they might have been born with low levels of natural talents. It would be inappropriate to treat

disadvantage-as-harm as disadvantage as bad luck. Therefore, Dworkin's theory cannot tell us what the state owes to people when their disadvantages are not wholly due to personal responsibility and / or bad luck, but, rather, have resulted in significant part from institutional injustice. Instead, we should conclude that those who suffer from disadvantage-as-harm are owed full compensation, i.e., compensation that will fully rectify the harm they have suffered. Where deficits in persons' just shares have been caused as a result of institutional injustice, these deficits must be fully restored. Finally, compensation for disadvantage-as-harm must compensate victims, not only for any initial harm suffered in the non-fulfilment of primary positive duties, but it must rectify any resultant harm. Dworkin's insurance model cannot capture this because it is purely distributive and does not figure in the relational wrong suffered by those who have been harmed; my model captures the relational aspect of rectificatory justice.

I have said that the existing social justice literature has not addressed the question of whether compensation is owed to many disadvantaged persons in virtue of their having been wrongfully harmed by the state. There is an important exception to this claim, which I would now like to point out and which involves a strand of argument within the literature on global justice. This is the argument that the globally worst off are owed significant redistribution as compensation, because they have been harmed by the imposition of an unjust international order, which is created, maintained and imposed upon them by wealthy states (Beitz, 1999; Pogge, 2005; Wenar, 2010).[14] As I noted in fn. 5, Thomas Pogge is the contributor to this literature who has written in most detail about disadvantage-as-harm in the global context (though he does not use the term "disadvantage-as-harm"). This thesis takes inspiration from Pogge's argument that significant redistributive duties are owed to the globally disadvantaged

[14] For discussion, see Barry & Øverland (2013); Risse (2005); Young (2006)

as compensation for wrongful harm inflicted on them through the collective creation and maintenance of an unjust institutional order. However, it also departs from Pogge's argument in a significance respect. In Chapter 2, I argue that a modified version of Pogge's argument for redistribution to the global poor can be used to justify demanding duties of compensation to the domestically disadvantaged. However, my argument is distinct from Pogge's in the following way. As I explain in Chapter 2, Pogge's account relies only on negative duty violations to support the claim that many of the global poor have been wrongfully harmed. I note some problems with Pogge's account and specifically with his exclusive reliance on negative duty violations as a basis for justifying demanding duties of compensation for the disadvantaged; the modified version of Pogge's argument I propose avoids those problems by appealing both to negative and positive duty violations as a basis for demanding duties of compensation to the disadvantaged in the domestic context.

1.5 Contributing to Existing Literature

So far, I have been discussing a gap in the social justice literature, which I am attempting to address in my dissertation. I now want to explain how this dissertation contributes to two further literatures. This is not because it seeks to fill a gap in these literatures, but rather because it seeks to solve problems they attempt to address. The first of these is the literature on collective responsibility; the second, the literature on historical injustice. Below, I explain how my arguments share common problems with these two sets of literatures and I summarise how I address these problems in the dissertation.

The Literature on Collective Responsibility

In my dissertation I argue that much of the disadvantage that obtains in society is caused by state wrongdoing (institutional injustice). I further argue that the state owes victims of disadvantage-as-harm, where this is attributable to domestic institutional injustice, a duty of full compensation to rectify the wrongful harm they have suffered. It is commonly accepted that states should be held responsible for their wrongdoing, and in practice many states do indeed implement compensation schemes when it is recognised that they have caused serious harm through their own wrongful actions. As Avia Pasternak writes, "At the international level, states routinely pay compensation and other forms of reparation for wrongs they inflicted on other states and individuals. … States also take upon themselves domestic compensation schemes" (2021, p.1). However, as Pasternak (2021) also notes, when states are required to provide compensation to rectify harms that have resulted from their own wrongdoing, the costs of these compensation schemes are generally distributed, not only among those state officials and agents directly involved in the decisions or actions that caused the wrongful harm, but also to the state's citizens. As she writes, "… the large sums of money that [are] needed to finance these compensation schemes [come] from the public purse. Their responsibility to address their wrongdoing [is] distributed, *de facto*, to their populations." (2021, p.3).

It is not at all obvious, however, that citizens should be required to share the costs of their government's wrongdoing. On the contrary, there may be occasions where this shared responsibility seems unjust, for example, where large numbers of citizens protested against the relevant unjust state actions (and should perhaps thus be exempt from shared responsibility for it), or where citizens are themselves victims of state wrongdoing. In Chapter 4, I explore the question of whether it is normatively justifiable to require all citizens to share the costs of rectifying the wrongdoing of their state. This is important to establish because I want to justify very demanding duties of compensation for large numbers of persons who have been disadvantaged by the unjust domestic order in their society. If it is not justifiable to distribute

the costs of rectifying state wrongdoing to citizens, this would represent a problem for my argument, as it would not be plausible to suggest the kind of compensation I propose ought to be implemented. I therefore seek to address the problems that arguments for collective responsibility face, and I develop an argument to support the existence of collective duties for citizens to share the costs of compensating victims of their state's wrongdoing.

In Chapter 4, I discuss some existing arguments for collective responsibility for state wrongdoing. These are arguments based on ideas about complicity (Zakaras, 2018), authorisation (Stilz, 2011), benefiting from injustice (Parr, 2016; Haydar and Øverland, 2014), and the existing of a natural duty of justice (Rawls, 1971). I defend three main points. First, I show that ideas about complicity and authorisation arguments are successful in generating a duty for certain persons to pay toward compensation for state wrongdoing in some cases, but neither generate this duty for a sufficiently broad scope of persons in order to justify the kind of mass liability that is required to apply to all cases of wrongful harm by the state.

Secondly, I show that the idea that certain persons have benefitted from injustice can justify a duty for them to compensate to rectify the wrongful harm caused by that injustice in some limited cases. The reason that these cases can generate a duty of compensation is because they point to a misallocation of resources or opportunities; those who benefit from such a misallocation have a duty to relinquish the benefits that have been misallocated to them, and which are therefore not rightfully theirs. However, there are some cases, which I call "damage cases" where a person is not harmed only in the sense of being deprived of certain opportunities or resources, but also or alternatively in the sense of suffering damage to their physical or psychological capacities. In damage cases there does not seem to be any clear beneficiary from the injustice, and so it cannot be appealed to, that persons have benefited from injustice, to justify a duty of compensation. Importantly, such cases are not negligible in number, so there are many victims of disadvantage-as-harm for whom full compensation cannot be justified by

appealing to the benefiting argument alone. Finally, I show that the natural duty argument I develop in the chapter can successfully justify mass liability for a duty of compensation to fully rectify wrongful harm inflicted by the state for all victims of disadvantage-as-harm.

In summary, in attempting to develop my overall argument in the dissertation, Chapter 4 contributes to the literature on collective responsibility. It makes this contribution by developing the argument that collective responsibility can be justified as an implication of our natural duty of justice.

Literature on Historical Injustice

This thesis argues that victims of disadvantage-as-harm are owed full compensation. What does this mean? One answer, which can be taken as the standard view, is that victims of wrongful harm should be restored to their counterfactual positions, so that they are no worse off, having suffered the harm and been compensated, than they would have been if they had never suffered the harm (See Nozick, 1974, and Roberts, 2006). In Chapter 5 of the dissertation, I discuss some problems that arise from the counterfactual conception of harm and compensation. These problems are shared with the literature on historical injustice.

Literature on historical injustice attempts to answer the question of what, if anything, is owed now for wrongful harm that was committed many years ago. Reparations can presumably only be owed to the victims of wrongful harm. This is what Thompson (2001) calls the "exclusion principle". As she writes, "It is a principle basic to reparative justice … that individuals or collectives are entitled to reparation only if they were the ones to whom the injustice was done" (Thompson, 2001, p.116). Intuitively, it seems highly unsatisfactory to conclude that no redress is owed to the descendants of some of the terrible injustices that have been committed historically, including slavery and dispossession. But, if reparations may only be owed to the victims of injustice themselves, how can we defend a claim to reparations for

the descendants of victims of serious historical injustice? The descendants of the victims of wrongful harm are not the persons to whom the injustice was inflicted. Furthermore, many of the descendants of historical injustice would never have existed had the injustice not been committed; for example, had their ancestors not been forcibly removed from their countries and put into slavery, this would have significantly altered the course of events that led to the very conception of many African-Americans alive today, so that, ultimately, were it not for the historical injustice of slavery, the descendants of slaves would never have been born. This is a problem for counterfactual accounts of harm and of compensation; how can we say that descendants of historical injustice have been made worse off, or indeed that they should be restored to the position they counterfactually would have occupied, if, in the counterfactual circumstances, had the injustice not been committed, they would never have existed at all? (See Sher, 2005; Cohen, 2009; Thompson, 2001). It is difficult even to diagnose an event as harmful, let alone to justify compensation for that event, if the injustice under consideration was a necessary condition of the victim's being brought into existence.

I argue in Chapter 5 that the standard counterfactual conception of compensation (CCC) faces three problems that involve (i) impossibility, (ii) preference and (iii) non-identity: (i) Often it is impossible to provide full counterfactual compensation to restore victims of disadvantage-as-harm to the positions they would have been in if they had never suffered wrongful harm by the state; (ii) Many victims of disadvantage-as-harm would not prefer to be restored to their counterfactual outcomes, even if this was possible. This might lead us to think that these individuals have not really been harmed and are therefore owed no compensation; and (iii) Many victims would not have been brought into existence, but for the unjust institutional order that existed in their society leading up to their conception; it may therefore seem as if they have no complaint, since their existence as a disadvantaged person is presumably better than non-existence. Hence, it may seem that such persons have not been

harmed and are not owed compensation. These problems are also faced by arguments that attempt to justify compensation for the descendants of historical injustice based on a counterfactual conception of harm and compensation. Since historical harms took place many years ago, it is often impossible to determine what the counterfactual outcomes of victims and descents of these harms would have been, had the harm not occurred, in order to establish what is owed to them; there are so many different events that could have occurred in the time that has passed since the harm took place, that epistemically it is very difficult to determine what the counterfactual outcomes of the victims and their descendants would have been. Moreover, the victims of historical injustice would likely not prefer to be restored to their counterfactual outcomes, even if this was possible. This is the case, not least because of the non-identity problem (iii); as I have explained above, many victims of historical injustice would not have existed but for the wrongful harm that was inflicted on their ancestors, and since in their counterfactual outcome they would not have existed, they most likely would not prefer this outcome; it may therefore seem as though the descendants of victims of historical injustice have not been harmed, and are therefore owed no compensation, even if they experience significant disadvantage and diminished wellbeing.

In Chapter 5, I discuss one solution to the non-identity problem, which has been proposed by Boxil (2003): the non-identity problem can be addressed, to some extent, by moving the baseline against which we consider whether victims have suffered from harm. While it is true that many victims of disadvantage would not have existed if we went back in time and, prior to their conception, removed the structural injustices that contribute to their disadvantage, this does not mean that the lives of the disadvantaged are entirely *unavoidably* flawed or that they have no grounds for complaint about the unjust institutional arrangements in their society. If, after their birth, the parents of the disadvantaged were compensated for the institutional injustice they have suffered, then their own disadvantage would likely be

alleviated to some extent as well. Compared to this baseline, victims of disadvantage-as-harm may say they are harmed by the prevailing unjust institutional arrangements in their society.

The above response to the non-identity problem does not, however, justify a duty to provide full compensation to the descendants of historical injustice or children of disadvantage-as-harm victims; some disadvantage may remain intact for these persons after their parents have been compensated, and this remaining disadvantage is subject to the non-identity problem. For example, while Sophie's outcomes would likely have been improved had her parents been appropriately compensated for the harm they have suffered as a result of the unjust domestic order in their society, some of Sophie's disadvantage-as-harm would still remain intact. While Sophie would undoubtedly benefit from her parents being provided with appropriate welfare support to alleviate their poverty, as well as supported to develop a range of skills that would help them to secure better work, it is regrettably unlikely that her parents would be able to give her as good a start in life as would parents who had never suffered from institutional injustice. For example, Sophie's parents might still struggle to see the value in education due to their own difficult experiences and might therefore struggle to support Sophie in her education and to instil these values in her. Any disadvantage that remains for Sophie after her parents have been compensated is difficult to classify as harm under the counterfactual conception, because of the non-identity problem.

Therefore, in Chapter 6 I develop a further response to the problem, which I call the Just Shares View (JSV). The JSV says that the state must restore deficits in people's just shares for which the state is responsible. The JSV contrasts with the CCC, which states that the state should compensate people for the amount of harm the state has caused them, relative to the counterfactual outcome that they otherwise would have occupied. The JSV can avoid the non-identity problem, or, more specifically, the problem that persons are not owed compensation because they are not worse off relative to their counterfactual outcomes in the absence of

background injustice (because in the counterfactual case they would never have existed). This is because the JSV does not state that, for the state to owe someone compensation, the victims must have been made worse off than they would have been if the state had enacted certain policies, or if the basic structure and political institutions of their society had not been arranged as they were. The JSV states that the state has a duty to compensate others when they experience a deficit in their just share for which the state is responsible. It is possible for someone to experience a deficit relative to their just share, even if they would not have existed in the counterfactual outcome that would have materialized had we not acted as we did. So, if we are responsible for causing this deficit, we might owe compensation to make up for this, even if we have not made them worse off compared to the counterfactual baseline. In this way, the JSV can help to overcome the non-identity problem which is faced by both the standard counterfactual conception of compensation and the literature on historical injustice.

Chapter 2. Disadvantage-as-Harm

2.1 Introduction

My thesis investigates what is owed to the disadvantaged. I am particularly interested in what the state owes to a specific sub-set of the disadvantaged in society, namely the low-skilled. "Low-skilled", here, is conceived of as a broad term referring both to those who lack the skills needed to form and execute a reasonable plan of life, as well as those who have reduced income-earning skills and, therefore, experience limited access to the labour market. The main claim of my thesis is that the state owes stringent duties of compensation to the low-skilled, because it has wrongfully harmed them; these duties are more stringent than the duties that would be owed to the low-skilled if their disadvantages were merely the result of bad brute luck. In order to defend and explain the implications of this claim, it will be necessary to answer a number of related questions:

1) Under what conditions might disadvantage be properly understood as being the result of wrongful harm by the state?

2) Are duties of compensation to those who have been disadvantaged by wrongful harm more demanding than duties to compensate those who have been disadvantaged by bad brute luck?

3) Do citizens or residents have a collective duty to contribute toward the cost of providing compensation for the wrongful harms perpetrated against individuals by their state?

Questions 2 and 3 will be answered in subsequent chapters. In this chapter, I will answer question 1. If the conditions I propose are correct for when disadvantage amounts to wrongful harm perpetrated by the state, then disadvantage as wrongful harm by the state is very pervasive.

In order to show that such *disadvantage-as-harm*, as I will call it, is pervasive, I will appeal to the claim that our understanding of 'wrongful harm' should include both violations of negative duties and violations of positive duties. I will argue that violations of positive duties can – under certain conditions – generate just as demanding duties of compensation as violations of negative duties, and that such violations are widespread in the UK.[1] In this chapter, I show that violations of positive duties should, under the conditions I will outline here, be properly understood as cases of wrongful harm; in the next chapter I will show that when the state causes wrongful harm, it must provide full compensation to the victims; therefore, disadvantage-as-harm, which is the result of violations of positive duties (and negative duties) by the state, gives rise to a duty of full compensation for the relevant disadvantaged persons.

My discussion in this chapter parallels, to a certain extent, a discussion that has taken place within the study of global justice. Some global justice theorists have argued that those persons who are worst-off globally are owed significant redistribution by persons who are better off globally. Some, within this pro-redistribution camp, hold that these redistributive duties are owed as a matter of compensation for wrongful harm. As Thomas Pogge has argued, these duties are owed because wealthy states are involved in the creation and maintenance of international institutions that systematically shape and uphold the poverty of the globally

[1] I focus on the UK context, but I take it that my claims may be applicable to many other modern societies.

worst-off (Pogge, 2005; cf. Beitz, 1999; Wenar, 2010).[2] The extent to which this type of defence of redistribution applies in the domestic context – that is, within states – has not been explored in the literature on social justice. That is my aim in this chapter. I will investigate the conditions under which disadvantaged members of a given society might be properly understood as having been wrongfully harmed by the "domestic order", or, in other words, by the main political and social institutions of that society.

My main claim, then, is that disadvantage-as-harm is pervasive in most societies. As I explain in greater detail below, by disadvantage-as-harm, I mean disadvantage as *wrongful harm*, i.e., harm that results from a violation of duty to the person who is harmed. Most societies are of course home to many instances of privately caused disadvantage-as-harm in which persons have become disadvantaged due to wrongful harm they have suffered at the hands of other citizens or residents, including, for example, assault and robbery. The main point that I want to defend, however, is that most societies are also home to publicly or state-caused disadvantage-as-harm in which it is the state that causes disadvantage *via* wrongful harm, and that, moreover, such cases are pervasive among the disadvantaged. That is to say that in most societies, of those who experience disadvantage, it is commonly the case that their disadvantage is attributable to wrongful harm by the state.

While Pogge's argument that we harm the global poor via the imposition of an unjust institutional order has been met with objections in the global context, I believe a revised version of the argument can succeed in the domestic context.[3] Pogge relies only on a claim that the global poor are harmed by violations of negative duty. In order to show that disadvantage-as-

---

[2] For discussion, see Barry & Øverland (2013); Risse (2005); Young (2006).

[3] For such objections, see Blake 2013, 99-100 and 116; Miller 2007, 55 and 238-247; and Risse 2005

harm is pervasive within many societies, I will appeal to the claim that our understanding of 'wrongful harm' should include both violations of negative duties and violations of positive duties that cause a person to be worse off than they otherwise would have been. Moreover, I will argue that violations of positive duties can, under certain conditions, generate just as demanding duties of compensation as violations of negative duties, and that such violations are widespread in many modern societies. Positive-duty-based accounts of harm, which claim that failures in positive duties can generate demanding duties of compensation, have been criticised for being overly demanding (see Sønderholm, 2013). However, while this objection may have some force against "interactional" accounts of positive duties, according to which direct responsibility for the fulfilment of duties is assigned to individuals, I argue that the charge of over-demandingness is not successful as an objection against "institutional" accounts of positive duties, whereby responsibility for the fulfilment of duties is, rather, assigned to institutional schemes (see Pogge, 2008).[4]

If, as I claim, disadvantage-as-harm is pervasive within most societies, this would be very significant. It seems intuitively plausible that the cause of a person's disadvantage – i.e., whether it is bad luck or state-caused wrongful harm – should make a difference to what they

[4] Pogge's argument does not appeal to positive duties, but he develops the concept of interactional vs institutional accounts of negative duties on a global scale in order to show that the global poor are harmed by the violation of negative duties via the imposition of an unjust global order, which foreseeably and avoidably causes harmful human rights deficits. For other institutional accounts of global justice, see Beitz, C. R. (1999), and Tan, K. C. (2004).

are owed.[5] Specifically, the state might owe more to those whose disadvantage has resulted from its own wrongdoing than it owes to those who have been disadvantaged as a result of bad brute luck.[6] If this is so, the argument of this chapter helps to show that, in most societies, the state may owe far more demanding duties of compensation to many of its disadvantaged members than might be thought if it was not recognised that their disadvantage was the result of wrongful harm by the state.

In section 2.2, I outline the conceptual elements of disadvantage-as-harm. I do this by recalling *Sophie,* the hypothetical case study outlined in Section 1.2 of the previous chapter. I explain how the conceptual elements of disadvantage-as-harm are present in Sophie's story and why Sophie, thus, experiences disadvantage-as-harm rather than disadvantage-as-bad-luck. In section 2.3, I develop two accounts of disadvantage-as-harm, the *wide negative duty account* and the *positive duty inclusive account.* I show why we cannot appeal to a *wide negative duty account* to explain the disadvantage-as-harm suffered by Sophie but must, rather, appeal to a *positive duty inclusive account*. In section 2.4, I develop a defence of the positive duty inclusive account by responding to possible objections. I also explain why the reasons Pogge wishes to avoid appealing to a positive duty inclusive account in the global context do

---

[5] I will argue for this difference in Chapter 3. My argument for the difference between what is owed to victims of wrongful harm compared to bad luck (at least above a minimum threshold of wellbeing), in brief, rests on the claim that perpetrators of wrongful harm disrespect the victims of their wrongdoing when they withhold compensation, whereas, this is not true when we fail to provide full compensation to the victims of bad luck.

[6] By "bad brute luck" I mean events beyond one's control, but I exclude from this, events where a person has been the victim of wrongful harm.

not represent a problem for appealing to such an account in the domestic context. I conclude by explaining why the implications of my argument are likely to be significant.

2.2 Disadvantage-as-Harm: Conceptual Elements

Disadvantage-as-harm occurs when a violation of duty to a person causes this person to be (a) worse off than other people in similar positions within their society who did not suffer the same duty-violation and (b) worse off than they otherwise would have been. For the purpose of this chapter, I will employ this relatively broad definition of disadvantage-as-harm (although, I will examine its assumptions critically and develop a more precise definition in later chapters). [7] The kind of disadvantage-as-harm that I am interested in, specifically, is disadvantage caused by harmful wrongdoing by the domestic order, i.e., by the main social and political institutions in a given society. In this section, I unpack what I mean by these elements in more detail.

---

[7] In Chapters 5 and 6, I determine that we should take persons as having been 'harmed', not when they have been made worse off than they otherwise would have been, but rather when they have been caused to suffer a deficit in their just share; in many instances, just shares cases will also see persons being made worse off than they otherwise would have been, but this is not always the case. In some cases, a person may be made worse off than they otherwise would have been, yet suffer no deficit in their just share. In other cases, a person may suffer a deficit in their just shares and yet not be made worse off than they otherwise would have been. I discuss cases such as these in Chapters 5 and 6. I will refer to this more elaborate definition of disadvantage-as-harm as the Just Shares View.

(a) *Conceptual elements*. A person is 'disadvantaged' if they face significant hardship or obstacles – either in absolute terms or compared to others. That is, I will not take a stand here on whether disadvantage is a relative notion, by which people are disadvantaged when they are *worse off* than others, an absolute notion, by which people are disadvantaged when they are simply *badly off*, or whether it is a combination of the two.[8] I do not commit myself here, either, to measuring disadvantage in terms of resources, capabilities or subjective welfare; I assume that many victims of disadvantage-as-harm are badly off in each of these respects (See Wolff and de-Shalit, 2007).[9] Recall, for example, Sophie's situation. Sophie was disadvantaged in a number of ways: she was financially disadvantaged as a child; her parents were unable to provide her with a good start in life; she was not provided with the same quality of education as children in better off neighbourhoods; she was consistently less happy than other people her age; she suffered a deficit in terms of her skills, capabilities and income-earning potential and was therefore, also, financially disadvantaged as an adult.

One commonly accepted account of 'harm' is the counterfactual comparative account, according to which a person has been harmed if the actions of others or her own actions have made her worse off than she otherwise would have been.[10] When I refer to somebody having been 'harmed' in this chapter, it is this account of harm that I have in mind. The reason I have the counterfactual comparative account in mind is because it is, as Purshouse (2016) observes,

---

[8] For discussion of the pattern of distributive justice, see: Axelsen and Nielsen (2015); Casal (2007); Huseby (2010); Nussbaum (2011).

[9] For discussion of the currency of distributive justice, see: Arneson, R. J. (1989); Dworkin, R. (1981) Part 1 and Part 2; Sen, A. (1980).

[10] For an overview of the counterfactual comparative account of harm see Bradley, 2012: 396-398.

"the dominant theory of harm" (p.251). This is not to say that the theory is without its challenges. Bradley (2012, p.397) notes that the counterfactual comparative account of harm is subject to *the omission objection*: "Merely failing to benefit someone does not constitute harming that person." However, when we fail to benefit others, we cause them to be worse off than they would have been if we would not have failed to benefit them. "So there are cases where nonharmful events are counted as harmful by the comparative account" (Bradley, 2012, p.397).

In my view the omission objection is not decisive once we observe that morally relevant harming involves a violation of duty. The reason the omission objection seems powerful is that many failures to benefit other persons do not involve violations of duty to them. For example, suppose that I win a new car in a raffle; I could give my old car as a gift to my sister, but I choose to sell it instead. In this case, I have failed to benefit my sister, and in doing so made her worse off than she would have been if I would have gifted my old car to her. However, it does not seem right to say that, through this failure to benefit her, I have "harmed" my sister since I did not violate any duty to her. Consider, however, failures to benefit others that *do* involve violations of duty to them. For example, suppose a doctor refuses to provide essential medical treatment to a patient under their care, leading to the patient becoming worse off than they would have been had the doctor treated their condition. Many would agree that the doctor in this case has harmed their patient. Likewise, if a parent neglects their children, for example by refusing to provide them with food, many would consider such neglect harmful. These examples suggest that the counterfactual account of harm can overcome the omission objection and that Sophie was indeed harmed when the state failed in its duty to provide her with a decent education (as well as other benefits), and thus made her worse off than she otherwise would have been.

I will return to the question of whether the counterfactual comparative account of harm and, moreover, its sister theory - the counterfactual comparative account of compensation – should be endorsed in Chapter 5. In Chapter 6, I endorse an alternative account, whereby a person is harmed if they are caused to suffer a deficit in their just shares, where the deficit would not have existed but for the actions of others.[11] While, for the purpose of this chapter, I assume the standard view of harm, the arguments and conclusions that I draw here and in Chapter 3 are consistent with my *Just Shares View* (JSV). Indeed, I will later show that the JSV, which I endorse in Chapter 6 is the full and correct interpretation of the arguments I develop throughout my dissertation.

When I refer to disadvantage-as-harm, I always mean disadvantage-as-*wrongful*-harm. By 'wrongful harm', I mean harm that results from actions that were in violation of a duty owed to the person harmed. There can be occasions where harming is morally permissible because there was no duty for the agent to refrain from causing harm. For example, if James strikes Morris in a legitimate act of self-defence, he causes Morris harm, but this is not a failure of duty, because there was no duty for James not to strike Morris. Disadvantage that results from harm that is *not* the result of a violation of duty is not what I mean by disadvantage-as-harm (for example, if Morris becomes worse off than others because James strikes him in

---

[11] As noted, I do not commit myself here to a particular view about what a person's just shares are, or whether just shares should be measured or defined in terms of specific goods, e.g., resources, opportunities or capabilities. In chapter 5, I will elaborate on this and show that, in fact, certain currencies centring entirely on subjective welfare or preference-satisfaction are not compatible with my account.

legitimate self-defence).[12] If it is the case that the state, in failing to provide Sophie with a decent education, failed to discharge its duties to her, then the disadvantage that Sophie experienced should be understood as resulting from wrongful harm.

Thus, in summary, for the purpose of this chapter, I will employ "disadvantage-as-harm" to refer to cases where a person is made *worse off than others* due to a *violation of duty to that person*, which results in the victim being harmed, interpreted here as being made *worse off than they otherwise would have been.*

It might be asked why we should be concerned with disadvantage-as-*harm* and not simply with disadvantage as *violation of duty.* The reason is this: We should be concerned, not only with disadvantage that results from a violation of duty, but also with disadvantage that consists of wrongful harm, because this makes a difference to what is owed to the disadvantaged in these cases. Since disadvantage-as-harm involves (by my stipulation) *wrongful* harm, a duty of compensation from the perpetrator is justified in such cases. The perpetrator owes compensation, not only to make up for the fact they violated a duty to the victim, and not only to compensate the victim for their relative disadvantage compared to others, but also to rectify the harm they have caused the victim. Indeed, disadvantage-as-harm might give rise to very stringent duties of compensation. By contrast, because a *violation of duty* to someone may sometimes not cause that person harm, it may not be the case that compensation is owed to that person, or at least not as much compensation as would be owed to them if they had also been *harmed* by that duty-violation. Wrongfully harming someone, it

[12] For an account of why persons do not have a duty not to inflict harm in self-defence cases, see Thomson, 1991.

is commonly accepted, often gives rise to a duty of rectification or restoration, whereas a violation of duty to her, simply *as such*, might not. [13]

We can further elucidate the notion of disadvantage-as-harm by contrasting it with disadvantage that results from bad brute luck (call this *disadvantage-as-bad-luck*). As I explained in fn. 5 above, by "bad brute luck" I exclude, by stipulation, the event of being wrongfully harmed. The following examples illustrate the contrast:

> (a) Seyi was raised in a state with racial segregation; due to institutional racial discrimination, she was prohibited from attending good schools, which were available to white citizens. As a result, Seyi received only a very basic education such that her educational outcomes were foreseeably and avoidably limited. Seyi suffers from disadvantage-as-harm resulting from a violation of negative duty.[14]
>
> (b) Sophie grew up in a socio-economically deprived neighbourhood; she was not officially prohibited from attending any given school, but the school she did attend was

---

[13] I will endorse an account of harm in Chapter 6 that appeals to deficits in just shares rather than to persons having been made worse off than they otherwise would have been. Disadvantage-as-Harm may also, therefore, refer to cases where a person is made *worse off than others* by a *violation of duty* that causes the person also to suffer a *deficit in their just shares*. The important feature to note is that these are cases where disadvantage is caused by *wrongful harm* and not merely by other conditions or events beyond the victim's control, such as bad luck.

[14] It might be thought that Seyi's disadvantage is the result of the state's failure in its positive duty to provide her with a decent education. However, the state fails in their negative duty because they prohibit Seyi from attending a good school, thereby violating a negative duty not to enforce racial discrimination or segregation.

inadequate. As a result, Sophie only received a basic education and her educational outcomes were foreseeably and avoidably limited. Sophie suffers from disadvantage-as-harm resulting from a violation of positive duty.

(c) Emily was born with a severe learning disability. She attended a very good school but, despite Emily's best efforts and the best efforts of her parents and teachers, her educational outcomes were unavoidably limited as a result of her disability. Emily suffers from disadvantage-as-bad-luck.[15]

Intuitively, it seems that the state has stronger duties to mitigate Seyi and Sophie's disadvantage than it does Emily's. One reason for this intuition is that we have reason to think, it makes a difference to what we owe the disadvantaged, whether their disadvantage results from bad luck or from our own wrongful actions. There are, to be sure, some luck egalitarian writers who think we owe very demanding duties of compensation to the victims of bad luck (see Cohen, 1989), but many other views of social justice would disagree with them about this.[16] It is less controversial to suppose that very demanding duties of compensation are owed to victims of

[15] See Dworkin (1981). Part 2 for a canonical definition of bad (brute) luck.

[16] For example, ex-ante luck egalitarians such as Dworkin (2000) think that we should compensate for disadvantage according to a hypothetical insurance model, and sufficientarians hold that the primary concern of social justice should be ensuring that the disadvantaged reach a minimum threshold, whether that be of welfare, capabilities or resources (see Frankfurt, 1987, 1997; Crisp, 2003; Huseby, 2010). These theories do not necessarily support very demanding duties of compensation to the victims of bad luck.

wrongful harm. As Roberts (2011) writes, "When one has sustained damage as a result of the transgression of a right, one has the right to reparation of the damage" (937).[17]

2.3 Two Accounts of Disadvantage-as-Harm

I propose that publicly caused disadvantage-as-harm is very pervasive. By this I mean that in any given society, among those we would consider to be disadvantaged, a great many are victims of disadvantage-as-harm. In this section, I distinguish between two accounts of the pervasiveness of disadvantage-as-harm and apply them to Sophie's story – i.e., two ways of showing why disadvantage-as-harm is pervasive. I call these the *wide negative duty* account, and the *positive duty inclusive* account. I will argue that the wide negative duty account faces problems and that the positive duty inclusive account is more plausible.

(a) *The Wide Negative Duty Account*. The *wide negative duty* account appeals only to negative duties in order to explain the pervasiveness of disadvantage-as-harm (it neither denies nor

[17] The idea of rectificatory justice – that is, the idea that when one has been wrongfully harmed by another, they are owed restoration of whatever they have lost – can be traced back to the work of Aristotle (Broadie and Rowe, 2002).

affirms the existence of positive duties).[18] The wide negative duty account endorses a broad conception of negative duties; according to the wide negative duty account, the disadvantaged can be harmed not only by the explicitly harmful actions of other individual agents (e.g., assault), but also *via* "the imposition of a coercive institutional order that avoidably" causes harm and "leaves human rights unfulfilled without making reasonable efforts to aid its victims and to promote institutional reform" (Pogge, 2008, p.176). In other words, the wide negative duty account stipulates that when institutions are arranged so that they foreseeably and avoidably cause or perpetuate disadvantage and harm to some members of a given society, this is sufficient for the resultant disadvantage to be categorised as disadvantage-as-harm. This is because, in such cases, citizens and residents violate their negative duty not to contribute to the imposition of unjust institutional arrangements, which foreseeably and avoidably cause harm to those affected. Thus, all of the conditions for disadvantage-as-harm are met; persons are disadvantaged due to a violation of negative duty not to impose an unjust institutional order and this violation of duty causes the harmed person to be worse off than they would have been under alternative institutional arrangements.

One way of explaining Sophie's disadvantage-as-harm is by appealing to the wide negative duty account. The wide negative duty account holds that other citizens and residents in Sophie's society owe her a negative duty not to create, uphold or contribute to the maintenance of a coercive domestic order that harms her, and that they violate this duty to her.

---

[18] The wide negative duty account was developed by Pogge (2008) to defend demanding duties of compensation to the global poor. Pogge's aim was to show that demanding duties of compensation to the global poor can be justified even if we appeal *only* to negative duties. By avoiding any appeal to positive duties, he believes he can garner wider support for such duties of compensation.

Sophie grew up in the UK. In 2018, the Office for Standards in Education (Ofsted) found that 3,100 schools across the country were inadequate or in need of improvement (Spielman, 2018).[19] More concerningly, 490 schools were found to have been 'stuck' in a cycle of poor performance for over a decade. These are "schools that have been judged to require improvement or be satisfactory or inadequate [i.e. schools that have failed to meet the criteria to be judged 'good' or better] in every inspection they have had since 2005" (Spielman, 2018, p.5).

Of the numerous concerns that this raises about the quality of education provision in the UK, there are two points which are particularly relevant in terms of illustrating how deficiencies in the education system reveal failures by the state to refrain from imposing an unjust institutional order upon its citizens and residents, resulting in widespread disadvantage-as-harm. First, that there are hundreds of schools, which have performed poorly for such prolonged periods of time, means that – in certain areas - there will be thousands of pupils like Sophie who, as Spielman noted in her letter, will have had "no opportunity to attend a good school at any point in their education" (Spielman, 2018, p.5). Second, this failure in education provision disproportionately affects children from low-income backgrounds, whether because schools of lower quality are more likely to be located in areas with higher levels of socio-economic deprivation (Lupton, 2004), or because low-income parents, like Sophie's mother, are less likely to have the time, social capital, bargaining power or literacy skills to be able to navigate the appeals process when applying for school places outside of their catchment areas (Hunt, 2019).

---

[19] Ofsted is a UK Government department responsible for inspecting and regulating educational providers in England. Spielman explains Ofsted's finding in a letter to the Chair of the Public Accounts Committee, Meg Hillier MP.

Therefore, the state's failure in its duty not to uphold an unjust institutional order, whereby many children are deprived of adequate educational opportunities, can be seen as a significant causal factor in the disadvantage experienced by children from low-income backgrounds. These children are less likely to obtain the qualifications required to pursue higher education and are more likely to come to rely on less satisfying, physically taxing, lower-paying jobs, and to experience the reduced health and happiness levels which tend to be correlated with lower incomes (Hunt, 2019). Their poor academic performance and income-earning skills deficits are not cases of disadvantage-as-bad-luck. Once we recognise that they are the result of the state's failure to fulfil its negative duty not to impose an unjust institutional order, which foreseeably and avoidably harms citizens and residents, it can be seen that these are, in fact, cases of disadvantage-as-harm.

A further example involves welfare and poverty-reduction. Sophie grew up in conditions of poverty. The institutional order in her society could have been arranged so that children are not avoidably and foreseeably left in poverty. The welfare system in the UK where Sophie lived could have been redesigned so that it would prevent many children from growing up in conditions of poverty. There are numerous ways this could be achieved. To give some examples, the amount of family benefits provided to low-income families could have been increased. In-work poverty could have been reduced by topping up working families' incomes, for example via a greater amount of Universal Credit or Working Tax Credits, and by providing fully subsidised childcare for both preschool and school-aged children. The cost of living could also be reduced by more generous provision of Housing Benefit (or Universal Credits toward housing costs), and other in-kind benefits such as vouchers toward the cost of utilities, clothing and groceries. Furthermore, it will have been quite clear to those who designed the welfare policies in Sophie's state that these kinds of changes to the welfare system could reduce or

prevent childhood poverty. Therefore, it might be said that Sophie's childhood poverty was not only *foreseeable*, but *avoidable*.

It is well-established that childhood poverty has significant harmful impacts on all aspects of children's development, physical and mental health, and wellbeing and that it contributes to widening inequality via its causal effect "on educational outcomes, employment status and socioeconomic position in adulthood" (Lai ETC, Wickham S, Law C, *et al*, 2019). It is important to note that childhood poverty also has a significant intergenerational aspect; those who experience persistent childhood poverty are themselves more likely to grow up to become poor adults, to become involved in criminal activity and to suffer from adverse health, educational and socioeconomic outcomes. Thus, adults who experienced persistent poverty in their formative years are more likely to lack the socioeconomic conditions that would enable them to function well as parents to their own children, who are in turn more likely to experience childhood poverty (Schurer, Trajkovski, Hariharan, 2019). It is, therefore, inappropriate to blame Sophie's parents for her difficult circumstances given that her parents were also victims of the unjust institutional order in their state.

Why the wide negative account fails

However, the wide negative duty account faces a significant problem. In brief, and as critics of Pogge's argument have maintained, the wide negative duty account collapses into the positive duty inclusive account. The thought here is that a negative duty not to cooperate in an institutional order that foreseeably and avoidably gives rise to human rights deficits is equivalent to a positive duty to ensure that the institutional order protects and fulfils human rights. In other words, it is not clear that Pogge's 'negative duty' not to cooperate in or uphold unjust social institutions, implies only a requirement that we abstain from cooperating in or upholding those institutions that actively create human rights deficits; rather, the duty not to

uphold an institutional order that foreseeably and avoidably contributes to human rights deficits might amount to a positive duty to ensure that our institutions guarantee the protection and fulfilment of human rights. This is because Pogge argues that we wrongly harm the world's poor when we cooperate in upholding an unjust global institutional order, under which the global poor suffer human rights deficits they would not suffer under feasible alternative institutional arrangements. Barry and Øverland (2012, p.98) have thus dubbed Pogge's argument the "Feasible Alternatives Thesis (FAT)". This captures the fact that Pogge says that the global institutional order harms insofar as those who uphold it fail to pursue feasible institutional alternatives under which human rights deficits would not occur.

In response to this criticism Pogge (2005, p.67) asserts that he does not endorse the view that a human right to X gives a person a moral claim against all others that they should act to ensure secure access to X. However, it is not clear how different it is to say (a) a human right to X gives a person a moral claim against others that they do *not impose* an institutional order upon them under which they foreseeably and avoidably lack secure access to X, and (b) a human right to X gives a person a moral claim against others that they *do maintain* an institutional order that ensures for them secure access to X. Suppose that there are only two possible institutional orders that a person could cooperate in: institutional order (i) in which access to X is secured through acts of beneficence, or institutional order (ii) in which the global poor "lack secure access to X as part of a foreseeable and avoidable human rights deficit" (Pogge, 2005, p.67). Pogge's claim that a person must not cooperate in imposing institutional order (ii) implies that in this case people would have a moral duty to cooperate in institutional order (i). Thus, if cooperating in institutional order (ii) is harm, it is harm as a violation of positive duties. To be sure, this does not mean that we should abandon the conclusions of the wide negative view. Instead, it means that these conclusions are not best captured in the manner

in which the wide negative view claims to capture them: as negative duties. To do so, instead, we must turn to a positive duty view.

(b) *The Positive Duty Inclusive Account*. Can the positive duty inclusive account justify Sophie's disadvantage as wrongful harm by the state? The positive duty inclusive account says that disadvantage-as-harm exists where a person is badly off in a relative or absolute sense and worse off than they otherwise would have been, due to violations of *either* negative *or* positive duties. There are different versions of the positive duty inclusive account depending on what kinds of positive duties one assumes the state owes its members. I assume, here, that the state owes positives duties to its members that can be identified on the basis of a range of theories of social justice that Will Kymlicka calls the 'egalitarian plateau'. These theories maintain that the state owes positive duties that ensure "social, economic, and political conditions under which the members of the community are treated as equals" (Kymlicka, 2002, p.4). All such theories would agree that, at the very least, the state has positive duties to provide people with decent primary and secondary education, health and social care, social housing, and sufficient welfare benefits for the sick, disabled, low-income and unemployed. I assume, therefore, that states owe positive duties such as these, which equally enable their citizens to pursue their own plans of life (Rawls, 1971; Dworkin, 2000; Nussbaum, 2011; Sen, 1974, 1979).[20]

Sophie's disadvantage is the result of failures in positive duties by the state both to her parents and to herself. This can be seen at multiple points in her story. For example, the state failed in its positive duties to provide a decent education to Sophie's parents, thereby depriving

[20] While these authors disagree over several foundational issues, I believe they all converge on the general idea that a just society is one in which citizens are treated as equals and are thus equally enabled to enjoy the freedom of devising and pursuing their own plans of life.

them of marketable skills they need to provide for her, and preventing them from developing a range of talents and abilities that would enable them to raise her well. The state further failed in its positive duties to Sophie when it neglected to provide adequate welfare support for her mother, and thereby failed to remove the conditions of poverty that Sophie grew up in. As well as failing Sophie in these indirect ways, it failed in duties it owed directly to her – for example, by not providing her with decent education or with sufficient support when she consequently lacked marketable skills as an adult.

2.4 Three Objections

In this section of the chapter, I consider three objections to my argument. The first objection claims that disadvantage-as-harm is not, in fact, pervasive in most societies. The second is an objection against positive duties in general; this is the *over-demandingness objection.* The third objection claims that my argument fails to provide any original insight into our distributive duties to the disadvantaged. This last objection can take three forms: i) that my argument does not teach us anything new about the *kind* of distributive duties owed to the disadvantaged; ii) that my argument is compatible with, and so fails as a critique of, existing theories of social justice, and; iii) that my argument does not tell us anything about the *content* of our duties to the disadvantaged that we could not have learned from existing theories of justice. I will address each of these objections in turn.

(a) Disadvantage-as-harm is not pervasive It might be thought that Sophie's case is an extreme example, and that disadvantage-as-harm such as this is not pervasive in many societies. In response to this there are two points to be made. First, among those who are disadvantaged, Sophie's case is not as extreme as might be thought; as Wolff and de-Shalit (2007) note, there

is compelling evidence from empirical studies for the "dynamic clustering" of disadvantage, whereby disadvantages accumulate across a person's lifetime and across generations.

> While researchers look for clustering of disadvantages, they should pay special attention to how clustering of disadvantage may persist, and indeed accumulate, over time. We call this *'dynamic clustering',* by which we mean both cases where a person 'accumulates' disadvantages over time, and the reproduction of disadvantage over generations. (Wolff and de-Shalit, 2007, p.120)

Wolff and de-Shalit further note that some disadvantages seem to have a "corrosive" effect, whereby experience of one disadvantage not only occurs concurrently with other disadvantages, but moreover *causes* a person to experience further disadvantages in other areas of their life. For example, it might be said that Sophie's disadvantage of not having books in her home as a child, contributed to her failure to develop literacy skills or a wide vocabulary, which contributed to her poor performance in school, which, in turn, contributed to her low income-earning potential as an adult. Sophie's case seems like a clear example of corrosive and dynamic clustering of disadvantages.

Secondly, when I say that disadvantage-as-harm is pervasive, I do not mean that a high percentage of all members of society suffer from disadvantage-as-harm. Rather, I mean that of those who experience disadvantage within a given society, many are the victims of disadvantage-as-harm. That is, wrongful harm by the state is a pervasive cause of disadvantage, not necessarily among the entire population, but certainly among the disadvantaged population. Furthermore, even if one is not convinced that dynamic clustering of disadvantage such as in Sophie's case is pervasive, it is sufficient for my claim that disadvantage-as-harm is pervasive, that one accepts that much of the disadvantage that obtains in society will commonly have

resulted from at least one instance of wrongful harm by the state. In other words, a given case of disadvantage does not have to be as severe as Sophie's to be case of disadvantage-as-harm. It may be that a person is harmed in a less severe way, but in a way which nonetheless causes them to be worse off than others, and that they otherwise would have been as a result of a violation of duty by the state. To be clear: my claim is not that *severe* disadvantage-as-harm is pervasive among the general population, but that most of the disadvantage that exists within the state, both in its severe and less severe forms, is disadvantage-as-harm.

(b) The Over-Demandingness Objection The positive duty inclusive account is in tension with a commonly held view that, while we clearly have strict negative duties not to inflict harm on others, we can only be said to have limited positive duties to benefit others. One reason for this it that would not make sense to claim that morality or justice confer duties on us that we could not possibly carry out; within moral philosophy the maxim that 'ought implies can' is generally accepted (Kant, 1998). Another reason for the intuitive resistance against positive duties between individuals is that most think morality should not require so much of any individual that they lose their personal prerogative to live their life as their own (Cullity, 2004, cf. Stroud, 2013).

Proponents of this view often cite the "over-demandingness objection" to positive duties (Murphy, 1993). To see the objection, consider Singer's example of the drowning child. Singer (1972) proposes the following principle to defend the existence of a positive duty to rescue the child: "If it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it" (231). As Richard Arneson has pointed out:

> [E]ven after one has donated most of one's income each month to world poverty relief, one could still donate more, and should do so according to the principle. For after all,

> the further reduction in one's available spending money does not incur anything that is comparable in badness to the loss that occurs to those in need of charitable relief if one's extra monthly donation is not forthcoming. (Arneson, in Chatterjee (ed.), 2004, p.33)

Arneson may have a strong point against Singer's conception of positive duties; forgoing the giving of birthday presents, to take one example, is clearly not of comparable moral importance to the very bad things that could be prevented by giving one's money, instead, to charities for the relief of severe poverty. Nevertheless, many would find that, if morality deems that we are committing a serious moral wrong whenever we choose to spend some of our money on buying birthday gifts for our loved ones, it is unreasonably demanding.

Does the over-demandingness objection undermine the positive duty inclusive account as an explanation for Sophie's disadvantage-as-harm? Note, to begin with, that it is possible to endorse positive duties without endorsing them in the form Singer proposes; positive duties need not take as demanding a form as this. One need not accept Singer's (1972) principle that we each have a moral duty to provide assistance whenever we are able to "prevent something bad from happening, without thereby sacrificing anything of comparable moral importance" (231) in order to endorse the existence of positive duties. Rather, an account of positive duties may take a less demanding form. The positive duty for a state to provide adequate welfare support for families or an adequate education to children, for example, need not rely on the existence of demanding individual positive duties of the kind suggested by Singer. Therefore, we should not assume that the over-demandingness objection against Singer's principle of beneficence is an objection against the existence of positive duties as such.

Nevertheless, the over-demandingness objection does require further consideration. We can distinguish between a duty being a) too difficult and b) too costly to fulfil (Cohen, 2001).

The costliness of positive duties is perhaps easy enough to understand. As for the difficulty of positive duties, this may require a little further explanation. Positive duties may be both too difficult to understand and too difficult to discharge. As Lichtenberg (2010, p.558) points out, it is often thought that negative duties are clear-cut and easy to fulfil; it might be assumed that negative duties impose easy-to-understand prohibitions such as "do not assault others", "do not burglarise", "do not commit murder", etc. Compared to this conception of negative duties, positive duties are often proclaimed to be highly complex. In addition to being difficult to determine or understand, many positive, furthermore, duties require consultation and cooperation with other citizens as part of a political community, as coordination problems would otherwise impede their effective fulfilment. As Feinberg (1984) describes the contrast:

> It is a rare case when we must really exert ourselves to keep from killing a person. […] On the other hand, we must in principle consult with our fellow citizens to determine a suitable rule, even a moral rule, governing our positive duty to rescue, because an individual duty to aid cannot be discharged completely. It would be unfair to those who attempt to do so on their own if others do not make similar efforts, and utterly chaotic if everyone tried, on his own, to discharge such a duty, independently of any known assignments of "shares" and special responsibilities. (p.170)

Before I respond to this version of the over-demandingness objection, it is worth observing that, contrary to what is often assumed, negative duties are not always more straightforward or easier to fulfil than positive duties. The duty to avoid inflicting harm can sometimes be just as – if not more – demanding than the duty to provide aid. Lichtenberg (2010) draws attention to the fact that our everyday activities can, in fact, contribute to causing serious harm to others in a myriad of ways, such that "not harming people turns out to be difficult and to require our undivided attention" (p.558).

> Don't buy clothing made in sweatshops. (Find out which those are.) Was your oriental rug knotted by eight-year-olds? (Find out.) Do you own stock in a company that exploits its workers? (Find out.) Is the coltan in your cell phone fuelling wars in the Congo? (Lichtenberg, 2010, p.559)

Thus, if we assume that we must reject duties on the grounds of cost and difficulty, we may have to reject many negative duties as well as positive duties. The over-demandingness objection suggests that in order to avoid over-demandingness we should limit the demands of justice to negative duties only, however, this does not hold as many negative duties can also be overdemanding – Proponents of the over-demandingness objection can therefore either put forward the objection and risk dispensing also with negative duties, or they must retract the objection.

How might proponents of positive duties respond to the over-demandingness objection? Following Murphy (1993), they can adopt an institutional response, which proposes that we should limit positive duties that require costly and difficult forms of assistance to those that can be "institutionalized" – that is, positive duties that can be discharged through collective institutions. An alternative conclusion is that we should not reject duties merely because they are too costly or difficult for individuals to discharge on their own. If duties that would otherwise have been undermined by over-demandingness can be made less demanding through

institutionalisation, then this should be done.[21] While the institutional response limits our account of positive duties in the sense that it only allows for demanding positive duties where these can be institutionalized, this still allows the positive duty account to assume the existence of very extensive positive duties.

There is another version of the over-demandingness objection, which says that theories of justice should appeal to people's intuitions more-or-less as they are. The idea is that we should not advocate the existence of moral duties, which most people would not agree on. One reason to think this is that, if moral duties do not align with folk intuitions, then many people will lack the motivation to act on such duties. This is why Pogge chose to appeal only to negative duties to claim that wealthy states harm the global poor.

> My … aim was strongly to motivate citizens and policy makers of wealthy countries to lend their political support to global institutional reforms and to compensate for their share of responsibility for the very substantial contribution that global institutions make to the persistence of severe poverty. (Pogge, 2010, p.181)

Despite claiming to appeal only to negative duties, I submit, as I explained in section 3 (a), that Pogge actually relies on appeal to positive duties. For this reason, this version of the over-demandingness objection is a problem for Pogge, since, as he is aware, such duties do not align

---

[21] As Holly Lawford-Smith (2013) puts it, when discussing the feasibility of normative recommendations: "The feasibility of the vineyard's grapes being picked before they go bad cannot depend on the superhuman speed and dexterity of one individual. Surely such an outcome is feasible if there is a set of individuals who could pick the grapes together, or a collective agent (such as a fruit-pickers' union) which could see to the grapes being picked." (p.247)

with folk intuition in the global context. As David Miller claims, most people will not "be sufficiently motivated to act on duties that are likely to be very demanding in the absence of the ties of identity and solidarity that nationality provides" (Miller, 2005, p.79).[22] This objection is not, however, a problem for my account as folk intuition supports the existence of positive duties in the domestic context (as Miller himself admits (2007), p.38).

(b) What's new? One might object that my claim that disadvantage-as-harm is pervasive does not teach us anything new about our distributive duties to the disadvantaged within a given society. This objection can take different forms. One version of the objection is that my argument does not teach us anything new about the *kinds* of redistributive duties that can be owed to a society's disadvantaged members. Existing theories of rectificatory justice already enable us to conclude that duties to redistribute resources can be owed to disadvantaged persons if their disadvantage is the result of wrongful harm perpetrated against them by the duty-bearer (see Roberts, 2011). However, this objection misunderstands the contribution I am trying to make in this chapter. The chapter does not aim to identify a new kind of redistributive duty to disadvantaged persons, or to develop a new theory of rectificatory justice; rather, it aims to show that a certain already-well-understood kind of duty is owed by the state to many more of its disadvantaged members than we might initially think. In other words, this chapter aims to show that many more among the disadvantaged are victims of wrongful harm than might initially be thought, and that significant redistribution of wealth is owed to them as compensation.

A second version of this objection is that the claim that disadvantage-as-harm is pervasive within the state does not tell us anything that proponents of existing theories of social

[22] For discussion, see Abizadeh (2004); Axelsen (2013); Weinstock (2009); Ypi (2012).

justice would disagree with. Their theories purport to show what positive duties are owed to persons. Their theories do not impede us from accepting that widespread redistributive duties are owed to disadvantaged members as compensation for wrongful harm. This is true, but my aim is not to show that existing theories of social justice are incapable of recognising certain conclusions, or internally flawed in some way, but rather to show that they have not addressed the possibility that more demanding duties are owed to many disadvantaged members of society on the ground that they have been wrongfully harmed by the state. The argument of the chapter shows that – because most disadvantaged members suffer disadvantage-as-harm, they are owed redistribution as rectification, and thus that the content of duties to redistribute to them is more demanding than we might otherwise have appreciated.[23] Sophie is entitled to more compensation as an adult than she would be if she had merely been a victim of bad luck. This teaches us something new about the content of our redistributive duties to Sophie. That this claim does not undermine existing theories of social justice is not problematic. On the contrary, I take it to be a good thing that my view is compatible with existing theories of social justice.

Finally, one might object that it is not true that existing theories of social justice fail to address the kind of redistribution that I am arguing is owed to Sophie and many others. The pervasiveness of disadvantage-as-harm, so it might be thought, implies only that the positive duties that have gone unfulfilled by the state must now be fulfilled going forwards. Existing

---

[23] Another way of putting this is to say that obligations may differ in *content*, *stringency*, or *both* (See Shields (2016), chapter 6, for this distinction). Thus, even if some critics hold that my arguments do not alter the content of our obligations, they could still alter their stringency. In chapter X, I will argue that when people suffer disadvantage-as-harm, our duties towards them do, in fact, change in terms of both stringency and content.

theories of social justice already say that that is what the state must do. Luck egalitarians, for example, say that the state owes positive duties to its members that ensure that no one is disadvantaged due to bad luck (see Cohen, 1989 and Dworkin, 2000). They will already agree that if the state has failed to alleviate Sophie's childhood poverty, it should provide her and her parents with the relevant support right away.

However, this objection is mistaken. We can distinguish between two ways in which not fulfilling a positive duty to someone can harm that person. The first is a harm that occurs in the very non-fulfillment of the positive duty. Returning to Sophie's case, assuming the state has a positive duty to ensure that children do not live in conditions of poverty, it harmed Sophie in the very non-fulfillment of that positive duty. It left her to experience avoidable childhood poverty, e.g., feeling hungry and cold, experiencing stress and anxiety due to persistent insecurity, lacking access to learning resources, etc. This species of harm to Sophie is *inherent to* the state's non-fulfillment of its positive duties to her. Notice, however, that Sophie experiences also a second kind of harm, namely one that results from the non-fulfillment of a positive duty. For example, suppose that, as a result of growing up in poverty and the impact this had on Sophie's development of certain capabilities, Sophie is unable to find rewarding or well-paying work as an adult. We can call this *resultant* harm from the non-fulfillment of positive duties to her.

The concern that my account implies only that the state should fulfill positive duties that are already endorsed by many existing theories of justice arises only if we assume that the compensation Sophie is owed consists of compensation only for inherent harm, whereas, I propose, it consists also of compensation for resultant harm. So, for example, my claim that Sophie has experienced disadvantage-as-harm implies not only that the state must provide her and her parents with the relevant support that it has initially failed to provide her as a matter of positive duty, but that it must compensate her also for all the resultant harm that she experiences

thereafter as an adult. These demanding duties of rectificatory compensation would not be supported by existing theories of social justice if they did not see that Sophie's disadvantage is resultant harm – i.e., the result of previous wrongful harm by the state. If Sophie is unable to find rewarding or well-paying work due to having suffered wrongful harm by the state that damaged their capacities, it should be clear that this person is owed restoration of their capacities and help to secure rewarding, well-paid work as well as income support. A person who lacks marketable skills and talents due to bad luck, on the other hand, might just be owed income support. Thus, my argument allows proponents of existing theories of justice to support far more demanding duties of compensation to the disadvantaged, than their theories might endorse if we did not correctly diagnose their disadvantage as wrongful harm, but rather as the result of bad luck.

2.5 Conclusion

My argument shows that what the state owes to most disadvantaged members should be thought of as compensation for wrongful harm. I have not sought to defend in detail here the claim that this makes a significant difference to the compensation the state owes the disadvantaged when they have been victims of state-caused wronging rather than bad luck. That is the aim of the next chapter of my dissertation. In Chapter 3, I argue that, while the state owes compensation to all disadvantaged persons that will bring them up to a minimum threshold of resources, capabilities or welfare, above that threshold there may be a difference in the compensation that the state owes; specifically, I argue that the state owes full compensation to those it has wrongfully harmed, whereas it may now owe as much as this to persons who are similarly disadvantaged as a result of bad luck.

Chapter 3. Rectification Versus Aid: Why the State Owes More to Those it Wrongfully Harms

3.1. Introduction

At the start of the previous chapter, I set out 3 questions that I seek to answer in this dissertation. In this chapter I will answer the second question from that list: Are duties of compensation to those who have been disadvantaged by wrongful harm more demanding than duties to compensate those who have been disadvantaged by bad brute luck? In Chapter 2, I set out the conditions under which persons should be seen as suffering from disadvantage-as-harm rather than being seen as victims of bad luck. In this chapter, I call attention to the difference it makes that many of the disadvantaged in society today are victims of wrongful harm.

Over the past few decades, normative political theory on social justice has tended to focus on the duties owed to persons who are disadvantaged due to bad luck or their own imprudent choices. For instance, Rawls' theory of justice is concerned with designing the basic structure of society so that people are not unjustly disadvantaged by "natural and social contingencies" (Rawls, 1971, p.63). According to Rawls, the basic structure of society should prevent distributions of resources that are "improperly influenced by these factors so arbitrary from a moral point of view" (Ibid, p.63). The extensive literature on luck egalitarianism supports this claim, appealing to the idea that distributions of resources should be "sensitive to different people's choices, but insensitive to their brute bad luck", where sources of brute luck include their natural talents and their social circumstances (Dworkin, 2000, p.451).

However, one of these categories – bad luck – can take more than one form. It is bad luck to suffer from harmful natural events (e.g. being born with a genetic illness) or from certain social contingencies (e.g. being born into a dysfunctional family). But it is also bad luck to suffer from harmful wrongdoing. By 'wrongdoing' I have in mind actions by others that deprive a person of her just entitlements, constitute an unjustifiable violation of her rights, or frustrate her legitimate expectations. What difference does it make to the duties we owe to persons who are disadvantaged if they have suffered disadvantage-as-harm rather than disadvantage-as-bad-luck?[1] One reason for asking this question is that—as I argued in the previous chapter—many persons who suffer from socio-economic disadvantage may be victims of a form of wrongful harm perpetrated against them by the state. Assuming, as I argue in Chapter 4, that citizens and residents of a state are collectively responsible for compensating for wrongful harms perpetrated by their state, this may make a difference to what we, collectively, owe the disadvantaged in our state, compared to a situation in which their disadvantages were due, not to state wrongdoing, but to other forms of bad luck.

Exactly what difference does it make to the duties that the state owes to the disadvantaged if they are victims of the state's own wrongdoing? One view is that the state owes a greater *amount* of support to those persons it has wrongfully harmed and that it must give greater *priority* to compensating them, as compared to persons who have suffered from other forms of bad luck.[2] Let us call this the *Difference View* because it revolves around the

---

[1] I set aside the third case of disadvantage that is due to our own choices because it has already been discussed at length in the literature.

[2] While being a victim of state wrongdoing is, of course, one form of bad luck, as I did in Chapter 2, I will henceforth use the term "bad luck" to refer to events beyond a person's control *other than* state wrongdoing (see Ch. 2. fn. 4).

idea that there is a difference in the duties owed to those that are harmed compared to those that are disadvantaged through bad luck.[3] One challenge faced by the Difference View is that it might be seen as arbitrary to distinguish in the way that it does between victims of state wrongdoing and victims of bad luck. Consider this comparison:

> *Jack* came to live in the UK with his parents when he was a baby. He and his family were commonwealth citizens of the Windrush Generation. As an adult, Jack was incorrectly deemed to be an illegal immigrant after the government destroyed his family's landing card slips, the only records with which he could prove his legal resident status. As a result, he has been denied access to work over a significant period of time. This has had a deeply negative impact on his wellbeing.[4]

> *John*, who suffers from a severe chronic illness, has been unable to access work over a significant period of time due to the challenges posed by his illness. This has had a

---

[3] This view is discussed by Douglas (2010) and explicitly endorsed by Pogge (1995, 2004). The view that states should prioritise rectification over aid is also implicitly supported by others e.g., Nagel (1997: 315) and Nozick (1974: 150-151).

[4] The Windrush generation are people who arrived in the UK from 1948 – 1971 from Caribbean countries. People were brought to the UK to fill the post-war labour shortage – many of those who arrived in the UK at this time were children who came with their parents. The Windrush Scandal left thousands of citizens from the Windrush Generation unable to prove their residential status in the UK. Many were denied re-entry to the UK after travelling abroad for work and holidays. Others were threatened with deportation and held in detention centres; some were deported to countries they had not set foot in since they were very young children (Williams, 2020).

deeply negative impact on his wellbeing.

According to the Difference View, the state need not provide the same amount of support or give the same priority to supporting John, as it must for Jack. Yet this seems morally arbitrary. Suppose that John has suffered as much as Jack as a result of his difficult circumstances. How can it be reasonable for the state to discriminate between the support it provides for them?

In this chapter, I defend a qualified version of the Difference View. It maintains that, when victims lie above a minimum threshold of wellbeing,[5] the duties the state owes to victims of its own wrongdoing can differ—both in amount and priority—from the duties it owes to victims of bad luck, even if everything else about the victims is the same. However, the state may not discriminate between the support it gives these two classes of victims when they lie below a minimum threshold of wellbeing. I call this qualified version of the Difference View the *Threshold Version of the Difference View*. In developing my defence of the Threshold Version, I first draw on a series of hypothetical examples to show that the Threshold Version is intuitively more appealing than alternative views. I then discuss two potential reasons for these intuitions both of which are grounded in the idea of respect for persons. I begin with a few preliminary clarifications.

---

[5] It does not matter for my discussion whether we should compare or assess people's claims to compensation according to their wellbeing or the resources they possess. Recall that in Chapter 2, I set aside discussion of whether the currency of distributive justice is resources, capabilities or welfare. Henceforth, for simplicity, I will simply speak of people as being above or below a 'threshold of wellbeing'. In chapter 5, I will elaborate on this and show that, in fact, certain currencies centring entirely on subjective welfare or preference-satisfaction are not compatible with my account.

3.2. Preliminaries

The main question that this chapter is concerned with answering is the question of whether duties of aid and duties of rectification differ from each other. Duties of rectification and duties of aid are both duties of compensation. Note that when I refer to "compensation", I therefore do not only mean a transfer of a resource to a person with the intention to make up for a wrong she has suffered. Often when people think of compensation, they have in mind a transfer of resources as recompense for wrongdoing. However, when I refer to compensation in this chapter, I mean a transfer of a resource to a person who has suffered from harm *simpliciter*; this need not necessarily be harm that is the result of wrongful conduct by others. Compensation can be owed to persons who have been harmed as a matter of bad luck as well as persons who have been harmed by the wrongful actions of others.

I will call duties of compensation that the state owes to victims of harm that it has wrongfully caused, "duties of rectification", and duties of compensation the state owes to victims of bad luck, "duties of aid". The key difference between rectification and aid, then, is that rectification is owed when a person is harmed as a result of wrongdoing or the violation of duty, whereas aid is owed when a person is harmed by bad luck. There are three different respects in which duties of rectification and of aid might differ from each other. Firstly, they might differ with respect to *who has the duty to compensate:* there may be a difference between who bears the duty to rectify for wrongful harm and who bears the duty to provide aid (cf. Steiner, 1997). Secondly, they might differ with respect to the *amount of compensation* they require; perhaps more is owed in compensation to victims of wrongful harm than to victims of bad luck. Third, it might be thought that duties of aid and duties of rectification differ in

priority.[6] Specifically, it might be thought that when a choice needs to be made about whether to fulfil a duty of rectification *or* a duty of aid, then, all other things being equal, the duty of rectification has priority. Notice that this priority claim allows that we must give equal priority between assisting victims of wrongful harm perpetrated by third parties and victims of bad luck.

In this chapter, I focus on the second and third of these three ways in which duties of rectification and duties of aid may differ from each other. The first way in which they may differ from each other is not sufficiently controversial to warrant discussion. It is widely accepted that duties of rectification should be restricted to those responsible for harmful wrongdoing, whereas duties of aid are general duties that fall on all citizens collectively.

We can distinguish several views about how duties of rectification and duties of aid compare to each other in terms of differences in the amount and priority of compensation they require. The Difference View says that duties of rectification can differ from duties of aid in both the amount and priority of compensation they require. The version of the Difference View I defend – the Threshold Version – limits the difference between duties of rectification and duties of aid to cases in which victims lie above a minimum threshold of wellbeing. More specifically, it says that all persons who lie below the minimum threshold of wellbeing, no matter what the cause of their adversity, must be compensated until they reach a minimum threshold of wellbeing; however, among persons above this threshold, the state owes full compensation to those who are victims of wrongful harm by the state, whereas full compensation is not necessarily required for those who have been harmed by other means, such as bad luck. The Threshold Version of the Difference View always prioritises compensating

---

[6] For a related distinction between the content and stringency of duties, see Shields (2016, Ch. 6).

victims who are below the minimum threshold of wellbeing. Among those above this threshold, it prioritises compensating those who are victims of wrongful harm, over compensating the victims of bad luck. Therefore, if the state could *either* (a) bring all persons up to the threshold *or* (b) fully compensate all victims of state wrongdoing, the Threshold Version would prioritise (a). By contrast, the No Difference View[7] maintains that duties of rectification and duties of aid never differ from each other, either in the amount of compensation that is owed or in priority.

According to the Threshold Version of the Difference View the state also has stronger reason, once it has provided compensation to raise all victims of disadvantage up to the minimum threshold, to provide full compensation to victims of state-caused wrongful harm over providing compensation to the victims of bad luck above the threshold. The Threshold Version supports the Difference View when it comes to providing compensation for those above the threshold. The specific kind of difference that it supports, however, is not necessarily a lexical priority difference (i.e., my thesis is not committed to the claim that redressing state-caused wrongful harm, no matter how slight, always outweighs redressing bad luck above the threshold, no matter how great). Instead, I believe that there is *stronger reason* to support victims of wrongful harm, other things being equal, where the other things that are equal are the levels of welfare of the victims of wrongful harm compared to those of bad luck. In other words, for victims that are at the same level of welfare, the Threshold Version of the Difference View tells us that we must give priority to compensating victims of wrongful harm, but this allows that we can sometimes give priority to victims of bad luck, if their levels of welfare are

---

[7] Derek Parfit has defended a view called the "No Difference View" when discussing the so-called non-identity problem (1986). The view I discuss under the same label is not related to Parfit's view or to the non-identity problem.

much lower than the welfare of victims of wrongful harm.

It is outside the scope of this thesis to develop an account of exactly when the difference in levels of welfare calls for us to prioritise compensating victims of bad luck over compensating victims of wrongful harm. However, it seems intuitively plausible that, at some point, the strength of the reason to prioritise compensating for wrongful harm, on the basis of respect, is outweighed by other reasons that we have to prioritise compensation for bad luck (i.e., other reasons such as the differing levels of welfare between the unlucky compared to the wrongfully harmed, or the overall levels of welfare that would be enjoyed if we were to prioritise compensating one rather than the other). An example that demonstrates such a case is the following. Suppose the state has discharged its duties of distributive justice, so that everyone now has their just share of resources, and no more than their just share. But now suppose that a hurricane hits and erases half of this wealth from 90% of the population. And let us suppose this leaves them just above the minimal threshold of wellbeing. Then there is the remaining 10% of the population who were lucky in that they were not affected by the hurricane, but who became flooded through the negligence of state actors who were rushing to the aid of the initial hurricane victims. Suppose that state actors negligently allowed some of the excess water to flood the remaining 10% of the population. The result of this flood was that this 10% of the population lost 10% of their justly held wealth, but they are still left way above the threshold of minimal wellbeing. What are these two parts of the population owed respectively, and who gets priority? Intuitively, it seems that priority should be given on the basis of need, or being worse off, rather than the source of misfortune.[8]

---

[8] I am grateful to my examiners, Dr Alice Baderin and Dr Isabella Trifan for bringing this example to my attention and encouraging me to consider my position on the lexical priority of compensating for wrongful harm over bad luck.

For simplicity's sake, I will henceforth assume that the cases I consider in my thesis do not meet the criterion to prioritise compensating for bad luck, and that we should therefore prioritise providing full compensation to victims of wrongful harm. Note, however, that what I mean, when I say we should prioritise compensation for wrongful harm victims over compensation for bad luck, is that we ought to do so, assuming that this will not cause either significant disadvantage for those required to provide full compensation or unjustifiable inequality in levels of welfare for the victims of bad luck compared to victims of wrongful harm.

An objection might be raised against the lexical priority that the Threshold Version of the Difference View gives to securing compensation for all persons up to the threshold. A critic might say the lexical priority that the Threshold Version of the Difference View gives to securing compensation for all persons up to the threshold, implies objectionable permissibility of unjust distributions above the threshold. Suppose we could only bring about one of two worlds: in World A, there is a distribution of 95% of the population at a wellbeing level of 300 (three times the threshold) and 5% at a wellbeing level of 99 (just below the threshold); in World B there is a distribution of 5% of the population at wellbeing level 600 (six times the threshold level) and 95% at wellbeing level 100 (at the threshold). The Threshold Version would say that we should bring about World B in which everybody is at or above the threshold, even though this leads to less wellbeing overall and greater inequality in above-threshold wellbeing. Carl Knight (2021) calls this the *above-threshold distribution objection*. As he notes, "The second world may seem fairer in one respect (the worst off [are] slightly better off), but that is outweighed by the substantial unfairness of the second world's distribution between [the bottom 95% and the top 5%], who are both at or above the threshold." (Knight, 2021, p.17). Perhaps the Threshold Version of the Difference View could be adapted so that it

acknowledges occasions where the state must weigh its obligation to provide compensation up to the threshold against other distributive and rectificatory considerations.[9] However, for now, I will concede that these are indeed implications of the Threshold Version as I have stated it.

My defence of the Threshold Version proceeds in two stages. The first stage, in sections 3.3 and 3.4, provides support for the Threshold Version by appealing to intuitions about a set of hypothetical examples. The second stage of my discussion, in sections 3.5 where I discuss two foundational arguments for these intuitions. Before proceeding, I want to begin by providing some context for the Threshold Version.

3.2. Why the Threshold Version of the Difference View Matters

The Threshold Version of the Difference View plays a key role in the broader argument my thesis seeks to defend, about the socio-economic duties that a society owes toward its disadvantaged members. This broader argument seeks to rest demanding socio-economic duties towards the disadvantaged on a more solid foundation than that provided by the claim that disadvantage should be compensated for when it is the result of bad luck.[10] It does this by

---

[9] One way of doing so would be to incorporate a "shift" in the value of benefitting those that are above the threshold (as proposed by Shields (2016)).

[10] Some luck-egalitarians do, to be sure, defend very demanding duties of compensation for persons who suffer disadvantage due to bad luck. However, others do not. Only ex-post luck egalitarians support fully redressing inequalities that arise due to brute luck. (See Cohen, 1989) By contrast, ex-ante luck egalitarians support redressing inequalities due to brute luck only to the extent that most people would have insured against those inequalities from an initially fair position. (See Dworkin, 2000.)

showing that demanding socio-economic duties towards many disadvantaged persons in society are justified as compensation, not for bad luck, but rather for wrongful harm. It relies on three main claims:

> (1) Disadvantage-as-harm is pervasive in modern society, i.e., many cases of disadvantage in society are caused by wrongful harm perpetrated by state institutions and by the way in which the basic structure of society is arranged.
>
> (2) All members of society share collective responsibility for discharging duties of compensation for wrongful harms caused by the basic structure of society.
>
> (3) Compensation that is owed by the state for disadvantage-as-harm is greater than compensation owed to redress bad luck, at least amongst victims who lie above a minimum threshold of wellbeing.

I have defended Claim (1) in Chapter 2. Claim (2) will be defended in Chapter 4. This chapter defends claim (3); it is the central claim of the Threshold Version of the Difference View. However, I want to begin by defending the initial plausibility of claims 1 and 2. This will help us to see that the Threshold Version is part of a broader and promising argument about the nature of socio-economic duties of redistribution.

The plausibility of claim 1 is evident from a depressingly familiar example of how the basic structure of a society deprives persons of just formative circumstances. Let's return to Sophie's story as an example of this: Sophie grew up in a socio-economically deprived area and attended a poorly funded school that was not able to provide an adequate education. Due to these unfavourable circumstances, she did not receive a sufficient level of education and nurturing in her formative years and finished school with inadequate income-earning skills and without the capacities needed to make her life go well (See Fishkin, 2014, chapter 2).

Subsequently, Sophie must rely either on welfare benefits or on low-paying jobs for income. Inadequate welfare provision for her and her family then has harmful knock-on effects on her own children's development, whose formative circumstances are thus similarly unjust, thereby repeating a cycle of poverty and dependence.

The key point to observe about this example is that it is not, or not only, an example of bad luck, but an example also of wrongful harm caused by the way in which the basic structure of a society is arranged. This is the case on a very plausible construal of "wrongful harm" – namely, as the avoidable withholding from persons of valuable resources and opportunities to which they are entitled, such as adequate education, housing, public amenities, and welfare provision.

As for claim 2 – i.e., that members of a society are collectively responsible for discharging duties of compensation owed because of wrongful harms caused by the basic structure of society – this is generally accepted in a number of cases. Many would agree, for example, that wealthy states should pay compensation for climate-related harms caused by excessive emissions of greenhouse gases and that providing this compensation is the collective responsibility of their citizens, as are any reparations they might owe for wrongful harm their state has perpetrated against others in an unjust war. The same applies when state institutions perpetrate wrongful harms against their own citizens, e.g., when the criminal justice system wrongly convicts persons for crimes. It is broadly accepted that the taxpayer bears a duty to provide the necessary compensation in such cases.[11]

To defend claim 3 – i.e., the Threshold Version of the Difference View – I next want to locate it within a neighbourhood of views about how duties of rectification and duties of aid

[11] See, for example, Lawford-Smith (2019, chapter 5); Stilz (2011); Parrish (2009).

compare with each other. There are two main views in this neighbourhood, the No Difference View and the Difference View. The No Difference View and Difference View disagree over the questions of whether the duty of rectification and duty of aid differ from each other in terms of (i) the amount of compensation owed and (ii) priority. The No Difference View says "no" to both of these questions and is thus the most extreme of the three views I discuss. The Difference View says "yes" to at least one of the two questions about difference. There are thus different possible variants of the Difference View, depending on which of the questions they say "yes" to. The Threshold Version of the Difference View allows that duties of rectification and duties of aid can differ from each other in certain circumstances. Specifically, it says that duties of rectification and aid differ from each other with respect to compensation that is owed to persons above a minimum threshold of well-being or resources. I begin my defence of the Threshold Version by casting doubt on the No Difference View.

3.3. The No Difference View

> *Case 1*: Alex is made homeless following a housefire, which destroyed his home. The fire was caused by lightning striking his roof. Prior to the fire, Alex had rented the house he was living in from a private landlord. The landlord had house insurance. However, his landlord's insurance company went bankrupt on the day of the housefire and was not able to fulfil any new claims. Alex's landlord is therefore unable to provide him with any assistance.

> *Case 2*: Sam is made homeless following a gas explosion, which destroyed his home. Sam had rented his house from the council. The local authority responsible for Sam's property neglected to arrange for annual gas safety checks to be carried out. The

explosion that destroyed Sam's home could have been prevented through proper maintenance of the property.

In both of these cases, a person has been made homeless by the destruction of their home. In Case 1, this is due to bad luck. In Case 2, this is due to wrongful negligence by the local authority.[12]

Let's suppose that Alex and Sam have similar socio-economic backgrounds and that neither has any significant savings, nor any family or friends capable of assisting them: without intervention, therefore, they will both be left homeless. What should we think about the *amount* of compensation that the state owes to the victims in the above cases? Does the state owe more assistance to the person whose homelessness is ascribable to wrongful negligence by the local authority (Case 2), than it owes to the person whose homelessness was the result of bad luck (Case 1)?[13] It might be thought – because Sam became homeless as a result of the council's

---

[12] Zofia Stemplowska (2009) considers similar hypothetical cases when considering whether one of two men, whose homes are each destroyed by housefires, should be prioritised for assistance from the local authority according to their own level of responsibility for the fires.

[13] Some might not consider the failure of the council to perform annual gas safety checks to be a cause of – but merely a condition of – the gas explosion that destroyed Sam's home. I believe this does not alter the intuitions drawn out by Cases 1 and 2, as direct causation is not necessary in order for the responsibility to compensate for wrongful harm to obtain; it is sufficient that one's actions are a significant and morally relevant condition of the harm in question. The question here is whether it makes a difference to what the state owes Alex and Sam that in one case the harm resulted from bad luck, whereas in the other the harm would not have come about but for the wrongful actions of the state.

wrongful negligence – that the council owes it to Sam to provide him with replacement housing, whereas, the council owes less than this to Alex, whose homelessness was caused by bad luck; perhaps the council might not owe Alex a new home, for example, but instead owe him assistance in the form of an emergency loan, so that Alex can pay a deposit to secure a new private tenancy. The No Difference View denies this, and this seems plausible bearing in mind the very low level of wellbeing Sam and Alex experience due to the profound distress and vulnerability caused by their sudden homelessness. Intuitively, it seems that the state should provide both victims with assistance in the form of replacement housing.

Consider, next, a question about *priority*: suppose that the local authority has limited housing resources, and can only provide emergency housing for either Sam or Alex; should the council prioritise assisting the person whose homelessness is due to the council's own wrongful negligence, over assisting the person who lost their home due to bad luck? The No Difference View denies this and, again, this seems plausible. Intuitively, there seems to be no reason to prioritise providing emergency housing to the victim of wrongful negligence; both victims are equally badly off due to circumstances beyond their control. (Perhaps the only fair way to determine who to give the only available emergency housing to is by using a lottery.) So far, the No Difference View appears to be a plausible view. Later, however, I will show that we can hold on to these intuitive judgements about Case 1 and Case 2 without endorsing the No Difference View.

Let's look more closely at these seemingly plausible claims by the No Difference View. We can now notice that these claims become untenable when we consider a case that involves comparatively less significant harm. Consider the following case, which I have modified from a case suggested by Douglas (2010):

Case 3: An on-duty police officer is cycling along the road when he receives a text

> message. Carelessly, he decides to read the message while continuing to cycle. He fails to notice the red light at a pedestrian crossing and knocks into a pedestrian. The pedestrian's mobile phone falls to the ground and breaks. By chance, at the same time, a nearby pedestrian happens to get caught by a strong gust of wind; her mobile phone also falls to the ground and breaks.[14]

What should the state's duties be in Case 3? Most people would agree that state has no duty to compensate the person who was caught in a gust of wind for the cost of repairing her mobile phone, whereas it owes the person who the officer knocked down the full costs of repairing her phone. Case 3 shows us that the No Difference View is implausible when it says that there is no difference in the *amount* of compensation the state owes to a victim of its own wrongdoing compared to a victim of bad luck. Case 3 shows that there clearly is a difference. Case 3 also illustrates that the No Difference View is mistaken in the claim it makes about *priority*: Suppose that the police officer is able to compensate one person for their broken mobile phone at the side of the road, and he must choose between compensating the person that he knocked down or the person who was caught in the gust of wind. The No Difference View would say that there is no reason for the police officer to prioritise compensating the person whose mobile phone was broken as a result of his wrongful actions. This seems counter-intuitive.

---

[14] Later, I discuss a modified version of this case where the individual the police officer knocked into suffers further harmful effects from the loss of her mobile phone. For now, let us assume that the loss of a mobile phone in this case is merely a costly inconvenience that will not lead to any further significant harm; neither individual has a pressing need to have a mobile phone with them at all times, and both have the means to replace their devices.

In summary, Cases 1-3 show us this: sometimes – as in Cases 1 and 2, it makes no difference to the amount or priority of compensation that a duty-bearer owes a victim, whether she is a victim of the duty-bearer's wrongdoing or a victim of bad luck. Sometimes – as in Case 3 – this *does* make a difference both to priority and the amount of compensation that is owed. Thus, it seems that the No Difference View, regarding the questions of amount and priority, is plausible when we are considering harms to victims *while they are below* some threshold of wellbeing. However, the No Difference View is implausible with regard to these questions when we are considering harms to victims *while they are above* that threshold.

3.4. The Difference View

Let us now shift our attention to the Difference View. There are different versions that the Difference View can take. One version is what I have called the Threshold Version; an alternative is the *No-Threshold Version*. I now want to explain why the *No-Threshold Version* of the Difference View is implausible.

The No-Threshold Version says that whether persons are victims of harmful wrongdoing for which the state is responsible or victims of other forms of bad luck makes a difference to the amount and priority of compensation the state owes them *regardless* of whether they lie above or below a minimum threshold of wellbeing. Earlier, when comparing Case 1 and 2, we saw that the first of these claims is problematic: intuitively, it seems that a person who becomes homeless due to bad luck should not have less of a claim to assistance from the state than a person who becomes homeless due to state negligence. The No-Threshold Version of the Difference View is also implausible in its claim about prioritization, for it implies that rectifying small harms for people who happen to be very well off should have priority over providing aid for unlucky people who are very badly off. The following example,

from Douglas (2010), illustrates this point forcefully:

Case 4:

> Suppose I have wrongfully caused a small amount of damage to a billionaire's yacht when I notice a child drowning in the marina. Surely, I should aid the child before – or if necessary, instead of – reimbursing the yacht owner. (p. 698)

Supposing that it would be impossible for the person in Case 4 to *both* compensate the billionaire for the damage caused to his yacht *and* save the drowning child, it seems clear that priority should be given to rescuing the child. Clearly, then, when it is not possible to provide both aid and rectification, there may be some cases where we should give priority to providing aid over rectifying wrongful harm for which we are responsible.

Both the No Difference View and the No-Threshold Version of the Difference View thus face significant problems. In section 4, I defend the Threshold Version of the Difference View, which better captures the intuitions illuminated by Cases 1-4. Before coming to that, I first want to explain the structure of the Threshold Version of the Difference View in more detail.

It will help us to understand the Threshold Version properly, if we divide the amount of compensation that a victim of harm can be owed into two separate amounts:

(1) *Up to the threshold amount*: an amount of compensation that raises a person up to a minimum threshold of wellbeing or ensures that they do not fall below it.
(2) *Above the threshold amount:* an amount of compensation given to a person above that which would be required to raise them up to the minimum threshold or to keep them from falling below it.

The Threshold Version only applies the Difference View to questions of amount and priority when it comes to *above the threshold* compensation. It applies the No Difference View to these questions as they pertain to compensation below the threshold. In other words, the Threshold Version asserts that all persons below the threshold are owed the full amount of compensation that will raise them back up to the threshold, regardless of whether the harm that put them below the threshold was bad luck or wrongdoing.[15] However, whether a person has been a victim of bad luck or wrongdoing can make a difference to the priority and amount of *above the threshold* compensation she is owed. I justify the Threshold Version's application of the Difference View to *above the threshold* compensation in section 4.

The Threshold Version's application of the No Difference View to the amount and priority of compensation owed to persons below the threshold is justified by appealing to the claim that all persons have an unconditional right to compensation that raises them to a minimum threshold of wellbeing. Such a right can be grounded in a broad set of literatures, arguing, for example, that everyone has a right to have their basic needs fulfilled (Sen, 1984; Shue 2020), to be able to appear in public without shame (Sen, 1983), to be capable of a life of human flourishing (Nussbaum, 2000, 2011), or to have enough (Shields, 2020). I believe that

---

[15] It might be asked what should be done in cases where a state genuinely can't afford to support both the unlucky and its own victims up to the minimum threshold; in these cases, should the state give priority to rectification over aid below the threshold? I would argue that the state may not discriminate between victims of wrongdoing and victims of bad luck when both are below the threshold. If it cannot equally divide the available assistance between the two, and must allocate all of its assistance either to one or the other, then it must select the person it assists by lottery. It is difficult to see any other fair way to resolve the case.

the strongest reason to think that the minimum threshold makes a morally relevant difference is grounded in the duty to respect others as moral equals. When a society withholds assistance from a person who is below the minimum threshold of wellbeing, they fail in the duty to respect their citizens. As Axelsen and Nielsen argue, "respect for moral agency … requires ensuring that people have the … resources, opportunities, capabilities, etc. needed to construct, revise, and pursue their plans for the good life…" (2020, p.662). When a person is below the minimum threshold, they lack the goods and capabilities that are necessary to act as moral agents; respect for a person's moral agency, therefore, requires that the state provide unconditional *up to the threshold* compensation to all, without making judgements of priority or entitlement based on the cause of a person's circumstances.

What would the Threshold Version of the Difference View say about Cases 1-4 discussed above? Consider Cases 1 and 2 again, both of which involve victims who lie below a minimum threshold of wellbeing. The Threshold Version of the Difference View would agree with the No Difference View that the persons in both of these cases are owed emergency housing assistance from the state. This is because the provision of emergency housing for the homeless is, I assume, part of the *up to the threshold* amount of compensation, which the Threshold Version of the Difference View says all victims are owed regardless of whether they have suffered from bad luck or wrongdoing. So, the fact that in Case 2 the victims' homelessness was due to wrongful negligence, does not mean that they have a greater right to assistance to raise them up to the threshold than the victim of bad luck in Case 1.

We might, however, think that the victim in Case 2 is owed some amount of *above the threshold* compensation. For example, it might be that the local authority, who failed to ensure that annual gas safety checks were carried out, should pay some amount of financial compensation for the loss of their tenant's belongings. It might also be thought that the council owes further compensation to their tenant for the trauma he experienced or for the danger to

his life from the council's wrongful negligence. In other words, if a person has become homeless because of events that are ascribable to wrongful harm by the state, it could make a difference to the total amount of compensation the state owes them, compared to what the state owes to a person who becomes homeless as a result of bad luck, but the difference may only exist in the amount of *above the threshold* compensation that is owed. In other words, there is no difference in the *up to the threshold* amount of compensation that is owed to victims of bad luck and victims of wrongful harm, but, *above the threshold*, there may be differences in the amount of compensation owed, depending on whether a person has been harmed by bad luck or by the wrongful actions of others.[16]

This distinction also justifies the intuitions drawn out by Case 3. Both the victim of bad luck and the victim of wrongful harm in this case are above the threshold. Since the Threshold Version of the Difference View holds that there can be differences in the amount of compensation owed above the threshold depending on whether the harm was caused by bad luck or by the wrongful actions of others, the Threshold Version supports our intuitive

---

[16] Note that the Threshold Version of the Difference View does *not* state that victims of bad luck are only owed *up to the threshold* compensation whereas victims of wrongdoing may be owed *above the threshold* compensation. Rather, the Threshold Version says that the No Difference View (in terms of amount and priority) applies to any *below the threshold amount* of compensation owed, whereas the Difference View applies to any *above the threshold amount* of compensation owed. Victims of bad luck may be owed some amount of compensation above the threshold, but this may be less than would be owed to victims of wrongful harm. This difference is explained by the duty to provide *full compensation* to victims of wrongful harm, while victims of bad luck are not owed the same duty (that is, they may only be owed partial compensation).

judgement that the police cyclist owes compensation to the person whose mobile phone he caused to break as a result of his wrongful actions, but not to the person whose mobile phone broke because of an accidental fall.

In the next section of the chapter, I will begin to develop a foundational argument in support of the Threshold Version, but I first want to address an interesting question that arises if we accept the view. The Threshold Version of the Difference View tells us that, above the threshold, states should prioritise rectification over aid, and that victims of state wrongdoing are owed full compensation, whereas this is not the case for victims of bad luck. This raises an interesting question: What should the state do if, after fully compensating victims of its own wrongdoing, the state would have no resources left to provide any aid to victims of bad luck? It seems that, in this case, the Threshold Version of the Difference View would have to endorse leaving all victims of bad luck above the threshold uncompensated. If there were more victims of bad luck than wrongdoing, but the costs of rectification were greater than the costs of providing aid, then prioritising rectification might leave more people suffering harm overall.

The Threshold Version of the Difference View asserts that, for reasons of respect, it is morally more important for the state to provide *above the threshold* compensation for a victim of its own wrongdoing than for a victim of bad luck. Therefore, a proponent of the view will indeed be committed to requiring that states prioritise compensation for wrongdoing, even if this means that all victims of harm (i.e., victims of both wrongdoing and bad luck) experience less welfare on aggregate than they otherwise would. Regrettably, I cannot, within the scope of my thesis, specify exactly how much more moral importance should be assigned to state compensation for wrongdoing. There may be cases in which compensation for a very large number of victims of bad luck could be secured if the state did not compensate wrongdoing it perpetrated against just one person, and in which the state may, because of the large numbers involved, be required to do the former rather than the latter. The moral relevance of aggregating

welfare is a large question in ethics and political philosophy, which cannot be settled here.[17]

In summary, the Threshold Version is, I submit, intuitively forceful. However, displaying its intuitive force does not amount to a complete justification of it. For that, we must also provide a foundational argument for the Threshold Version. In section 3.5, I develop two foundational arguments for the Threshold Version of the Difference View, both of which are grounded in the idea of respect for persons.

3.5. The arguments from respect

The two foundational arguments I develop in support of the Threshold Version in this section of the chapter maintain that all persons are owed respect and that this entails that victims of wrongful harm are owed *full* compensation (whereas respect does not require as much

[17] For discussion, see Casal (2007); Knight (2021); Shields (2016); Voorhoeve (2014).

compensation to persons who are harmed due to bad luck).[18] Each argument appeals to distinct reasons for why this is the case. This is because I appeal to different conceptions of respect in each argument: in the argument from assurance, I appeal to the conception of respect as requiring us to regard others as moral equals; in the argument from persistent harm I appeal to the conception of respect as requiring us not to inflict wrongful harm on others. Importantly, neither of these two reasons apply when the victim in question is a victim of bad luck, as opposed to wrongdoing. They, thus, provide principled grounds for distinguishing between victims of wrongdoing and victims of bad luck in the way that the Threshold Version of the Difference View requires.

Compensation and assurance

The first reason why respect requires full compensation for wrongful harm is that full compensation is necessary for the perpetrator to sincerely apologise (and perpetrators must

---

[18] It is worth noting that it is possible for a person to be made worse off than they otherwise would have been, and yet this will not generate a duty of full compensation. This is because, as I shall argue in this section of the chapter, compensation is an expression of respect. However, it is not the compensation itself that is the respect, but what it represents. When someone has significantly more resources than they have a right to or holds goods impermissibly, it is not disrespectful to fail to restore them to the counterfactual state, where they have as much as they otherwise would have had – given that they were not supposed to have this much before. Failing to provide full compensation will not signify disrespect since it is not necessary for assurance and withholding counterfactual compensation in such cases will not create a persistent or compounding wrongful harm for those who are made worse off. It *may* however, be necessary to apologise. I will say more about this in Chapter 6.

sincerely apologise when they wrong others). The duty of respect requires us to assure others of our respect for them, at least when they have good reason to doubt that we do respect them. This is why we ought to apologise whenever we behave in a way that causes wrongful harm to others; by apologizing, and thus expressing regret, the perpetrator assures his victim that he respects her despite his wrongful actions. If the perpetrator leaves intact some of the wrongful harm that he caused his victim, when he could have rectified all of it (without causing himself or others to fall below a minimum threshold of wellbeing), then he shows that he does not really regret his wrongful actions, and he therefore fails in his duty to show his victim adequate respect. Thus, it is not possible for a perpetrator of wrongful harm to apologise sincerely if they fail to fully compensate, when they could have without excessive cost to themselves or others, for wrongful harm they have caused.[19] A duty of assurance and apology has been defended on several grounds. Specifically, it has been argued that such a duty protects victims from a sense of fear for their own future safety (Radzik, 2001), repairs moral relationships (Cohen, 2016), and can support a victim's self-respect, which, as Rawls (1971) has argued, is "perhaps the most important primary good" (p.386). Here, I am appealing to the conception of respect as

---

[19] Importantly, victims of bad luck are not owed a duty of assurance or apology in this way. This is because, when they lie above the threshold, victims of bad luck do not lack assurance of respect when we fail to provide them with full compensation. It is therefore not unfair that victims of bad luck should, through no fault of their own, be left worse off than victims of wrongdoing (assuming that their respective welfare levels are not so different that our duty to prioritise compensating the victims of wrongful harm is negated by the duty to mitigate unjustifiable inequality in society); full compensation is owed to the victim of wrongful harm as this is necessary for the perpetrator to be able to fulfil the duty to provide assurance of respect, whereas no such assurance is owed to the victim of bad luck.

requiring us to regard others as our moral equals. This includes a duty of assurance; victims of wrongful harm, in the absence of apology and assurance of respect, have reason to believe that the perpetrators do not respect them as moral equals. In order for the relational equality between perpetrators and victims to be restored or recognised, an apology and assurance of respect are required; when perpetrators fail to provide adequate assurance of their respect or to apologise for wrongful harm, they reveal that they do not, in fact, regard the victims of their wrongdoing as moral equals. If they did, they would issue a sincere apology for the wrongful harm, and this would require that the perpetrator also compensate their victim in full. It is not possible for perpetrators to provide either an apology or the assurance that respect demands if the compensation due to the victim is withheld by the perpetrator.

Douglas (2010) has raised an objection to the argument that feeling and expressing regret requires full compensation for wrongdoing. The objection is this: it might be the case that perpetrators of wrongful harm ought to feel regret, and to express regret by apologising, but requiring this is not, strictly speaking, the same as requiring compensation. Douglas claims, in other words, that it is possible for perpetrators of wrongful harm to feel and express regret (for example, through apology) without ensuring that full compensation is provided. Douglas suggests that those who believe full compensation ought to be provided for reasons of respect, do not actually believe in compensation *per se*, but in regret *per se*, and that respect therefore does not require compensation, but only regret. The key to Douglas' objection must then be this: it is possible, firstly, to feel regret and secondly, to express regret, without ensuring that full compensation is provided, even in circumstances in which one is able to provide full compensation without excessive cost.

This objection is mistaken on both counts: it is incoherent to say that we can feel regret about the harm caused by our wrongful actions, and yet decide not to provide full compensation if a) we could do so without excessive cost to ourselves or others – i.e., without causing

ourselves or others to fall below the minimum threshold of wellbeing, and b) failing to do so will leave the victim of our wrongful actions continuing to suffer the harmful effects of those actions. To feel regret is to wish that we had not acted as we did given the harmful effects. If someone felt genuine regret over their actions, they would therefore wish that the harmful effects of their actions did not persist. If one fails to compensate fully, however, the victim may continue to experience harm because of one's wrongful actions. Douglas is thus mistaken: it is not possible for perpetrators of wrongful harm to sincerely regret their actions, while allowing the victim of their wrongdoing to remain uncompensated, if they could have provided full compensation without excessive cost to themselves or others.[20] Furthermore, it is not only required of us that we *feel* regret when we cause others wrongful harm, but also that we *adequately express* that regret in a way that provides assurance to those we have wronged that we respect them. It is not possible for perpetrators of wrongful harm to adequately express regret if they choose to withhold compensation from the victim of their wrongdoing.

It is worth noting the following: It does not follow from the claim that perpetrators can

---

[20] It is worth noting that there may be cases where we must choose between providing compensation or fulfilling other, more urgent moral obligations. In such cases, it may be the case that we can coherently regret wrongful harm we have perpetrated without compensating for it. For example, we may not have to provide compensation for very minor harms if doing so would prevent us from keeping important promises to others. For reasons of space, I cannot explore the complexities of such cases in this chapter. The view I endorse here is that in the absence of strong countervailing moral reasons against compensating, and in cases where a perpetrator is able to provide full compensation without excessive cost to themselves or others, it remains the case that failure to provide full compensation demonstrates a lack of regret and undermines the perpetrator's ability to provide a sincere apology.

be required by the duty of assurance to provide full compensation, that compensation, apology, and assurance of respect cannot each be owed on distinct grounds. Nor does this requirement imply that an apology cannot be sincerely issued by those who are unable to provide full compensation, or that compensation is only owed in cases where the perpetrator must issue an apology. It is quite coherent to think that a perpetrator who is unable to provide full compensation could genuinely come to regret the wrongful harm they have caused and to apologise sincerely for this. Alternatively, we can imagine a case where a victim has no desire for an apology from the perpetrator, but nonetheless does want compensation from him. The argument from assurance does not claim that compensation is only owed in cases where an apology is also owed. Rather, it claims the following: When a perpetrator causes wrongful harm to another person, they must apologise for this in order to assure the victim of their respect for them (except on very rare occasions). While it is possible for a perpetrator of wrongful harm to compensate their victim without apologising or giving any assurance of their respect, it is *not* possible – if the perpetrator is able to compensate their victim – to sincerely apologise or offer assurance, while withholding compensation that is owed and expected. That is the key claim. Thus, in order to apologise for their wrongdoing and fulfil their duty of assurance, perpetrators must provide full compensation in all cases where they can do so without excessive cost to themselves or others.

While the assurance-based reason discussed above provides some support for the Threshold Version of the Difference View, it does not cover all cases of wrongful harm and is thus incomplete as a justification for the duty to provide full compensation for wrongful harm. This is because, in some cases the perpetrator might have strong countervailing moral reasons not to provide full compensation, and in those cases the failure to fully compensate the victims of their wrongdoing might not signify a lack of regret by the perpetrator. Additionally, there will be some cases in which respect arguably does not require assurance, namely, those cases

in which our victim lacks the ability to understand our apology. Suppose, for example, the state causes wrongful harm to somebody who is brain damaged to the extent that they are unable to understand an apology. In this case, it may not be possible for the state to communicate regret to the victim or to assure them of their respect. Nevertheless, the state's inability to assure the victim that they are respected by the state does not imply that the state therefore owes them less compensation. For these reasons, the need to apologise and provide assurance of respect to victims of our wrongdoing does not, on its own, constitute a complete basis for the duty to provide full compensation. We should therefore turn to the second respect-based argument to fully justify the Threshold Version.

Compensation and persistent harm

Before I explain how the second respect-based reason justifies the requirement of full compensation for wrongdoing, there is a preliminary point that must be understood: central to the ensuing argument is the idea that compensation is not only a way of making up for a harm that occurred in the past, but it can also be a way of preventing it from persisting and being compounded in the future. The assumption, here, is that many wrongful harms do not expire immediately after their occurrence, but exist and grow over time. As an example, let us return to Case 3. A police officer has just carelessly cycled into a pedestrian causing her mobile phone to be knocked to the ground and broken. Now suppose that the pedestrian in this example is a recipient of conditional welfare benefits and that she is due to have a telephone appointment for a Work Focused Interview with the Job Centre that afternoon. Because her mobile phone is broken, she misses the interview and subsequently has her benefits sanctioned. She has no other source of income, and thus falls behind on her rent and is evicted. The pedestrian's life in this modified version of Case 3 has now taken a completely different course than it would have taken had the police officer not knocked into her on his bike. What this shows is that harm

is not necessarily a singular static event, but can stretch over time. If the police officer had quickly provided compensation for the pedestrian so that she could have had her phone repaired or replaced before her interview with the Job Centre, this compensation would have prevented the harmful effects of his wrongful action from persisting into the future and from compounding; it would have averted the additional harm suffered by the pedestrian, which was caused by her inability to attend her telephone interview with the Job Centre. Thus, failure to compensate for wrongdoing can cause harmful effects from our wrongful actions not only to persist, but to compound (cf. Fishkin, 2014, Ch. 2).

With this in mind, we can now fully state the second reason for why full compensation is owed on grounds of respect to victims of wrongful harm. It can be stated in four premises:

(1) To respect others, we must avoid wrongfully harming them.

(2) When we wrongfully harm another person at a given moment in time T1, the harm we cause that person can persist and compound at T2, T3, T4, and into the further future.

(3) By compensating a person at T2 for a harm we wrongfully inflicted on her at T1 we can prevent our victim from suffering persisting and compounding harm at T3, T4 and into the further future.

(4) By compensating a person at T2 we thus prevent our wrongful harm at T1 from causing harm to her at T3, T4 and into the further future.

Conclusion: Therefore, to respect others, we must provide full compensation at T2.

Once we see that the harm our wrongful actions cause another person can persist into the future, and that we can prevent our victim from experiencing that persisting harm by compensating her at T2, we also see that unless we provide full compensation at T2, we cause her wrongful

harm in the future. Respect for others thus requires compensation as a way of ensuring that we do not wrongfully harm them in the future.[21]

Somebody might object to this second argument by pointing out that harm resulting from bad luck can also persist and compound over time; it might be asked why we should prioritise preventing further harm that we have wrongfully caused rather than preventing further non-wrongful harm. The reason lies ultimately in the duty of respect. When a perpetrator withholds compensation, they allow wrongful harm they have caused to compound over time, and the disrespect they showed their victim when they committed the original act of wrongdoing thus continues. This is not so for cases of bad luck. It is, of course, very regrettable for a person to suffer from persistent or compounding harm caused by bad luck, but it is even more regrettable, all else being equal, for a person not only to suffer from such harm, but also to be a victim of disrespect.

A question might be raised about whether there is a real-world difference between what the state owes to victims of disadvantage as bad luck compared to victims of disadvantage as wrongful harm. The reason for this is as follows: I have proposed that the state owes strong and extensive positive duties to prevent its citizens and residents from suffering significant economic disadvantage caused by social or natural circumstances beyond the individual's

---

[21] This second, 'persisting harm' reason for why respect requires compensation does not justify a duty of compensation for harms which are temporary or short-lived. If we harm somebody through wrongdoing but they spontaneously recover and there are no persistent harmful effects from our earlier wrongful action, then the duty not to cause harm cannot ground a duty to provide compensation. In cases such as these, it might be that an apology and assurance of respect is all that is required.

control; the existence of these positive duties might suggest that disadvantage caused by congenital disease and the effects of natural disasters, which I earlier listed as examples of bad brute luck, may actually be examples of wrongful harm: the state may have failed in the duty to invest enough in disaster prevention or medical research, for example. There may, therefore, be an objection to my claim that the state owes more to victims of wrongful harm than it owes to victims of bad luck, because, it might be said, on my account, there is simply no such thing as bad luck.

Is it really the case that the bad luck category of disadvantage is empty? It may be the case that, in practice, it is very difficult to distinguish between cases of disadvantage as bad luck and cases of disadvantage as harm. However, in theory, I submit that we can still imagine cases where a person has suffered disadvantage caused by bad luck, which the state had no positive duty to mitigate (assuming the victims of such disadvantage exist above the minimum threshold of wellbeing) or where the state has carried out their duties in full and yet the disadvantage could not be prevented. To be clear, it is only when disadvantage is caused by failures in duty by the state that I consider this to be a case of wrongful harm; where the state has not failed to fulfil their duties, then any disadvantage that befalls individuals should be understood as bad luck. It may well be the case that such cases are very rare in reality. However, I do not consider this to be a problem; my theory still tells us, importantly, that we owe far more to those who are victims of wrongful harm than we would owe them if they were victims of bad luck (i.e., we owe the victims of wrongful harm full compensation, where this would not be owed to victims of bad luck) and, moreover, such cases – in the real world – are far more pervasive than we might have first thought, especially if cases of bad brute luck are, as it may turn out, very rare.

What is the value in my argument from respect, then, if it tells us that more is owed in cases of wrongful harm than in cases of bad luck, if cases of bad luck may only exist in rarity

(or may not exist at all)? To clarify, it is not my intention to draw a distinction between two significant forms of disadvantage in the real world, which might, in turn, justify differential treatment of individuals at the policy level. Rather, having drawn attention to the fact that almost all real-world disadvantage is of the 'wrongful harm' kind, I aim to show what follows in terms of duties of compensation. I see my arguments from respect as making two valuable contributions in the debate about what is owed to the disadvantaged, given that almost all disadvantage is disadvantage as wrongful harm: Firstly, my arguments from respect provide a further justification to theorists who already hold that very demanding duties of compensation are owed to victims of "bad luck". Such theorists can now say that these demanding duties are owed because the victims they address are actually victims of *wrongful harm*, and, as my arguments show, such victims are owed full compensation. Secondly, my arguments from respect may justify demanding duties of compensation to those theorists who would not support very demanding duties of compensation to the victims of bad luck – If, indeed, there is no such thing as bad luck at all, or if such cases are very rare, then demanding duties are owed to the disadvantaged on a basis which is far more commonly accepted, i.e., on the basis that the disadvantaged are victims, not of bad luck, but of wrongful harm.

In summary, there are two arguments that can be made for why respect requires us to provide full compensation: the first argument grounds the duty of full compensation *via* the claim that respect requires us to apologise for wrongful harm and to assure others of our respect for them; the second argument from respect grounds a duty of full compensation *via* the claim that respect prohibits us from wrongfully harming others. This claim justifies a duty of full compensation because full compensation can be required to prevent our earlier wrongful actions from causing persistent and compounding harm to others presently and in their future.

3.6 Conclusion

The two arguments from respect show that, all else being equal, victims of wrongful harm have a stronger claim to compensation than victims of bad luck. The first respect-based reason does not provide conclusive support for the Difference View. Nonetheless, it does show that victims of wrongful harm are, at least in many cases, denied assurance of respect from perpetrators if the wrongful harm caused to them is avoidably left uncompensated, whereas this is not true of victims of bad luck. Thus, our duty of assurance provides some support for the Threshold Version of the Difference View. The second respect-based reason shows that perpetrators of wrongful harm disrespect the victims of their wrongdoing insofar as they withhold compensation in cases where the harmful effects of their wrongful actions persist or compound over time, whereas, again, this is not true of the victims of bad luck. These differences between the victims of wrongful harm and of bad luck provide justification for differentiating between the duties that are owed to them in the way that the Threshold Version of the Difference View does.

The Threshold Version tells us that, above a minimum threshold of wellbeing, all else being equal, the state owes more compensation to redress its own wrongdoing than it owes to redress the bad luck of its citizens. It is abundantly clear that the state wrongfully harms people. There exists no shortage of examples that clearly demonstrate this: in the UK context, examples of wrongful harm by the state include the contaminated blood scandal (see Mitchell, 2019), the Windrush scandal (see Williams, 2020) and the 'Spycops' scandal (see Woodman, 2018). My arguments show that the state owes full compensation to the victims in such cases.

Moreover, this conclusion is not only relevant for obvious and clear cases of state wrongdoing against discrete groups of individuals, such as, for example, the UK government's wrongful denial of legal rights to members of the Windrush Generation; the arguments from

respect might also have a wider application, depending on our understanding of what constitutes state wrongdoing against individuals. The Threshold Version of the Difference view is part of a broader argument about the kinds of socio-economic duties that are owed to disadvantaged members of society. This has important implications for the many disadvantaged persons who are victims, not only of bad luck, but also of wrongful harm perpetrated against them by the way in which the basic structure of their society is arranged. If the Threshold Version is correct, it becomes clear that they are owed more in compensation than they would be owed if they were victims only of bad luck.

Consider the example of childhood poverty. The fact that 4.3million children live in poverty in the UK is at least partly due to avoidable features of the basic structure of UK society. One example of this is the 'two child benefit cap' introduced by the UK government in 2017, which limits the number of children that families can claim welfare benefits for to two. The predictable outcome of this is that poorer children in larger families (i.e. those with two or more siblings) will not be provided with the necessary assistance to lift their families out of poverty (O'Brien, 2018). This is important because we know that the experience of poverty affects all areas of children's development, health and wellbeing (Ridge, 2011). Educational attainment is significantly reduced for poorer children (Department for Education, 2015). Growing up in poverty also affects children's social capital, self-esteem, and mental and physical health, meaning that poverty significantly limits children's prospects later in life (Ridge, 2011). Thus, the harm of childhood poverty persists and compounds over time. A way of summarising the harm of childhood poverty is to say that it deprives children of developing the capabilities "to lead the kind of lives they want to lead, to do what they want to do and be the person they want to be." (Robeyns, 2017, p.206). The 'two child benefit cap' illustrates how childhood poverty is to a large extent foreseeable, avoidable and unjustifiably widespread

and this gives us reason to surmise that childhood poverty is a harm perpetrated by collective wrongdoing, for which all citizens in the UK are responsible.[22]

If my respect-based argument for the Threshold Version is successful, we can be more confident about the plausibility of a broader argument in favour of harm-based socio-economic duties to persons who have grown up in poverty. That is, if the Threshold Version is correct, this would have implications not only with regard to what is owed to children currently living in poverty, but also with regard to what is owed to adults who grew up in poverty and who continue to live with the compounding harmful effects of those antecedent circumstances. If respect requires full compensation, urgent reform is needed to the welfare system to bring poorer families with children out of poverty, and significant compensation is owed to those who continue to suffer harmful effects as a result of living in poverty during their formative years. Such compensation might include a more generous system of welfare benefits, more generous provision of employability and income-earning skills training, access to free mental health support and counselling to address the diminished self-worth and confidence in one's ability to succeed in life.[23] And this compensation would be owed, not because it corrects for bad luck, but to rectify wrongful harm as a matter of respect.

The provision of full compensation that is owed to the victims of disadvantage-as-harm is likely to be very costly once we recognise the pervasiveness of disadvantage-as-harm and

---

[22] I justify the claim that all citizens are collectively responsible for state wrongdoing in Chapter 4.

[23] It should be noted that this is a non-exhaustive list and the actual compensation owed, to ensure that victims do not continue to suffer from persistent or compounding harms as a result of the unjust arrangement of social institutions, may be far more substantial. I explore the nature and content of rectificatory duties more closely in Chapters 5 and 6.

the extent of compensation required to ensure that harmful effects do not persist and compound for victims over time. It is unlikely that the costs of such compensatory schemes could be paid for by those government officials who alone have been directly responsible for implementing policies that cause and perpetuate disadvantage-as-harm in society. Rather, it is likely that in order to compensate victims of disadvantage-as-harm, states will have to share and recover the costs from its citizens and residents via taxation. It is not clear that this kind of collective responsibility is normatively justifiable. In Chapter 4 of the dissertation, I investigate whether it is justifiable to extend these compensatory duties for state wrongdoing to all members of society, and I defend an argument in favour of collective duties, based on our natural duty of justice.

Chapter 4. Collective Duties: Paying For Our State's Wrongdoing

4.1. Introduction

So far in the dissertation, I have established that respect implies that when an agent commits wrongful harm that agent has a duty to provide full compensation to their victims. In the previous chapter, I developed two respect-based arguments for the duty of full compensation for victims of wrongful harm. In this chapter I want to argue that when states commit wrongful harm, the respect-based duty that the state has to provide full compensation falls on citizens and residents collectively. In other words, I want to show that my two arguments from respect entail, not only that the state must provide full compensation for wrongful harm it causes, but also that the costs of providing this compensation can justifiably be distributed among all or most of the citizens and residents of the state in question. This is what typically happens when states provide compensation for their wrongdoing. As Pasternak (2021) notes, when countries have accepted demanding duties of rectification for their own state-wrongdoing "the large sums of money that were needed to finance these compensation schemes came from the public purse. Their responsibility to address their wrongdoing was distributed, *de facto*, to their populations." (p.3).

It might be contended that my arguments from respect only justify duties of full compensation for individuals who have perpetrated wrongful harm against others, and not for all the members of a state collectively. Why should citizens and residents have a collective duty to compensate for wrongful harm, if it was not committed by them, but by public officials? Why does respect require that this duty fall collectively on citizens and residents of a state, rather than only on the public officials who were directly involved in the commission of the

wrongful harm in question? I will call this *the extension problem*: my arguments from respect require that, when the state commits wrongful harm, it must provide full compensation for this. The extension problem challenges the claim that the duty to provide full compensation for wrongful harm committed by the state can be extended so that it applies to all citizens and residents of the state collectively, and not only to the public officials who committed the wrongdoing.

In order to meet the aim of the chapter and respond to the extension problem, I require an argument that shows that there is a connection of some sort between citizens and residents, on the one hand, and public officials, on the other, such that the former assume the responsibility to compensate for the wrongs committed by the latter. In this chapter, I will explore four arguments that attempt to establish this connection. These are the arguments from i) complicity, ii) benefiting, iii) authorisation and iv) natural duty. Not all of these arguments succeed in meeting the extension problem. Some of the arguments I will be discussing in this chapter establish that there is a limited duty to compensate for wrongful harm by the state – limited in the scope of persons who bear the duty – but not that there is a collective duty for all citizens and residents to compensate for wrongful harm by the state. However, one of the four arguments does succeed in establishing this collective duty. This is the natural duty argument.

By appealing to the natural duty argument I will show that responsibility for the full compensation owed to the victims of wrongful harm by the state may justifiably be extended to all or most of the citizens and residents of a given state collectively. This is important because my dissertation, as a whole, seeks to argue that many of the disadvantaged in most societies are victims of wrongful harm by the state and not only, or mainly, unlucky. They are, for that reason, owed full compensation by the state. Furthermore, I want to show that this duty of full compensation is one that is owed to the disadvantaged by other citizens and residents of the

state taken collectively. The natural duty argument is thus key to establishing the overall conclusion the dissertation aims to support.

4.2. The four arguments: an overview

The extension problem is a problem for my argument that victims of state-caused wrongful harm are owed full compensation. This is because, in many cases, full compensation for state-caused wrongful harm is so costly that the public officials who were directly responsible for state-caused wrongful harm would not, on their own, have the amounts of personal wealth required to provide it. Therefore, in these cases, full compensation for state-caused wrongful harm could not possibly be provided unless the large sums needed could be collected through taxation. However, if we are to hold citizens and residents collectively responsible for the actions of public officials, we need to identify a connection between citizens and the state such that it is reasonable to distribute the costs of compensating for the wrongful actions of the state to the citizens and residents of that state.

In this chapter I will examine four arguments that might be used to meet the extension problem. These four arguments can each potentially explain why respect implies a collective duty to compensate the victims of state-caused wrongful harm. The arguments appeal to the notions of Complicity, Benefiting, Authorisation and Natural Duties respectively. They maintain that the reason that individuals have duties to apologise or compensate for state wrongdoing is that they are complicit in the wrongdoing of public officials, have benefited from that wrongdoing, have authorised the state to act on their behalf, or have a natural duty to ensure that state institutions are just, which requires that wrongful harm perpetrated by state institutions be compensated in full.

These four arguments have differing implications for the scope of persons who must apologise for the wrongdoing of public officials as well as who must contribute – and how much they must contribute – toward the costs of full compensation. Some of the arguments that I examine do not succeed in establishing a collective duty because their implications are not broad enough in terms of the scope of persons for whom they justify a duty of compensation. However, one of the arguments does succeed in establishing a collective duty of compensation; this is the natural duty argument.

4.3 Complicity

The complicity argument is not very controversial; it is intuitively plausible and generally accepted that if we have culpably contributed to bringing about a wrongful harm then – all else being equal – we have a greater responsibility to help alleviate the harm in question than, for example, innocent bystanders. When I refer to a person's "culpably contributing" to a wrongful harm, what I mean is that they have made a causal contribution to bringing about wrongful harm without justification or excuse. I will assume that it is essential for the complicity argument that persons deemed liable for reasons of complicity must have causally contributed to wrongful harm in this way.

There are many ways that citizens and residents could be complicit in wrongdoing by their state. For example, they may be complicit in specific unjust policies by enforcing, endorsing or enabling those policies in a way that causally contributes to the wrongdoing. An obvious example of this is when soldiers in a national army are ordered to fight in an unjust war and do so. However, complicity in state wrongdoing can also occur when public officials implement social policies. Consider the following example from the UK. Health care professionals, who carry out so-called "Work Capability Assessments" for the Department for Work and Pensions (DWP), often wrongfully deny disabled and chronically ill persons benefits to which they are legally entitled. Almost three quarters of complaints against unjust failures by public officials to provide a Personal Independence Payment (PIP) between 2013 and 2019 resulted in the claimant being awarded PIP by a tribunal service. This shows that unjust treatment occurs in an alarmingly high number of cases following an initial assessment by the health care workers employed by the DWP. It is often over a year after initially being denied welfare support before benefit-claimants have their appeals heard by an independent tribunal and receive the award that they are entitled to. During this time they can experience severe distress, financial hardship, reduced independence, agency and dignity. Many die, whether through suicide, poverty, or as a result of their illness or disability, before having their appeals heard by the tribunal service (Bulman, 2019). In light of this, it is reasonable to conclude that some healthcare workers who assess disabled benefit claimants and determine that they do not meet the criteria for benefits, when they in fact do, may be directly contributing in a morally culpable way to the wrongful harm experienced by many benefit-claimants.

The above are all examples of ways in which public officials may be complicit in state wrongdoing. However, in order to help address the extension problem – i.e., in order to help us conclude that there is a collective duty to compensate for individuals who suffer from disadvantage-as-harm – the complicity argument must explain how *all*, or at least *most*, citizens

and residents are complicit in causing the disadvantage-as-harm that these public officials inflict on their victims.

To show this, I want to begin by discussing a version of the complicity argument that has been proposed by Zakaras (2018). According to Zakaras, it is sufficient that people obey and uphold the law in their everyday lives for them then to be considered complicit in state wrongdoing. This is because in obeying laws, and to that extent agreeing to accept the authority of the state, citizens empower state institutions and officials in a way that enables them to commit wrongful harm against others. In brief, without general compliance from citizens, the state would not be able to function. As Hart and Honoré (1959) have argued, the rule of law ultimately comes down to "a general habit of obedience" and it would be impossible for governments to enforce the law if those who broke it constituted any more than a very small percentage of the population. Similarly, Zakaras (2018) writes:

> If enough people lost respect for any law—and refused to obey it—then it would cease to exist. It would lose all legitimacy, and government would be unable to enforce it without tremendous coercive effort … Governments and laws survive as such by means of citizens' deference. Once this deference is withdrawn, they fail. (pp.199-200)

In other words, for Zakaras, just insofar as people accept the authority of the state, they are liable when that power is misused. If this is true, it would make a great number of people complicit in a way that would generate collective liability.

As Zakaras is aware, there is an obvious and significant problem with this argument, which is that it is often impossible – or at least, unreasonably difficult, costly or burdensome – for people to avoid obeying the law. The argument thus tells us to regard people as complicit in state wrongdoing even though they could not reasonably be expected to act otherwise than

as they do. This is unreasonable and thus suggests that complicity cannot plausibly be used as a justification for collective liability.

Zakaras' response to the above objection is as follows: he concedes that it would be unreasonable to regard people as complicit in wrongdoing just insofar as they do something that they cannot avoid. He therefore thinks that people who obey the law are not necessarily complicit as long as they also, at the same time, challenge unjust policies. For example, Zakaras might say that those who protested against the War in Iraq were not complicit in that particular injustice, but that others who could have protested, but did nothing, are complicit. In other words, Zakaras says that people can avoid complicity by exercising responsible citizenship, for example by writing to their MP, signing petitions, protesting, or campaigning against unjust policies.

This response might seem to overcome the problem of unavoidable complicity. However, it creates a further problem. It is not obvious that people who exercise responsible citizenship, in the sense just described, are not free of liability for their government's wrongdoing. For example, suppose that a campaigner protests against fracking in their community, but that nevertheless fracking is given approval by the local authority and goes ahead, with – as it turns out – disastrous consequences for the local environment and residents: the groundwater is contaminated and needs to be purified at great cost; residents and animals are exposed to toxic chemicals with serious ill effects on health; gas explosions cause serious injuries to employees of the fracking site; homes around the site suffer degradation to their integrity, and the quality of surrounding roads and public infrastructure deteriorate, all with huge costs to the tax payer in clean-up bills, compensation, and reparative, environmental and medical costs. It is not at all obvious that those who objected to fracking's being approved in the first place ought to be exempt from paying taxes toward the costs of repairing the harm caused by the government's decision to allow fracking to go ahead.

However, even if Zakaras is right that people avoid complicity when they are responsible, politically active citizens, his version of the complicity argument does not function well as a justification for a collective duty to compensate victims of state wrongdoing. This is because if people can avoid complicity through political activism, then the complicity argument may not generate a sufficiently broad scope of liability. Of course, this depends on how we ought to define "responsible politically active" citizenship; the less demanding the definition, the more people engage in it and the narrower the scope of persons with liability. One example of what less demanding responsible citizenship might involve is simply asking questions about government policy during casual conversation with other citizens. In other words, how far Zakaras' complicity argument can overcome the extension problem will depend on how we should define what it is to be a "responsibly politically active" citizen.

One way to summarise this analysis of Zakaras' complicity argument is as follows. His argument seems to face two problems depending on how "responsible political activity" is defined: if it is defined in a way that is very demanding, then complicity is very difficult to avoid because responsible citizenship is so demanding. However, it seems unreasonable to hold people liable on grounds of virtually unavoidable complicity. On the other hand, if it is very easy to be politically active, then many people would meet this condition and the complicity argument would fail to justify a broad scope of liability.

In light of these problems, it is worth considering an alternative account of the complicity argument. On this alternative account, it could be argued that even in cases where people may not be complicit in particular unjust policies – because they actively opposed or campaigned against them, for example – they may, nonetheless, be complicit in creating and upholding the power that enabled the government to enact those policies in the first place, so long as they continue to obey the law, and to behave in their everyday lives in ways which enable the institutions of the state to exist with all of the powers they possess. In other words,

citizens and residents may still be complicit even if they have campaigned against unjust policies. Responsible political participation such as protesting may reduce one's complicity in the government's enactment of certain policies, but it does not remove one's complicity entirely. In other words, the source of complicity can be rooted not only in a failure to opposed specific policies, but in the support one gives to the existence of the state and its power to implement those policies. Therefore, it could be said that a person is complicit in state wrongdoing, regardless of whether they objected to the way the state exercised the use of its power in practice.

The above account of complicity overcomes a problem to which Zakaras' account of the complicity argument is susceptible: it is able to justify liability for state wrongdoing for a broad scope of citizens and residents. However, we should now recall that Zakaras introduced the potential for complicity-limiting behaviours for a reason. This was to overcome the initial objection we noticed against the complicity argument, which was that the argument made it unreasonably costly or burdensome for people to not be complicit. If one may be complicit just insofar as one gives support to the existence of the state, then the complicity argument remains susceptible to the objection that complicity cannot be avoided and that it is therefore unreasonable to hold one liable for complicity-based reasons.

We have seen through this discussion that it is difficult to establish collective liability based on complicity without running into significant problems: we can either accept the version of the complicity argument put forward by Zakaras but then fail to show that a sufficiently broad scope of persons have duties to compensate for state wrongdoing; alternatively, we can modify the complicity argument to include those who campaign against unjust policies, but we would then face the objection that it is unreasonable for people to be held liable when they cannot avoid complicity. The complicity argument founders on this dilemma.

4.4. Benefiting

Let us now consider a second argument that might explain why many citizens and residents might share a collective duty to compensate victims of state-caused wrongful harm. I call this the "argument from benefiting". It appeals to the following idea: if you have benefited from injustice, then, under certain conditions, you have a duty to give up the benefits or otherwise provide compensation to the victims of the injustice (see Parr, 2016). If it is the case that benefiting from injustice triggers a duty of compensation, then – assuming that many citizens and residents of the state do in fact benefit from the unjust structure of their society at the expense of the disadvantage-as-harmed – the benefiting argument could be used to justify a collective duty for them to compensate those victims. In this section of the chapter, I am going to examine whether, and if so, under which conditions, benefiting from injustice triggers a duty of compensation. I will also consider whether it can be said that many in society really do benefit from the unjust structure of their society in a way that would trigger that duty.

We should note to begin with that benefiting from injustice does not generate a liability to compensate under all circumstances. To see this more clearly, consider the following example.

> *Kiosk.* A man owns a kiosk in a location where violent crime is frequent. The man makes his living from selling panic alarms, which people buy to protect themselves in the event that they should become victims of crime. The man does not commit any crime, nor does he contribute to the wrongful harm that leads people to feel the need to protect themselves by purchasing panic alarms.

In this case, it seems clear that the kiosk owner does not owe a duty of compensation to the victims of violent crime. However, it is the case that he has benefited from injustices, for, if it were not for the high levels of crime in the area, he would not be able to make his living by selling panic alarms to vulnerable members of society. Therefore, it seems that benefiting from injustice only generates liability for the beneficiary under some circumstances, not all circumstances – or, put another way, benefitting from injustice *as such* does not generate liability, but may do so under some further condition or conditions.

To explore this possibility further, we can consider a discussion by Bashar Haydar and Gerhard Øverland (2014), who put forward three 'boosting' conditions (as they call them), at least one of which they argue must also be present for there to be a duty on the part of beneficiaries to disgorge at least a significant amount of the benefits they have acquired in order to compensate the victims. These boosting conditions are as follows:

i) *Competitions* - the injustice from which the beneficiary has benefitted consists in the distortion of a structured competitive procedure, such that the injustice interferes with fair opportunity. For example, suppose two candidates, Alice and Mike, apply for a promotion in their firm. Only one candidate may be promoted. Alice is the most qualified and experienced candidate. Suppose, however, that Alice's malicious ex, Sarah, bribes the committee in charge of allocating promotions so that they turn Alice down, promoting Mike instead. In this case, Mike has benefited from an injustice that was aimed at distorting a structured competitive procedure in such a way that fair opportunity is thwarted. We might think that Mike therefore has a duty to disgorge some of the benefits of his being promoted in order to compensate Alice for the injustice from which he has benefited. For example, if Mike could be sure that his declining the promotion would result in re-running the competition for promotion fairly, or in Alice being promoted in his place, we might think he ought to do this. Alternatively, we might think that Mike is morally obligated to give a significant portion of the difference in his pay

after being promoted to Alice in order to compensate her for the loss in income compared to the income she would have had if the competitive procedure had been fair.

ii) *Motives* - the second boosting condition is that the beneficiary of injustice was the motivational cause of the injustice. For example, – returning to the hypothetical case of Mike and Alice – suppose now that it is not Alice's ex that bribes the committee, but Mike's partner, with the intention of benefiting him at Alice's expense. Mike – being unaware of his partner's interference – is not guilty of any wrongdoing, however, he is causally implicated in the injustice that Alice has suffered, at least in the following sense: he was the motivational cause of his partner's actions. Although Mike is not morally culpable for what his partner does, nor causally responsible for Alice's subsequent disadvantage, it is nonetheless the case that the injustice done to Alice was committed with the intention to benefit Mike. In this case, it seems that Mike would, again, have some responsibility to disgorge the benefits of the injustice and provide compensation to Alice.

iii) *Transfer of assets* – the third boosting condition is this: the beneficiary of injustice gains the benefits in question through a transfer of assets from the perpetrators of the injustice. For example, imagine a burglar steals expensive jewellery, which he then sells in a pawn shop. The burglar then uses the money from the sale of the stolen jewellery to buy his daughter an expensive car. It seems plausible to suggest that the burglar's daughter would have a duty to give up the car to provide compensation to her father's victims (assuming that the burglar himself in unable to compensate them).

If a beneficiary is content to accept or keep the benefits generated for them as a direct result of injustices under one or another of the above boosting conditions, then it seems intuitively plausible that the victims of the injustice from which they have benefited, may reasonably assume that the beneficiaries – as well as the perpetrators – do not respect them as moral equals. For example, if somebody steals a car intending to give it to me as a birthday

present (thus satisfying two boosting conditions: motives and transfer of assets), it seems right that I should have a duty to return the car to the victim (and in that sense compensate the victim). This is so, even though I was not complicit in the wrongdoing and did not authorise the perpetrator of wrongdoing to act on my behalf. The fact that I benefited from the injustice in the way described here is sufficient to generate a duty to provide compensation. This is for two reasons: a) I am not the rightful owner of the car; the rightful owner of the car has a right to the car, while I do not, and b) if I kept the car, knowing that it was stolen from somebody else, I could reasonably be assumed to be endorsing or accepting the wrongdoing of the perpetrator who gifted the car to me; more specifically, in allowing the perpetrator to succeed in his unjust plan to steal a car from his victim and gift it to me, I could reasonably be accused of failing to show proper respect for the victim (see Parr, 2016).

Before continuing the discussion of the benefiting argument, let me make three clarificatory points. First, I will focus on cases involving benefiting that results from the fact that the basic structure of society is unjust. The second point is that the distinction between two of the three boosting conditions that Haydar and Øverland put forward, namely, competitions (i) and transfer of assets (iii), is morally superficial. I assume that the reason competitions and transfer of assets generate a duty of compensation is because they are both cases of what I will call misallocation of assets or opportunities. The difference between competitions (i) and transfer of assets (iii) is only that the former misallocates opportunities, whereas the latter misallocates assets. This difference is not, in my view, morally significant. However, I will continue to refer to these conditions as distinct conditions, in the way that Haydar and Øverland do. The third point is that I will discuss the benefiting argument in the context of two kinds of wrongful harm cases: one type of case is a misallocation of assets or opportunities, and the other is what I will refer to as a "damage case". The concept of a "damage case" is important for my argument, and I will explain it in more detail below.

I assume that the benefiting argument can justify the conclusion that some disadvantage-as-harm victims are owed compensation by wealthier citizens because conditions i and iii may be satisfied by the basic structure of their society. In other words, it could be said that the basic structure of society, for example in the UK, has allowed some better off citizens to benefit, at the expense of some of the less well off, due to unfair competitions and unjust transfers of assets. It is less likely that when wealthier citizens benefit from an unjust basic structure in the UK, this satisfies also condition ii, *motives*. This is because, presumably, the basic structure of society is not intentionally designed to be unjust for the purpose of benefiting some at the expense of others; if the basic structure was intentionally designed to unjustly benefit some at the expense of others, then the motives condition would indeed be relevant for justifying compensation, but I will assume this is not the case in the UK today.

Let us consider these points more carefully, starting with condition i *competitions*. This condition says that when an injustice is aimed at distorting a structured competitive procedure, such that the injustice interferes with fair opportunity, this generates a duty of compensation for whomever it benefits. There are many ways that the unjust basic structure of a society can generate or permit inequalities in opportunity through unjust competitions that benefit some people at the expense of others. For example, the inequality in education provision between children from deprived socio-economic backgrounds and children from middle-upper class backgrounds creates inequalities in opportunity that have a profound impact on how those children will fare in competitions for jobs later in life (see Swift, 2003; Clayton and Stevens, 2004). Additionally, unjust hiring practices and labour market regulations allow or cause some to benefit at the expense of others due to unjust competitions. For example, discrimination based on a person's sex, gender identity, disability or race can have a significant impact on a person's likelihood of being offered a job, regardless of the applicant's skill set, qualifications, experience or suitability for the role. In other words, individuals who are less likely to be

discriminated against – namely, heterosexual white cis-men with white-sounding names and without a disability – benefit from this injustice at the expense of others, which distorts a structured competitive procedure and interferes with equality of opportunity, thus satisfying condition i.

The basic structure of a society can also be said to fulfil a version of condition iii *transfer of assets* Condition iii, as Haydar and Øverland (2014) explain it, says that when a beneficiary gains benefits through a transfer of assets from the perpetrators of the injustice, then they have a duty to compensate the victims of that injustice. Consider now the UK. Admittedly, it is not necessarily the case that the basic structure of its society causes unjust transfers of assets in this strictest sense; it is not generally the case that the poor had wealth at one moment in time, and that this wealth was then taken away from them and given to others at a later moment in time. However, condition iii need not be interpreted so strictly as to require that assets must have been unjustly transferred from some people to others in this way. For a duty of compensation to arise, it is not necessary that wealth was once possessed by those who are entitled to it, prior to its being transferred to others, but rather that it should be possessed by them instead of those others. A person owes a duty of compensation so long as he benefits from an unjust allocation of wealth that should instead have been possessed by someone else. (Condition iii, as I suggested earlier, is, along with condition I, best interpreted as the expression of a single concern that some should not benefit at the expenses of others due to the misallocation of assets and opportunities.)

There are unjust policies, laws and norms in the basic structure of UK society that have this consequence. For example, tax law in the UK that allows the very wealthiest in the country to avoid paying a fair share of taxes could be said to be an example of an unjust misallocation of assets. Consider the findings of a recent study, which reviewed data from the tax authorities in the UK (the HMRC). The study shows that the wealthiest in society pay a significantly lower

rate of tax than those on middle-rate incomes (Advani and Summers, 2020). High earners who took home an average renumeration to the sum of £10,000,000 paid an effective tax rate of only 21%, which is less than the rate that is paid by those earning £30,000 per year. Furthermore, the study showed that many people who receive renumeration in excess of £1,000,000 have an effective tax rate which is lower than that which would be paid by those earning only £15,000 per year. The fact that the very rich do not always pay a fair share in taxes and that they subsequently are able to hold onto a superabundance of disposable income for themselves, while the very poor do not have a sufficient income to meet the costs of living, could be construed as a misallocation of assets.

If the basic structure of a society allows some to benefit at the expense of others due to the misallocation of assets and opportunities, this could support the conclusion that there is a widespread duty for the citizens who benefit to compensate those who have been disadvantaged. However, there is an objection to this conclusion that must be considered. This is the epistemological objection that it is difficult to ascertain exactly who has benefitted at the expense of who and by how much. For example, we might at first think that in a case where a white job applicant is given a job because of racial discrimination from the employer against a better qualified black candidate, it is clear that the white candidate is a beneficiary of injustice. However, it might also be the case that this white male candidate has suffered many disadvantages in his life because of the unjust basic structure of our society; for example, he might have been raised in a deprived area by a single teenage parent, with poor educational provision. There are many complex ways in which some people could be both beneficiaries and victims of the unjust basic structure in society, and many cases of benefiting-at-the-expense-of others would be difficult to prove. It is therefore not realistic to set out to determine in all cases who is a beneficiary and who is a victim of the unjust basic structure in our society.

This objection, however, does not imply we should refrain from finding some way of redistributing from the beneficiaries of the unjust basic structure to those who have been disadvantaged by it. Rather, in light of the immense difficulty of establishing exactly who has benefited at the expense of whom and by how much, it is reasonable to make approximate judgments. It is safe to assume, for example, that very well-off people – say, the wealthiest 10% in society[1] – have benefited from the unjust basic structure at the expense of much less well-off people. There are two premises that justify this claim: first, everybody is affected in significant ways by the basic structure of our society[2]; and second, if the basic structure of our society is unjust, so that its policies, laws and institutions do not fulfil the right principles of justice, then – given the massive and widespread impact of the basic structure on everybody's lives – we can reasonably assume that the very well-off have benefited from this unjust basic structure compared to how well of they would have been if our society had a just basic structure,

---

[1] There is room for reasonable disagreement about how wealthy a person must be in order for us to assume that they are the likely beneficiaries of injustice – while some may think anybody who earns over £70,000 per year should be included in the approximation, others might think the income threshold should be lower, and some might think that it should only include people who have more than £1million in personal wealth. However, for the purposes of this chapter, it is sufficient to note that there is *some* level of income or wealth above which it is uncontroversial to make such an approximation. In other words, there are some people who *clearly* have more than their fair share, and for those people it is reasonable to assume that they have benefited from the unjust basic structure of society at the expense of others and therefore have a duty to provide compensation.

[2] This is one of the main reasons that Rawls says that the basic structure of society is the primary subject of justice (See Rawls, 1971, Chapter 1, Section 2, p.7; Rawls, 1993, pp.257-288).

and we can reasonably assume that this is at the expense of the less well-off who have been disadvantaged by the same comparison. We should therefore make an approximate judgement about who is likely to have benefited from the unjust basic structure; those who can reasonably be assumed to have benefited can therefore be required to pay taxes to compensate the less well-off in society.

This conclusion, that we can assume that the very well-off have benefited from the unjust basic structure of our society at the expense of the less well-off, seems plausible and would justify a duty of compensation on behalf of those who can be assumed to be the beneficiaries of injustice.

In misallocation cases it is unnecessary to appeal to my arguments from respect; in these cases, compensation may be owed independently of any duty of respect that might also exist. However, as I will show, the benefitting argument, in isolation from those ideas about respect, does not justify a collective duty of compensation in a sufficiently wide range of cases, because it cannot justify compensation in what I will call "damage cases".

When I refer to "damage cases", I am not discussing cases in which a person has been wrongly deprived of assets, which have been wrongly received or retained by another person. Rather, "damage cases" are cases in which a person has suffered some amount of damage due to wrongful harm, whether to their property or to their capacities. When I refer to damage to one's capacities, I have in mind a broad range of diminished capabilities that a person might suffer. For example, a person with damaged capacities may suffer the diminished capability for practical reasoning, understood as the ability "to form a conception of the good and to engage in critical reflection about the planning of one's life" (Nussbaum, 2000, p.70). They may have been deprived of the nurturing, education, environment, opportunities, experiences and / or resources necessary to develop capacities to make good decisions for themselves or function in a way that would enable them to live a better life. Importantly, those with damaged

capacities often experience a loss of agency, i.e., "the freedom to achieve whatever the person, as a responsible agent, decides that he or she should achieve" (Sen, 1985, p.204). This is not damage only in the sense of suffering deterioration of capacities an agent once held, but also in the sense that victims are kept from developing the capacities that they would have been able to develop under just circumstances. Although victims in the latter cases have never fully developed the capacities that I am referring to as being 'damaged', they should have developed those capacities, and under just circumstances, would have. In other words, victims in what I am calling "damage cases" have suffered damage compared to the capacities that they should have had. Note that damage cases are not cases that can be settled by a simple redistribution of resources. Compensation in these cases must repair damage that someone has suffered, rather than return assets of which they have been deprived.

In damage cases it is, by definition, false that one person has in their possession what ought to belong to somebody else, so that the beneficiary can simply 'give back' assets that belong to the victim of injustice. In damage cases, rather, one person has suffered damage, whether it be physical or psychological, as a result of wrongdoing. These cases do not seem to generate benefits for anybody; that is to say, in damage cases there are no obvious beneficiaries to the injustice. It would thus be inaccurate to think that there has been a simple misallocation of assets.

Damage cases are not, furthermore, negligent in number. To see why, notice that they occur in the following types of situations: in cases where there is insufficient support for young or vulnerable families, resulting in children being raised by parents who are unable to properly support the development of their capacities; in cases involving deprivation of sufficient welfare benefits, whether because of sanctioning or child benefit caps, resulting in children being raised in conditions of poverty, which is proven to increase the likelihood of poorer outcomes later in life; in cases involving inadequate provision of education; in cases involving inadequate health

and social care provision - for example, resulting in victims not being properly protected from harm or looked after following harm; in cases where education and healthcare providers are not properly trained to recognise the signs of developmental disabilities such as Autistic Spectrum Disorder, resulting in these conditions being undiagnosed and thus depriving disabled individuals of the accommodations and support they require; in cases of looked-after children with complex needs who are not placed in stable homes with appropriate carers, and so on. In cases such as these, people are inhibited from accessing the range of resources and from developing the full range of capacities that are required to make meaningful decisions on how best to live their lives or, in other words, to be able to act as moral agents (See Axelsen and Nielsen, 2020; Robeyns, 2017; Nussbaum, 2000).

Some damage cases are *pure* damage cases. In these cases, it is inaccurate to construe wrongdoing by the state as consisting of enabling some to possess benefits at the expense of others. In many damage cases it is unclear that others have benefited in any obvious way, much less in any way that they could be asked to give the benefits up and return them to the victims of injustice. Therefore, the benefiting argument cannot justify a duty of compensation in pure damage cases. Simply put, because there is no misallocation, there are no beneficiaries and the benefiting argument thus cannot justify a transfer back of assets.

Other damage cases are *mixed* cases, in that they involve both damage and misallocations. There are occasions where a person has suffered damage as a result of the unjust basic structure of society and, as a result of this, someone else has obtained benefits at their expense. In these cases, however, the benefit actually arises as a result of a subsequent misallocation of assets or opportunities. For example, a person who has been deprived of appropriate education or training opportunities in their youth will not be able to compete in the job market for the well-paying jobs that somebody who has benefited from a very good education would be applying for. However, as with the pure damage cases that I discussed in the previous paragraph the

benefiting argument cannot justify full compensation in these mixed cases. This is because the benefiting argument can only justify the correction of misallocation and not the correction, also, of the damage to the victim that led to it. Victims of damage, however, are owed compensation that, as far as possible, restores to them the capacities they would have had under just circumstances. For example, in the case of a person who has suffered damaged capacities due to receiving a poor education, there may be a duty not only to allocate the additional resources or income to him that he would have had if he had received a proper education, but also to provide educational and training opportunities that would enable him to enjoy the capacities he might otherwise have had. Therefore, in cases where a duty of compensation may be justified for those who have benefited from an unjust misallocation due to damage, the benefiting argument alone cannot explain why there is a duty to provide full compensation. This is because full compensation is required not only to rectify the misallocation but also for the damage suffered by the victim of wrongful harm by the government.

In the paragraph above I have explained why the benefiting argument cannot be used to justify full compensation in cases where people have benefited at the expense of others in damage cases. This is because the benefiting argument can only justify compensating for the misallocation of assets and not for the damage itself. Allow me to pre-empt an objection that might be raised in response to this. A defendant of the benefiting argument might propose that persons who benefit in damage cases might owe a duty of compensation for the damage and not only the misallocation of assets, because of a duty of assurance, as outlined in my first argument from respect. It might be thought that when we benefit in damage cases, we must apologise and assure victims of damage that we respect them, and that this might justify a duty of compensation for damage as well as misallocation.

While it may be necessary to appeal to respect to justify a duty of compensation in damage cases, it is not yet clear that the benefitting argument can, even so, overcome the extension

problem to justify full compensation in all cases that involve damage. When someone benefits because of damage to others, it is not clear that the beneficiary has a duty to apologise or to assure the victim of their respect for them, and it is not clear that they have a duty to prevent the harm from compounding in order to fulfil their respect-based duty not to cause wrongful harm because they are not responsible for the injustice; they merely benefit from it. This does not mean that victims are not owed full compensation, but only that full compensation might not be justified by appealing to the benefiting argument. An alternative argument might therefore be necessary to justify a duty of full compensation to victims in cases of damage caused by the unjust basic structure of society.

In this section of the chapter, I have considered cases involving benefiting from unfair misallocations of assets and opportunities. We have seen that in these cases it is not necessary to appeal to my arguments from respect to justify a duty of full compensation, because the beneficiary must simply relinquish assets that they have, which they do not have a right to. However, we have also seen that this justification for full compensation does not work in damage cases and that it might therefore be necessary to appeal to the duty of respect to justify a duty of compensation in such cases. However, it is not immediately clear why a duty of respect would justify a duty to provide full compensation for the beneficiaries of injustice in cases where they have benefited from misallocation due to damage; that duty may lie only with those who are directly responsible for causing the injustice, rather than with those who merely benefit from it.

In sum, the benefitting argument succeeds in justifying a duty of full compensation for some victims of the unjust basic structure of society, namely, those who are affected only by a misallocation of assets. However, it also faces problems. One problem I have discussed is that we may only impose duties on people if we can be reasonably confident that they are in possession of assets that should belong to others and that it is therefore not practically possible

to trace every individual case of benefiting that triggers a duty of compensation. While, as I have suggested, it is reasonable to approximate, this may nevertheless reduce the scope of the benefiting argument so that only the very wealthiest can be assumed to have a duty to pay taxes to compensate the less well-off. This is because it is only possible to state with confidence that the very wealthiest have benefited at the expense of others, whereas it is more difficult to show that people on middle-rate incomes have benefited from wrongful harm at the expense of those who are less well off.

A second problem is this: in many cases, the harm caused to victims of the unjust basic structure of society is not a misallocation of assets but damage to their capacities. In these cases, compensation cannot be justified by the benefitting argument. Although the benefiting argument may justify redistribution wherever there is benefiting due to misallocation, the benefitting argument does not justify full compensation in cases that only involve damage. As such, the benefitting argument is promising in some limited respects, but it does not justify a collective duty to compensate in the full range of cases of state wrongdoing and is therefore unable to fully meet the extension problem. However, while benefiting alone is not sufficient as an argument to warrant the kind of compensation that I am trying to argue for, it may be appealed to, along with complicity, as part of a package of arguments to justify providing full compensation to victims of wrongful harm caused by the unjust basic structure of society.

4.5. Authorisation

A third argument that could be used to support a collective duty to compensate for state-caused wrongful harm is the authorisation argument. This has been put forward by Anna Stilz (2011). Her argument relies on a core claim, which is that, under certain conditions, the will of any given citizen is implicated in their government's actions in any given situation. By a

citizen's will "being implicated in" her government's actions, Stilz does not just mean to say that the citizen endorses her government's actions, but that the citizen endorses that the government should interpret and exercise her rights in various ways. It may be helpful to break this argument down into parts.

First, when Stilz says that people's wills are implicated in their government's actions, she assumes that people have certain rights, and that these can be transferred to others such that those others have authority to exercise those rights on their behalf. In making this assumption, Stilz is drawing on a tradition of thinking about political philosophy that goes back to Thomas Hobbes, in which the government is seen as exercising rights people would have had in a state of nature before the existence of government. Consider a famous passage from Hobbes:

> Of persons artificial, some have their words and actions owned by those whom they represent. And then the person is the actor; and he that owneth his words and actions is the AUTHOR: in which case the actor acteth by authority. … And as the right of possession, is called dominion; so the right of doing any action is called AUTHORITY. So that by authority is always understood a right of doing any act; and *done by authority*, done by commission or license from him whose right it is. (Hobbes, Gaskin (Ed.), 1996, p.107)

Stilz is drawing on Hobbes' argument that citizens should be seen as authors of the acts of their governments, "because those acts are an exercise of their rights" (Stilz, 2011, p.199). Stilz argues that people are therefore the owners of the actions of their governments. This is because they own the rights that their governments are interpreting and exercising. "Because they "own" the rights their state interprets and enforces," Stilz writes, so "citizens must also take responsibility for what their state does." (Ibid, p.199)

Second, Stilz says that a citizen's will is implicated in the government's acts if, and when, that citizen has moral reason to endorse the government's exercising certain rights on her behalf. As Stilz puts it,

> [P]olitical obligations are not externally imposed, but derive from the subject's own will. They are obligations that can ideally be understood and endorsed by subjects themselves. If this account of political obligation holds, we can say that the member's will is implicated in his state when that state counts as "authorized," and therefore that he has reason to "own up" to what an authorized state does. (Ibid. p.198)

In other words, if a member has moral reason to support state institutions, rather than just prudential reasons (i.e., to avoid the bad consequences of disobeying those institutions), then, Stilz says, the state is an "authorised" state - that is, the state represents the people's will. It is for this reason that the people are implicated in – and thus liable for – the actions of their state's institutions.

Authority-based accounts of collective responsibility face a dilemma, which arises once we press the question of what exactly it is that grounds citizen liability: either such accounts ground citizen liability in (a) the consent of citizens, which is problematic as I will discuss below, or (b) a moral reason to obey the law. Stilz intends to avoid (a) and instead endorses (b) as the correct explanation for why a citizen's will is implicated in her government's actions. However, as I will suggest, we will also face problems if we endorse (b).

Let us briefly review why (a) is problematic. As many opponents of the consent-based account of political obligation have argued, it is not clear that citizens have consented to political membership, or to their government's interpreting or exercising their rights on their behalf (see Hume, 1752). This is for two reasons: i) It is generally not the case that people explicitly authorise or give their consent to the state for it to act on their behalf, and; ii) It is

difficult to claim with confidence that implicit authorisation or consent can be inferred from how most people conduct themselves;[3] it is questionable whether we can infer from people's everyday behaviour, for example their compliance with laws and use of public facilities that they have authorised the government.

There are some possible responses to these concerns. One possible response is that a person's actual consent to government is not necessary in order to establish that a person's will is implicated in that government's action. It may be sufficient that this person would consent to government under certain hypothetical conditions. Consider the following point in this light. If presented with an effective and properly funded option of leaving the country, many people would not take the opportunity, but would choose to continue residing in the country. This preference, so it might be said, can be interpreted as tacit authorisation. In other words, if a person has a real option to leave the country but they would prefer to stay this could be seen as sufficient for establishing that they have given their consent to the power and authority exercised by the government.

However, even if this argument for seeing people as having authorised the government is successful, it still faces a problem. Most people would not have authorised the government to commit any of the wrongdoing that has caused harm to low-income individuals in society, and the authorisation argument cannot, therefore, justify the conclusion that they have a duty to compensate for *this* wrongdoing.[4] There is, again, a potential response to this line of argument: even if people would not have authorised specific instances of wrongdoing

---

[3] John Locke famously refers to this kind of implicit authorisation or consent as "tacit consent". See, Locke (1965, Sect. 119). [This is Locke, *Two Treatises of Government*, edited by Peter Laslett, 1965, Cambridge Univeristy Press.]

[4] This objection has been raised by Huseby (2017).

perpetrated by state institutions, they can be said to have authorised the power that made such wrongdoing possible. It could be said that, even if a person disagrees with how the government has abused its power, they nonetheless share liability for the wrongdoing because they did authorise the government to possess the power, without which, the abuse would not have been possible. However, it isn't clear that consenting to someone's possessing power grounds liability for how they use it, at least if the person who uses the power was a fully responsible agent capable of acting otherwise than as they did. To use a simple example, if I lend my car to my neighbour, who is a fully responsible adult (and in a fit state to drive) and he then subsequently crashes into someone through negligent driving, then it seems unreasonable to hold me liable for this.[5] The argument we are currently considering appeals to the idea of hypothetical consent – i.e., to what people would hypothetically consent to. It is not plausible to argue that because most people would hypothetically consent to the government's having the kind of power that public officials abuse, they are liable to those abuses. They would, after all, prohibit the government abusing that power if they could.

For the above reasons, Stilz understandably aims to avoid (a) consent as a basis for citizen liability and maintains, instead, that citizen liability is grounded in (b) the fact that they have a moral reason to support state institutions. Stilz says that having moral reason to support state institutions implicates the will of a citizen. The main problem with this line of argument is that it is simply not clear why this should be the case. Stilz might have two kinds of argument

---

[5] There may be more to say here. Perhaps consenting to others' possessing power grounds liability if it is foreseeable that some of them will abuse it, even if one has no reason to think that they are incapable of using it properly. But this is unclear, and I will assume for the sake of argument, that the consent argument cannot appeal to this claim.

in mind: i) there is a decisive moral reason for citizens to accept or support their government, and the existence of this decisive moral reason is sufficient to implicate the will of those citizens; alternatively, she might have in mind ii) citizens would, "in a moment of calm reflection" (Stilz, 2011, p.200), agree that they have moral reason to support state institutions and thus endorse their government's having the right to interpret and exercise rights on their behalf and therefore are liable for the government's actions.

If Stilz has i) in mind, this argument is unclear as a basis for why the will of citizens should be seen as being implicated in the actions of the government. The fact that a moral reason exists for citizens to accept or support their government does not mean that their wills are implicated in its actions. Having reason to do something, and having willed it, are not the same thing. If Stilz has ii) in mind, this is more promising, however, there is still some uncertainty about this argument. Does the fact that a citizen would endorse, in a moment of calm reflection, a moral reason for the government's exercising their rights on their behalf, mean that the will of that citizen is implicated in the government's actions? Stilz might be correct to say so. However, it seems that the case for liability should not rely upon a claim about what a person would, upon calm reflection, endorse. There might be cases where there is good moral reason for the government to do something, and most people would, upon calm reflection, endorse the government's acting on their behalf, but where a handful of people within society would not endorse the government acting. For example, a number of stubborn conspiracy-theorists would not endorse investment in the development of a vaccine for COVID19, despite there being good moral reason to support this, because they believe so strongly that the Coronavirus pandemic was created to generate fear and compliance in the general population, and that the 'vaccine' was part of a secret plot whereby microchips would be implanted into the unwitting recipients (Goodman and Carmichael, 2020). It is not clear that

liability should not be shared among those who would not, upon calm reflection, endorse the government interpreting and exercising their rights, when the government gets things wrong.

The authorisation argument, therefore, could potentially work in cases where people would endorse the moral reason for their government having the authority to act on their behalf. However, like the complicity and benefiting arguments, the authorisation argument does not justify the kind of collective duty to compensate that this chapter seeks to support. Intuitively, it seems that people should be liable, even when they do not endorse the moral reason for their governments to act on their behalf. We must therefore find some other or better reason for why the fact that citizens have a moral reason to obey the law and support institutions makes them liable. In the section of the chapter that follows, I attempt to develop an alternative account of why citizens should be considered collectively liable for the actions of the state. This is closely related to the authorisation account, but instead of proposing that people are liable because they have good moral reason to support state institutions, I propose that liability arises from a natural duty to support just institutions and to ensure that our political institutions are just.

4.6. Natural duty

To understand the natural duty argument properly it is helpful to notice a key difference between this argument and the complicity and benefiting arguments, which is that the natural duty argument does not emphasise or rely upon citizens being in some way causally implicated in the wrongdoing of their governments as the reason for their liability. Rather, it emphasises that citizens are in charge of their governments and have a duty to ensure that their governments are just; this is the sense in which citizens can be considered "responsible" for the actions of their governing institutions. Just as one might hold a person responsible for a problem, just in virtue of the fact that she is in charge of ensuring that events run smoothly in a particular domain, so one can hold citizens liable for wrongful harm perpetrated by their governing

institutions, just in virtue of the fact that they ought to be in charge of their governing institutions.

According to the natural duty argument, people must bear liability for government wrongdoing because, under certain conditions that I shall make clear, they have a natural duty to ensure that their government is just. Furthermore, a just government must refrain from wrongfully harming people and, whenever it commits wrongdoing, it must fully compensate those who are harmed by it. Therefore, under certain conditions, people have a duty to provide the means that enable their government to fully compensate those persons it has wrongfully harmed.

A key assumption of the argument is that people have what John Rawls (1971) calls a "natural duty of justice". Let me clarify this duty in four respects. The first three respects are well known and often noted.[6] By comparison, the fourth respect is often overlooked, but it is crucial for the natural duty argument.

First, natural duties are duties that are incumbent upon us all as a requirement of morality, and do not depend on other factors; in particular, natural duties do not depend on their being chosen or voluntarily incurred (in contrast, for example, to promissory duties) (Rawls, 1971, p.98). Having a natural duty of justice means that we have an unchosen, pro tanto duty to bring about just outcomes for other people. This in turn means that we have an unchosen duty to support political institutions (provided they are minimally just), given that such institutions are required in order to ensure just outcomes for others. Rawls writes of this natural duty of justice as follows:

---

[6] For helpful discussions of Rawls' natural duty of justice, see Simmons (1979, pp. 143-156); Klosko (1994); Wellman and Simmons (2005, pp. 155-179).

> This duty has two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves. (Ibid, p.334)

Rawls outlines a number of natural duties, apart from the natural duty to support (minimally just) political institutions: i) the duty of helping another when he is in need or jeopardy; ii) the duty not to harm or injure another; iii) the duty not to cause unnecessary suffering, and iv) the duty of mutual respect (Ibid, p.98, p.297, p.425). A person cannot reasonably reject their natural duty to bring about just outcomes for others, or their subsequent duty to support just institutions, where they are able to do so without incurring unreasonably burdensome costs for themselves. Refusing one's pro tanto requirement to bring about just outcomes for others cannot be justified to those who would, as a result, suffer unjust outcomes. Therefore, such a refusal is a violation of our natural duty of mutual respect.

Second, the natural duty of justice is, in principle, a duty that is owed from all persons in the world to all others. However, I will assume that, for practical reasons, the duty to bring about just outcomes for others must be particularised so that it requires that we set up and maintain localised political institutions; it would be impractical for everybody in the world to be equally responsible for bringing about just outcomes for every other human being, including those on the other side of the world; it would be very difficult for citizens living in the UK, for example, to ensure that government institutions outside of the UK are sufficiently just. It therefore makes sense for citizens to have a duty primarily to ensure that their own government

is just. [7] This, I assume, is what Rawls (1971) means when he says that we must comply with just institutions when they apply to us.

Third, their political institutions need not be perfectly just in order for people to have a natural duty to support them. To see this more clearly, consider the criminal justice system: As Thomas Christiano and Will Braynen (2008) note, "even the best penal system is likely to convict some innocent persons and let some guilty persons go free" (p.402). When innocent people are wrongly convicted of crimes they did not commit, or when guilty people are judged to be innocent, these verdicts are unjust. However, despite the fact that judges and juries sometimes arrive at unjust verdicts, we generally think that we ought to support the justice system. This is because the system is generally just, and because without supporting the justice system, far more injustice would be permitted to exist in society. That said, we also tend to think that victims of injustice by the penal system ought to be compensated for the wrongful harm they have suffered. The fact that the system is considered sufficiently just to generate a duty to support it, does not mean that it always gets things right, or that there is no duty to support the provision of compensation in cases when it gets things wrong. Indeed, part of it being a just system might require that compensation is provided in such cases.

I have so far been clarifying the natural duty of justice in three relatively well-known respects. I will now turn to a fourth clarification that is relatively overlooked but which is crucial for understanding of the natural duty argument. The fourth respect in which the natural duty of justice needs to be clarified is this. While the natural duty of justice requires us to support political institutions as long as they are minimally just, the duty to support minimally just governments is only one part of our natural duty of justice. When a government meets the conditions such that it can be considered sufficiently just, this triggers a duty of compliance for

---

[7] For this kind of reasoning in more detail see Goodin (1988).

all residents under its jurisdiction. However, this is not the full extent of what the natural duty of justice requires of them. The duty to comply with minimally just governments is a necessary part of the natural duty of justice, because to remove support for minimally just governments would bring about less just outcomes for others. However, Rawls (1971) explains that while there is a duty to comply with minimally just government institutions, there is also a further duty to bring those minimally just institutions closer to becoming fully just institutions:

> Viewing the theory of justice as a whole, the ideal part presents a conception of a just society that we are to achieve if we can. Existing institutions are to be judged in the light of this conception and held to be unjust to the extent that they depart from it without sufficient reason. … Thus, as far as circumstances permit, we have a natural duty to remove any injustices, beginning with the most grievous as identified by the extent of the deviation from perfect justice. (p.216)

Thus, the natural duty of justice may be appealed to not only to justify a duty to support minimally just government institutions, but also to justify liability for state wrongdoing when this liability is required in order to remove injustices and bring about more just outcomes for others.

These four clarifications having been made, I can state the natural duty argument as follows: if the government fulfils a number of conditions that mean that it is sufficiently just, people have a pro tanto duty to comply with it and to make it as fully just as possible. Just governments do not always get things right, but when they commit wrongdoing that harms people, they must provide compensation for this in order to be fully just. If the government did not compensate in cases where it commits wrongful harm, it would be responsible for the fact that some people suffer continuing injustice – i.e. the uncorrected effects of injustice it has itself perpetrated - and hence not fully just. The natural duty that people have to support the

government as a just government therefore implies that people are liable for fully compensating any wrongdoing perpetrated by the government.

Why is full compensation necessary?

Someone might object that the natural duty of justice does not conclusively establish that we must pay taxes that fully compensate for wrongdoing committed by our government institutions, but instead requires something less. It might only require that we try to prevent our government from perpetrating wrongdoing, for example, via demonstrating against unjust government policies, campaigning for policy reform or otherwise acting to ensure that state institutions are just from now on. Alternatively, it might only require us to pay taxation that only partially compensates for government wrongdoing. Why does our duty to support just institutions mean that we must pay taxes that provides full compensation for people who have been wrongfully harmed by the government?

Recall that our natural duty of justice requires us to support political institutions that are just and to remedy injustices in our political institutions where they exist. We may not, given this, allow a situation to exist in which institutions, that we have a duty to support, wrongfully harm people, and then fail to fully compensate for this wrongful harm. This is because institutions that fail to provide full compensation for wrongful harm that they have themselves perpetrated are tantamount to being institutions that cause wrongful harm, and are therefore unjust. To cause wrongful harm without compensating for it is to allow it to continue, or to continuing to cause it. Assuming that we are able to contribute via taxation toward the provision of full compensation without unreasonable cost to ourselves, refusal to do so would therefore constitute a violation of our natural duty of justice.

The connection between the arguments from respect that I have made in the previous chapter and the natural duty argument is subtle. If we were to understand our natural duty of justice as requiring something less than liability for full compensation for government wrongdoing – for example, as requiring only that we ensure that government institutions are just from now on, or only that we are liable for partial compensation for government wrongdoing, this would be a failure to include the persons who have been wrongfully harmed by our government within the scope of persons to whom we owe a natural duty of justice. It would express that we are content to allow those people to remain wrongfully harmed by our governing institutions. Assuming that our natural duty of justice to all persons in the world is particularized in such a way that we are responsible for our local governing institutions (as other peoples are responsible for *their* local governing institutions), our allowing people to remain wrongfully harmed by our governing institutions is, in effect, a failure to regard them as persons to whom we owe a natural duty of justice, or therefore, with respect.

Let us consider an example that helps to make this clearer. Consider again the case of The Windrush Scandal that was discussed in the previous chapter. This is a clear example of a case in which people have been wrongly harmed by their government. In 2012, the UK Government began to design and introduce legislation intended to make the UK unliveable for illegal or undocumented immigrants. This legislation, known as 'hostile environment' legislation, restricted access for those suspected of being illegal immigrants to certain rights and services, and required migrants in the UK to prove their legal right to live and work here. For citizens of the Windrush generation this meant that the Home Office required them to prove that they had arrived in the UK prior to 1973. In fact, the Home Office demanded documents proving their residency for each year since. Many of the Windrush generation arrived in the UK as children. As such, their entry to the UK was on their parents' passports and finding documents for each year they have lived in the UK was impossible for them. Those who were

not able to meet the burden of proving their legal status were incorrectly deemed to be illegal immigrants, and were denied their rights to access work, welfare benefits, healthcare, housing, and to hold bank accounts or UK driving licences. A number of commonwealth citizens from the Windrush generation were denied re-entry to the UK after travelling abroad for work or vacations. Others were placed in detention centres and / or deported. This has had a devastating impact on their lives. Understandably, many of the victims from the Windrush generation who have been affected by the hostile environment legislation feel that they have been victims not only of unjust and harmful treatment by the UK, but that racism has played a significant part in the unjust immigration policies that have destroyed so many of their lives and that the UK Government has failed to respect them as moral equals (see Verma, 2020).

The natural duty of justice requires that British citizens support the reform of immigration legislation so that it no longer reflects institutional racism or causes the kind of wrongful harm that citizens from the Windrush generation have been subjected to. However, this is not sufficient to fulfil the demands of their natural duty of justice. The natural duty of justice also requires that British citizens share the costs of providing full compensation to the victims of wrongful harm perpetrated against members of the Windrush Generation by the UK government. Unless such compensation is forthcoming, the victims of the Windrush scandal might reasonably assume that they are not respected as moral equals by other British citizens, and they will continue to suffer the harmful effects of the UK Government's wrongful actions. If other British citizens were unwilling to contribute via taxation to providing full compensation to the victims of the Windrush scandal, but were to insist that their natural duty of justice could be met merely by reforming immigration policies from now on or by providing only partial compensation, then they would be failing in their duty to assure the victims of the Windrush scandal of their respect for them. Other British citizens would be expressing that they are content for the Windrush victims to continue to suffer effects of wrongful harm perpetrated by

a government of which they – the other British citizens – are in charge. This would be a profound failure to assure the Windrush victims of equal moral respect and to ensure the government's wrongful actions do not continue to harm them.

For the above reasons, if the institutions for which I am responsible commit wrongful harm, in the sense that they bring about unjust outcomes for others, then I must accept shared liability to fully correct for this failure. Accepting this liability is necessary for me to assure others that I owe them a natural duty of justice; it is therefore not possible to fulfil the duty of assurance set out in my first respect-based argument, while at the same time rejecting liability for wrongful harm committed by our state.

We can further clarify the connection between the duty of respect and the requirement that citizens bear liability for full compensation for government wrongdoing by contrasting this case with two others. One other case is a case in which fellow citizens suffer from harm as a result of natural misfortune rather than government wrongdoing and the other case is one in which citizens in other states suffer from wrongful harm at the hands of their own governments. Respect-based reasons do not require that UK residents provide full compensation in either of these two cases. By contrast, they do require this in cases of wrongful harm committed by the UK Government; this is because the duty of respect is undermined by failure to provide full compensation in the case in which one's own government perpetrates wrongful harm. If the institutions for which I am responsible do not commit wrongful harm, but witness natural misfortune on the part of some citizens or their victimisation by their own governments, the natural duty of justice does not require that I share liability to fully compensate for this misfortune or victimisation. Our natural duty to bring about more as opposed to less just outcomes for others, then, imposes upon us a duty to contribute toward full compensation for victims of wrongdoing by government institutions when they apply to us, but may only require that we contribute toward partial compensation in cases of bad luck.

In summary, I submit that the natural duty argument is successful in justifying a collective duty to fully compensate the victims of wrongful harm by the government. This is because: the UK government fulfils a number of conditions that mean that it is able to act on behalf of the people; citizens of the UK therefore have a duty to support the government as a just government. Their natural duty of justice is not only a duty to support minimally just governments, however, but also to take steps to bring governments closer to being fully just. So it implies that they are liable for any wrongdoing perpetrated by the government, since, without this liability, the government could not be fully just. The implication is that they must pay taxes to correct for wrongdoing that has been perpetrated by their government. It is not sufficient for residents only to seek to ensure that government institutions should be made just from now on because this would leave many people suffering the effects of wrongful harm committed by a government that they have a duty to ensure is just. This is not reasonable or justifiable. Those who would be left uncompensated in this case would have reasonable cause to assume that citizens and residents in the UK who were not willing to pay taxes to provide full compensation to correct for the wrongful harm committed against them by the government do not respect them. If citizens and residents in the UK were unwilling to pay taxes to rectify for wrongful harm committed by the government, they would be implying that they do not include those who have been wrongfully harmed by the government within the scope of persons to whom they owe a natural duty of justice.

4.7. Conclusion

In this chapter I have considered a potential problem for my argument that citizens and residents collectively must compensate for wrongful harm that their state has caused on grounds of respect. This is the extension problem; while respect for others may require an agent

to fully compensate for wrongful harm what that agent has committed, it is not clear why there should be a collective duty to fully compensate for wrongful harm the state has committed. My aim was to develop an argument that could be used to overcome the extension problem and thereby justify why my two arguments from respect imply a collective duty for citizens and residents to compensate. I explored four possible arguments that might be used to justify this conclusion.

The complicity argument was found to be promising in some limited respects; it is able to justify a duty to provide full compensation for those who have avoidably contributed to government wrongdoing, but ultimately the argument was unable to generate a duty of compensation for a sufficiently broad scope of persons to meet the aims of the chapter. The benefiting argument was also problematically limited in scope; it was only able to justify a duty of full compensation in cases that involve the misallocation of assets. It was not able to justify a duty of full compensation in cases that involve damage, whether these are pure damage cases or cases in which there is misallocation as a result of damage. Although these two arguments are limited in their ability to generate the kind of liability that I am looking to justify in this chapter, they may be used to justify compensation in some cases. They may also be used to justify greater liability or a duty to provide more extensive compensation for certain individuals than for those who are liable only on the grounds of our natural duty of justice. The authorisation argument is problematic because it either relies on a consent-based claim about authorisation, which is difficult to defend, or it grounds collective liability on the claim that we have moral reason to support government institutions. Due to the problematic nature of these claims, I believe we should not rely on the authorisation argument to justify a collective duty of compensation.

I have responded to the extension problem by developing a natural duty argument, which shows why it is not as problematic as one might think to require the citizens or residents

of a given state to collectively bear the burdens and costs associated with providing full compensation for state wrongdoing. On the contrary, the collective duty of compensation is a requirement of our natural duty of justice; it is not possible, by definition, for just governing institutions to allow wrongful harm perpetrated by them to persist; our natural duty to support just government institutions, and to improve these institutions where they could be more just, thus requires us to support the provision of full compensation for state-caused wrongful harm, as it is a requirement of justice that such harm be rectified. Furthermore, if we were content to allow individuals to remain harmed by the wrongful actions of our state, this would be a failure to regard them with respect. Therefore, the natural duty argument is able to overcome the extension problem and justify a collective duty of compensation. In the next chapter I consider some further problems with the claim that the state must provide full compensation to those it wrongfully harms. These are problems that arise due to the counterfactual accounts of harm and compensation that I appeal to in my thesis.

Chapter 5. "Full Compensation":

Problems with the Counterfactual Conception

5.1 Introduction

In previous chapters I have argued for a duty of full compensation to victims of wrongful harm. In this chapter I look more closely at what "full compensation" entails. This is the central question of rectificatory justice, or, the branch of justice concerned with righting wrongs. The leading theory of rectificatory justice is the Counterfactual Conception of Compensation (CCC), which says that rectificatory justice requires the provision of compensation that restores victims of wrongful harm to their counterfactual outcomes. In Nozick's words, "Something fully compensates a person for a loss if and only if it makes him no worse off than he otherwise would have been" (1974, p.57). The idea is that, if a person is no worse off, having suffered a harm and been compensated for it, than they would have been if they had not suffered the harm in the first place, then they have been fully compensated and the demands of rectificatory justice have been met. According to George Sher, (cited in Roberts, 2006), this is "both the official view and the standard interpretation of compensation" (p.415). In this chapter I critically examine whether the CCC is the conception of compensation that should be endorsed for the purposes of determining what is owed to the victims of disadvantage-as-harm. I discuss some problems with the CCC that arise as a result of the counterfactual nature of both the CCC, and of the conception of harm that it assumes.

In Chapter 3 I defended a set of claims about the difference it can make to the duties we owe the disadvantaged that the sources of their disadvantage are our government's wrongful actions rather than their bad luck. I called this set of claims the Threshold Version of the Difference View, because they maintain that all disadvantaged persons, no matter what the

cause of their disadvantage, must be compensated until they reach a minimum threshold of wellbeing; however, among disadvantaged persons above this threshold, we owe full compensation to those who we have harmed through wrongdoing, whereas full compensation is not necessarily owed to those who are disadvantaged due to bad luck.

The arguments that I made in support of the Threshold Version of the Difference View might imply that the 'full compensation' the state owes to victims of disadvantage-as-harm is that which the CCC recommends. The two arguments from respect, recall, maintain that (i) we fail to assure others of our respect for them if – despite being able to provide full compensation – we leave them experiencing wrongful harm that we caused them, and (ii) we allow the wrongful harm we cause others to persist in the present, and possibly to compound in their future, if we do not compensate for it. Because these claims assume a counterfactual notion of harm, it follows straightforwardly from them that the kind of compensation they say we must provide is also counterfactual. Simply put, if, as I assume in Chapter 2, "harm" is to be understood as an action that makes a person worse off than they would otherwise have been (had we not acted that way), the duty to alleviate or end that harm must consist of a duty to ensure that they are no worse off than they would otherwise have been (had we not acted in that way). The Threshold Version of the Difference View therefore seems to support the CCC as a theory of rectificatory justice.

However, as I will show in this chapter, the CCC faces three problems. I will call these the *impossibility problem*, the *preference problem*, and the *non-identity problem*.[8] The impossibility problem is this: it is sometimes impossible either to a) ascertain what

[8] "The non-identity problem" is not my label for the problem I will discuss here. Rather the problem was labelled this by Parfit (1986).

counterfactual compensation requires, or b) provide compensation that would restore the victim to their counterfactual position. The preference problem arises because the victims of wrongful harm can sometimes prefer their harmed existence to their counterfactual unharmed existence. This may especially be the case in many formative harm cases. I use the label *formative harm cases* to refer to a special class of disadvantage-as-harm cases in which a person has been deprived of opportunities and subjected to harms in their formative years. This has a profound impact on their development of various skills and capabilities, causing them to suffer lasting disadvantages throughout life. That victims of formative harm might prefer their post-harm outcomes to their counterfactual outcomes makes it difficult to say that those victims have indeed been harmed, and, therefore, to justify compensation for them. The non-identity problem arises because the victims of wrongful harm are sometimes non-identical to the persons that would have existed but for the wrongful actions of others. This is because they would not have existed in the counterfactual outcome that would have materialised had the perpetrators acted differently. This, again, makes it difficult to establish that such persons have been harmed and should be compensated. As I will explain later, the CCC can respond to the impossibility and preference problems, but the non-identity problem undermines the CCC as a guide for what we owe to victims in formative harm cases.

Does the fact that the CCC faces these problems mean that it is mistaken to think that disadvantage-as-harm victims are owed counterfactual compensation? Because, as I will argue, the CCC is unable to respond to the numerical non-identity problem, I will propose, in Chapter 6, an alternative to the CCC, which I call the Just Shares View (JSV). The JSV is still a counterfactual view of compensation; the way that the JSV differs from the CCC is not by dispensing with a counterfactual element altogether, but by incorporating a different counterfactual element to the one that characterises the CCC. Recall that the CCC says that harmed persons should be restored to the position they counterfactually would have occupied

but for harmful actions of others. The JSV says that the state must compensate a person if it wrongfully cause a deficit in this person's just share, as compared to the distribution of shares that would have existed had it not acted as it did. In Chapter 6, I provide illustrations of what this means.

The JSV can overcome the non-identity problem that the CCC faces, because it does not construe compensation for wrongful harm as the restoration of persons to the position they counterfactually would have occupied, but rather construes it as compensation that makes up for deficits in just shares that would otherwise not have occurred. Once we understand wrongful harm as the deprivation of another person's just share, we understand why the state really has harmed people in non-identity cases and why the state must compensate them. This is because the state must provide compensation that rectifies deficits in people's just shares that would otherwise not have existed, but for the wrongful actions of the state. I explain the JSV in detail in Chapter 6 of the dissertation. In the following sections of this chapter I will look at each of the problems with the CCC in more detail. As I will explain, these problems amount to a problem of under-inclusivity; the CCC does not include all those who we think should be included in its account of who has been wrongfully harmed and who, therefore, is owed full compensation.

5.2. Preliminaries

Although the CCC is taken to be the standard view of compensation, it has not been free from criticism as a theory of rectificatory justice. It has been said that the CCC lacks any clear argument for why it is the correct response to harm-based disadvantage. Rodney Roberts (2006) has critiqued the CCC for this reason. He claims that there is no underlying rationale to explain why we ought to offer compensation in the ways that the CCC suggests: "the

counterfactual conception of compensation", Roberts (2006) asserts, "is merely a popular assumption, having no positive argument in support of it" (p.415).

As I have shown in Chapter 3, there are two arguments which might support provision of the kind of compensation that the CCC entails. These are my arguments from respect. The CCC tells us that victims of wrongful harms must be restored to the position they would have been in, or to an as-equivalent position as possible to the one they would have been in, had they not suffered the harm. The two arguments from respect seem to support this because they say, i) if we avoidably leave somebody in a position where they continue to suffer the harmful effects of our wrongful actions, then we violate our duty to respect them, and so cannot provide assurance of our respect, and, ii), by leaving victims of persisting wrongful harm uncompensated we violate our duty not to cause wrongful harm to others. It will be helpful to state these arguments for the CCC in a more schematic form as follows:

a) Justice requires that perpetrators of wrongful harm must do two things:
    i. They must provide assurance of their respect to their victims, and
    ii. Wherever they can do so, they must ensure that they cause no outstanding wrongful harm, which might persist or compound over time.

b) If perpetrators adhere to the CCC, they offer assurance of their respect, and ensure that they cause no outstanding wrongful harm to persist or compound over time.

Therefore,

c) We ought to implement the CCC.

While the arguments from respect appear to support the conclusions of the CCC, they do not provide conclusive support for it. It might be said that the above argument is not a valid argument for implementing the CCC because the conclusion c) does not necessarily follow from the premises a) and b). The conclusion that we ought to implement the CCC would follow

from the premises if the CCC was the only way of ensuring the outcomes of assurance of respect and no outstanding wrongful harm. However, as I will show later, there is another, better way of ensuring these outcomes, namely the JSV. The JSV is also a version of counterfactual compensation, but it is not the standard version of counterfactual compensation as the CCC is. While my arguments from respect lend support to the idea of counterfactual compensation, they do not conclusively support the CCC and can, instead, support the JSV. The JSV, in turn, avoids a serious complication and objection to which the CCC is vulnerable.

In summary, contrary to claims that have been made about the CCC, that it lacks any clear argument in support of it, my arguments from respect do provide some support for the CCC, however, that support is not conclusive, given that, as I will show later, the JSV could also be an implication of the two arguments. Furthermore, as I will explain in the remaining sections of this chapter, the CCC faces some significant problems. Nevertheless, the CCC is, on the whole, an intuitively appealing theory of rectificatory justice and its recommendations seem, in many cases, to be implied by my arguments from respect. It might be the case that the CCC is so appealing because the compensatory measures that would be recommended by the CCC may, in a great many cases, happen to coincide with what the correct theory of compensation would recommend. I suggest that this is in fact the case; working in the background of the CCC, and justifying the claims made by the two arguments from respect, is our duty not to deprive others of their just shares. This background duty is endorsed by the JSV, so it is this latter view of counterfactual compensation that we should ultimately endorse. In the three sections of the chapter that follow, I explore the problems with the CCC in detail, as well as some initial, but ultimately, insufficient responses that may be provided in defence of the CCC. In the subsequent chapter, I defend the JSV which can overcome these problems while retaining the intuitive plausibility of the CCC.

5.3. The Impossibility Problem

The impossibility problem has two components. The first is an epistemic component: it is often impossible to know exactly what a person's life would have been like if they had not been harmed and to know which harmful effects in their life are attributable to which wrongful actions on the part of others. So, firstly, there is an epistemic problem of determining what full, counterfactual compensation requires and who must provide it. In many formative harm cases in particular, the combination of unknowable variables that could have occurred during the time since the harm took place, including the decisions and actions formative harm victims may have taken in that time, as well as the actions that others may have taken, make it impossible to know with any certainty what any person's counterfactual outcome would have been, had they not suffered certain formative harms. This raises the question of what the CCC should suggest that we ought to do for victims of formative harms when we cannot know what their counterfactual position would have been. Secondly, even if the counterfactual position can be identified, there is a practical component to the impossibility problem, in that it is often also impossible to restore people to the position they would have occupied if they had not been harmed. If justice requires that victims of wrongful harm be put back into the exact position they would have occupied, then the demands of the CCC seem impossible to meet in a great many cases.

The epistemic part of the impossibility problem constitutes a significant, but not necessarily fatal, objection to the employment of the CCC in rectifying wrongful harms. Proponents of the CCC may respond that, in the absence of certain knowledge about counterfactual outcomes, we ought to restore persons to the outcome that similar people in similar circumstances, minus the harm in question, tend most often to end up in. Restoring victims of wrongful harm to the position that they most likely would have occupied if they had

not been harmed might be seen as a fair solution to the epistemic impossibility problem. A. J. Simmons (1995) uses an example in order to illustrate this solution to the epistemic problem that involves a victim of bicycle theft. Outlining some of the various possible outcomes that could have befallen him had he not had his bicycle stolen, Simmons shows that when we enter into discussions about counterfactual positions, we do not really mean to postulate about the exact and precise outcomes that people would have occupied, but rather to refer only to what would most likely have been the case:

> [I]t is clear that we do regularly make counterfactual judgments with a high degree of confidence … 'If he hadn't stolen my bicycle, I would have been better off (by so much and in these ways).' … We are not bothered by the fact that, during my bicycle's absence, I might otherwise have been shot by a deranged hater of bicyclists or might have been discovered by a talent scout for the Olympic cycling team. We do not hold the thief liable for dashing my Olympic hopes or reward him for saving my life. For purposes of assigning blame and liability we assume a normal unsurprising course of background events, roughly like the one that actually occurred… Often, of course, our judgments concern not what would certainly have happened in any relevantly similar history, but rather what would have been most likely to have happened. (Simmons, 1995, p.157)

In summary, it is undeniably the case that individuals' counterfactual outcomes – absent formative harm – cannot be known with precision or certainty. This may be a concern for the CCC because it seems problematic that justice could require us to restore persons to a position that cannot possibly be determined. However, this problem may be surmountable by appealing to probability and aiming to restore people, not to exact counterfactual positions, but merely to their most likely counterfactual outcome.

While compensating people according to the most likely counterfactual outcome seems like an intuitively plausible response to the impossibility problem, it would be helpful if we could provide some sort of theoretical support for that response. Consider, therefore, the following point. The reason that the most likely outcome seems reasonable as a measure for how much compensation is owed, is that – at the moment in time when victims of wrongful harm were deprived of resources or opportunities that they had a right to – the victim had various different prospects ahead of them. We cannot know with certainty which outcome the victim would have ended up in if she had not been wrongfully deprived of her opportunities or resources. Had the victim not been harmed, she may still have ended up worse off than others who faced the same prospects as her, or she may well have ended up better off than those others. If she would have ended up worse off, this would have been due either to bad luck or to her own imprudent actions. Conversely, if she would have ended up better off, this would have been due to good luck and/or her extraordinary effort and ability. Now, in the absence of any indication that the victim would actually have acted imprudently or exceptionally, it seems unfair to attribute these qualities to her and to provide compensation on that basis, and it also seems unfair to compensate her in line with her bad or good luck. In short, it seems unfair to assign compensation to her based on anything other than the most likely outcome for persons facing her prospects. The epistemic impossibility problem, while substantial, does not, I conclude, amount to an insurmountable problem for the CCC.

Let us turn now to the practical impossibility problem. Roberts (2006) asserts that this is a fatal objection to the CCC. In his words, the practical impossibility problem "weighs significantly against the CCC. Indeed, it seems to fail as a legitimate rectificatory concept on this ground alone" (Roberts, 2006 p.416). In many cases of significant formative harm, there is simply no way to restore individuals to their counterfactual outcome. There are some simple cases of harm in which full restoration is indeed possible – for example, if your wallet is stolen,

the thief will have caused you an unjustifiable loss, but you may be restored back to the position that you would have been in if you had not been a victim of this crime simply if the thief returns your wallet to you and offers a sincere apology, thereby assuring you of their respect for you. However, formative harm cases tend to be much more complex. There are some losses for which it is difficult to conceive of any amount of compensation constituting full or total restoration.

As an example of a loss of a quality, asset or level of welfare that seems incommensurable with anything that could be offered by way of compensation, consider the following hypothetical example:

> *Factory Accident*: Laurence owns a factory. Toni works part time in Laurence's factory and part time as a concert pianist. Toni is very passionate about her role as a pianist; for her, it is not just a job, but also an integral part of her identity. Toni practices the piano endlessly in her free time; the enjoyment and meaning derived from playing, for Toni, are such that she could not obtain equivalent satisfaction from any other hobby or career. Laurence, through wrongful negligence, causes an accident in which Toni gets her hands trapped in a machine. Toni's hands are so badly damaged that they must be amputated. Toni can no longer play the piano or work in the factory and, as she lost both of her hands, her employment prospects are significantly limited.

In order to compensate Toni for this harmful negligence Laurence could offer the following rectificatory measures: as Toni is no longer able to work in the factory or as a concert pianist, Laurence could continue paying her a salary and top it up so that she suffers no loss in earnings, until she is able to find another job that she is able to do, and which would pay her the same as she was previously making from her two part time jobs; Laurence could also pay for Toni to have the best prosthetic hands available, and; he should definitely apologise sincerely.

However, with all of the compensation and apologies that may be given from Laurence to Toni, Toni would still have lost her hands and her preferred occupation.

Arguably, none of the compensation that Laurence could provide should be seen as equivalent to or commensurable with Toni's outcome or level of welfare if she would not have lost her hands. It seems, in this case, that no amount of compensation could provide Toni with the same meaning and identity-creating aspects she enjoyed from playing the piano, and that it would be offensive to Toni to imply that the compensation offered would be able to fulfil some counterfactual restorative function, such that it should be seen as putting her back in a position of equivalence to her counterfactual outcome; Toni is unlikely to regard the compensation she is offered as having restored her to an outcome in which she is as well off as she would have been if she had not suffered the harm of losing her hands.

In the factory accident example above, it would not be possible to provide Toni with compensation that would be equivalent to her counterfactual outcome. She cannot be provided with the means to pursue the same ends as before her accident, because her desired ends require her to have two working hands, and – because of the importance she placed on her identity as a pianist – there are no ends-substituting measures that could provide her with equivalent welfare. It would be a mistake to think that providing alternative ends, which are objectively considered to be 'as good as' the ends Toni enjoyed before the accident, equates to providing equivalent welfare.

One possible response to the practical impossibility problem is that the CCC does not recommend that we fully restore persons when this is not possible; rather, the CCC recommends only that we ought to do as much as we can to restore people as closely as possible to their counterfactual positions. It might be said that one of the greatest appeals of the CCC is that it attempts to eliminate any outstanding wrongful harm, and to ensure that harmful effects

do not persist or compound over time, and that this is achieved only when full compensation is given in a way that restores individuals to the outcome that they would have been in if they had not been harmed. If, in reality, this is not possible then it seems that some amount of outstanding wrongful harm remains even after counterfactual compensation has been offered. However, this is not as problematic as it might first seem.

To see why this is not problematic, it is helpful to consider again the justification that the two arguments from respect I made in the previous chapter provide for the CCC. The reason the arguments from respect lend support to the CCC's claim that we must restore victims of wrongful harm to their counterfactual positions is this: Firstly, if perpetrators could provide full compensation for wrongful harm and did not, then they would be failing to assure their victim of respect. Secondly, the perpetrators would be causing wrongful harm to persist and possibly to compound if they did not compensate their victim in full. These reasons for why we must provide compensation do not imply, however, that we need to compensate victims if we are not able to. Rather, the arguments from respect only require that fully compensate our victims if we can do so. If we cannot provide full compensation, because it is impossible, then we do not necessarily fail to assure our victim of our respect for her and we do not, unjustifiably, cause harm to persist and compound. For these reasons, we need only provide full compensation when we are able to. Where full compensation is not possible, we need only provide compensation that restores people as closely as possible to their counterfactual outcome. Therefore, the impossibility problem, I submit, is not fatal as an objection to the CCC. Suitably understood, the CCC can provide reasonable responses to cases of impossibility and preference. However, as I shall explain in the following sections, the non-identity problem each undermines the CCC as the correct theory of rectificatory justice.

5.4. The Preference Problem

We have seen that the CCC can overcome the impossibility problem, but what about the preference problem? This problem, in essence, is that the counterfactual outcome is not always preferred by a victim of wrongful harm. On the contrary, the requirement that a victim be put back into the position they otherwise would have been in can sometimes lead to "absurd notions of compensation" (Roberts, 2006, p.417). Roberts gives the example of a reckless taxi driver who causes a car crash, breaking his passenger's leg (Ibid, p.417). The passenger was taking the taxi to the airport where he was due to catch a plane. It later transpires that the plane crashed and all of the passengers on board died in the accident. In this example, the passenger seems to have been benefited from the taxi driver's recklessness, despite having been shown disrespect and suffering a broken leg. The passenger, having been in a car crash and suffered a broken leg, is in a better outcome than his counterfactual outcome, in which he would have died in a plane crash. It could be an implication of the CCC, that the taxi driver owes his passenger nothing; as the passenger is better off than he otherwise would have been (he would have been dead if the taxi driver had not crashed and broken his leg), the taxi driver could be said to have benefitted, rather than harmed, the passenger. Intuitively, this seems to be the wrong conclusion.

We can think of many cases where victims of unjust harms may not want to be restored to their counterfactual lives for various reasons: this may be because the harm that they have experienced led to them taking a different path in life, which has subsequently made them into a different person with different preferences, ambitions, and valuable relationships. Consider the following example;

> *Mathew becomes a better person.* Mathew was born to parents who were both financially well-off and very affectionate and nurturing. As a result, Mathew enjoyed a secure and comfortable upbringing. However, Mathew was conceited and did not care much about others. When Mathew was an adult, his country experienced a period of

> civil unrest following well-founded speculation that national election results were being fixed by the government. Mathew's house was destroyed and Mathew was displaced and dispossessed. Having sought asylum in a neighbouring country, Mathew developed a new appreciation for the people in his life, and a different set of values to those he held before. Despite everything he had gone through, Matthew came to prefer his life post-harm, because he believed he had become a better person; he enjoyed more authentic, meaningful, and longer-lasting relationships, and he had a new appreciation for what really mattered to him. If he could be given the option, Mathew would not prefer to return to his counterfactual life, pre-harm.

The CCC would struggle to identify that Mathew was harmed when he was subjected to abusive power by the regime in his home country; he prefers his actual life to the counterfactual outcome he would have occupied if his country had not experienced the civil conflict. Intuitively it seems clear that we should see Mathew as having been harmed, via being subject to an oppressive and tyrannical government, threatened with violence by his state's military, being forced to live in fear of losing his loved ones, and ultimately being dispossessed and displaced from his home. However, the CCC would have to conclude that, since Mathew prefers his post-harm outcome, and therefore enjoys a greater level of welfare, that he has not been harmed and is not owed any compensation.

As I have alluded to above, the reason that the preference problem might imply– on the standard counterfactual view of harm and compensation – that victims have not really been harmed is that they may enjoy greater welfare or be happier in their actual outcomes than they would have been in their counterfactual outcomes. So, we cannot say (on those terms) that they have been made worse off than they otherwise would have been. If we define 'harm' as making somebody worse off than they otherwise would have been, then it is not always clear that victims who do not prefer to be restored to their counterfactual outcomes have been harmed.

One response to this claim is that many people may prefer their post-harm life, not because they regard their actual outcomes as objectively better for them than their counterfactual outcomes would have been, but rather because of attachments and loyalty to those with whom they now have relationships – relationships that would not exist except for the harmful events in their pasts.[9] If this is the case, their preference for their post-harm life does not indicate that they have not been harmed. However, this response only applies in some cases. In many others, a victim may actually be better off in their post-harm outcome than in their counterfactual outcome (e.g., the passenger in Roberts' reckless taxi driver example), and in others the victim may genuinely prefer their actual outcome and might therefore be thought to enjoy a greater level of welfare - where 'welfare' is understood in terms of preference-satisfaction - than she would have if she had not experienced the harmful events in her past. In these cases, it seems difficult to say that the victim has been harmed and it is therefore not clear that she should be owed any compensation at all.

In summary, the preference problem is this: the CCC, by relying on the claim that individuals should be restored to their counterfactual positions can lead to absurd recommendations for people who do not prefer to be restored, or who would be made worse off if restored to the positions that they would have occupied if they had not suffered wrongful harms. In such cases, it is difficult to justify, on a counterfactual conception of harm and compensation, a claim that such victims have been harmed, or that they are owed any

---

[9] The importance of treating people's personal allegiances as central to political philosophizing is a key component of theories that operate on "the egalitarian plateau". Thomas Nagel (1995), for example, writes that the "personal standpoint must be taken into account directly in the justification of any ethical or political system which humans can be expected to live by" (p.15).

compensation at all. The fact that victims sometimes prefer their life post-harm could imply that, in those cases, no harm has been done, and, therefore, no compensation is due. In other words – according to the counterfactual comparative account of harm, in which a person is harmed if they are made worse off than they otherwise would have been – an implication of the preference problem may be, given that a victim prefers her post-harm outcome, that she is better off than she otherwise would have been, and has, therefore, not actually been harmed at all.

Can the CCC overcome the preference problem? A proponent of the CCC might respond that the preference problem only implies that victims are not worse off than they otherwise would have been if we assume a narrowly subjective metric for measuring harm, such as welfare, simple preference-satisfaction, or desire-fulfilment. However, a person may have greater preference-satisfaction post-harm, yet be worse off than they otherwise would have been in other respects. For example, a disadvantage-as-harm victim may *prefer* their current life because of newfound attachments or a religious awakening, and yet be worse off in terms of resources and capabilities. So, if the CCC adopts a resourcist or capabilitarian metric for measuring harm, it can still identify persons who prefer their ex-post lives as victims of wrongful harm. The compensation that the CCC would recommend in these cases would be the restoration of resources and / or capabilities, so that the victims are not worse off than they otherwise would have been in these respects.

5.5. The non-identity Problem

While, as I have discussed above, the CCC can respond to the impossibility and preference problems, the non-identity problem is more severe. There are two kinds of non-identity problem that arise for the CCC in formative harm cases. These are *qualitative* non-identity and

numerical non-identity problems. [10] To see the difference between these two cases, notice that some kinds of harms can fundamentally change the qualities of a person. They can fundamentally change her character traits, and thus also the person they will have become, and how they will respond to future experiences and opportunities. After significant formative harms experienced during childhood – such as the harms experienced by Sophie in the extended example I set out in Chapter 1 –the person who emerges into adulthood post-formative-harm is qualitatively different from the person this individual would have become if they had not suffered formative harm. This is what I call a *qualitative* non-identity case, because there is non-identity between the fundamental qualities of the person who is harmed and the person she would have been had she not been harmed.

In *numerical* non-identity cases, the life of the person who is harmed ends and a new person, in effect, is brought into existence. This new person experiences a foreseeably but unavoidably disadvantaged life. Their disadvantage is unavoidable because, if the harmful actions that caused their disadvantages had been mitigated, they would not have come into existence. For example, suppose that a person suffered severe brain injury as a result of wrongful harm and that this brain-injured person now lives a disadvantaged life compared to non-brain-injured persons. The brain injury has severed the psychological ties that the person may have had to their past self, such that the past self, in effect, no longer exists, and a new person was created by the wrongful harm. Numerical non-identity cases are problematic for the CCC. The persons who are disadvantaged in these cases seem to lack a complaint against the kind of existence they have been given, assuming that their disadvantaged existence is

[10] The distinction between qualitative and numerical identity comes from Parfit (1987), chapter 10.

nonetheless preferable to not existing at all. That persons in such examples seem to lack grounds for complaint for the kind of existence they experience is deeply counter-intuitive and yet it is difficult to conclude otherwise.[11]

I will divide this section of the chapter into two sub-sections; in the first I consider qualitative non-identity cases. As I explain below, the problematic nature of these cases, on closer consideration, can be seen as a culmination of both the impossibility and preference problems that I have discussed above. Nonetheless, an independent discussion of qualitative non-identity cases is worthwhile as these cases demonstrate how these two problems of impossibility and preference can amalgamate and form more complex and difficult cases. I then turn in the second sub-section to a discussion of numerical non-identity cases.

i) Qualitative Non-identity Cases

Qualitative non-identity is a different kind of non-identity to numerical non-identity. Consider the fact that many formative harm victims emerge into adulthood as vastly different persons to the persons they would have become if they had not been harmed in their youth (here, when I refer to the 'person' they are, or would have been, I mean the various preferences, qualities, capabilities, and character traits that make up their identity). In these cases, the version of the non-identity problem that I mentioned above in the brain injury case does not arise. There are sufficient psychological links with past versions of the harmed-person's self, such that, were

[11] For a discussion of the standard non-identity problem as described here, see Parfit (1986 and 2017).

we to compensate the adult, we would be compensating the same person as the person who suffered the relevant harms during their youth. This is the case, for example, with Sophie. While the formative harms Sophie experienced during her youth significantly affected her preferences, qualities, capabilities and character traits as an adult, the adult she became, as a result of them, is still closely connected, psychologically-speaking, to the person she was when she was harmed during her youth. We can thus say that the adult Sophie is the "same person" as the Sophie who was harmed during her youth.

In these formative cases, there is, however, a qualitative non-identity problem that confronts the CCC. The CCC says that we ought to compensate in such a way that harmed persons are put back into the position they would have occupied had they not been harmed. However, literally restoring formative harm victims to their counterfactual positions would require transforming the harmed individual into a qualitatively different person; namely, the person they would have become if they had not been harmed. In other words, while there is psychological continuity between the harmed person now, and the person she was during her youth, the harmed person's identity is now so far removed from the counterfactual adult version of herself that it is not possible to restore her to that counterfactual adult version of herself. For example, if Sophie's parents had been able to provide her with a good start in life and if she had been provided with a good education in her early years, the person she would have become could have been unrecognisable to the person she actually became. Had Sophie's parents not been victims of the unjust arrangements of the basic structure of their society, they would have been able to provide Sophie with a more nurturing home environment, they would have been better placed to instil in her the value of education and a love of learning, they would have had more time to spend together as a family, to enjoy arts, cultural and educational activities such as museum visits, movie shows and theatre performances. In sum, they would have been able to provide her with a better start in life. It's reasonable to imagine that, absent the formative

harms Sophie suffered in her youth, such as inadequate education provision, poverty, and her parents' inability to give her a good start in life, the adult Sophie *would have become* would be virtually unrecognisable from the adult Sophie *actually became*, in terms of her characteristics, personality, preferences, skills and capabilities. These differences between the counterfactual adult Sophie and the post-harm adult Sophie are so vast and complex that restoring Sophie to her counterfactual adult self would not be possible.

Furthermore, even if we suspend reality for a moment and imagine that it would be possible to restore the harmed person, so that they would become the person they would have been if they had not been harmed, to do so would be problematic; restoring the harmed person to the person they counterfactually would have been would mean that they would cease to exist as the person that they currently are. Suppose a time-travelling alien possesses a device that allows him to tinker with the timeline. The alien might be able to offer full restorative counterfactual compensation, so that the victim of formative harms becomes the person they would have been if they had not been harmed. However, compensation that would convert one person into qualitatively non-identical person hardly counts as compensation, since, in order for a benefit to count as compensation, the person receiving it must have been made better off by it, and this arguably does not happen if the "benefit" essentially converts her into a different person. This would result in a loss of the person that she has become as a result of the harms she has experienced. Moreover, it seems likely that most people would not want this.

Therefore, there are two aspects to the qualitative non-identity problem in the formative harms case: firstly, it is not possible to compensate the victim of harm using the CCC. The CCC says that we ought to restore people to their counterfactual positions, and restoring the harmed person to their counterfactual position in the qualitative non-identity case would mean the harmed person being transformed into a different person (i.e., the person they would have become had the harm never occurred), which is not possible. Secondly, even if such

compensation was possible, victims may very likely not want to be 'compensated' in this way; it is likely that, although they have been undeniably disadvantaged as a result of their experiences, they would prefer to continue to exist as the person that they are than to be replaced with the person that they would have been if the harm had not occurred.

Somebody may respond to the qualitative non-identity problem by saying that if it is not possible to restore somebody to the person they would have been, we should at least try to restore them to the closest possible approximation. However, it is difficult to see how this is possible. Imagine, for instance, that adults who were victims of an extended period of formative harm during their youth, are now given the opportunities and resources which they ought to have received during childhood. This would not restore the harmed individual to the person that they would have been if they had had those opportunities and resources *during their youth*. Giving someone opportunities and resources in adulthood will not change the past experiences and harms that have shaped the individual into the person they have become and will not restore them to the person that they would have been if they had not been harmed.

A response to this may be that what compensation requires us to restore is not people's outcomes, but only the means they have lost with which to pursue their life-plans. [12] In other words, compensation need only provide those means with which to pursue a life-plan that would have been available to a person had they not been wrongfully harmed. However, it is not always possible to restore a person's counterfactual means. For example, providing free education in adulthood to those who have been deprived of a good education in their formative years should not be seen as equivalent to the benefit of receiving a good education in childhood. One reason that means-replacing compensation seems inadequate in formative harm cases is

---

[12] The notion of "means replacing" compensation is discussed by Goodin (1989).

that the persons who emerge into adulthood following formative harm may face many limitations and constraints, because of the harm they experienced in their youth. This harm, in turn, impacts their ability to take advantage of opportunities they are presented with compared to a counterfactual life in which they had not been harmed and had faced the same opportunities. Thus, if the lives of formative harm victims are marked by more obstacles compared to the lives of individuals who have not suffered such harms, then having the same means that they counterfactually would have had may not be as beneficial to them as it might have been had they not suffered those harms. As an example, consider Sophie again. Sophie is now a single mother with young children; she may be provided with skills training and education intended to provide her with equivalent income-earning means as she would have received through receiving an adequate education earlier in life. However, her post-harm circumstances – for example, her requirement to find employment that facilitates flexible working and the overall demands on her time and energy from parenting – constitute constraints that prevent her from being able to utilise those means equivalently to the way in which she might have in a life absent of the formative harms that created her present circumstances. So, even after providing her with those means it still seems to be the case that she would be disadvantaged compared to her counterfactual outcome.

To summarise, the qualitative non-identity problem is this: the harmed person has grown up to become somebody very different to the person that they would have been if they had not suffered those harms. This is a problem for two reasons: First, it is not possible to restore the harmed person to their counterfactual position, because doing so would require transforming them into the person that they would have been if they had not been harmed, and this person is fundamentally different to the person they are now. Second, the harm victim in many cases would not prefer to receive compensation that would restore them to the person they would have been if they had not been harmed. These problems of impossibility and

preference are particularly complex as they apply to people who have developed into qualitatively different persons than they otherwise would have been. Furthermore, these persons, in many cases, will have suffered damage to their capacities and their ability to make decisions that will make their lives go well, or to take advantage of means and opportunities restored to them (whereas their counterfactual selves would have not suffered such damage to their capacities). Thus, the qualitative non-identity problem that arises in many formative harm cases makes it difficult for the CCC to guide us on how to compensate the victims in these cases, despite it seeming strongly intuitive that many victims in these cases have been severely harmed and are owed substantial compensation. As I explained in sections 5.3 and 5.4 there are some answers to the impossibility and preference problems, so the qualitative non-identity problem is not fatal to the CCC. However, because qualitative non-identity cases are so complex, it can be very difficult to identify the counterfactual position that victims of disadvantage-as-harm would have occupied and to restore them to it.

ii) Numerical Non-identity Cases

Numerical non-identity cases pose a problem for the idea that counterfactual compensation should be owed to people who suffer disadvantage due the way in which the basic structure of their society is arranged. To see why, we must note the following important fact. Many people who suffer such disadvantage do so as a result of the way in which the basic structure of society affected their parents *prior* to their parents conceiving them. However, if the basic structure were not arranged in that way, many of the disadvantaged in society would not exist at all (due to the fact that minor changes can cause a different set of people to come about, a phenomenon described by Gregory Kavka (1982) as the "precariousness" of existence). Parfit (1986) draws attention to this precariousness by pointing to a woman's contemplation of who she might have been if her parents would have "married other people" rather than each other – as Parfit notes,

"in wondering who she would have been, this woman ignores the answer: 'no one'." (Ibid, p.351). Similarly, if the basic structure of society did not affect her parents prior to her conception in ways that caused her to experience disadvantage, then they would never have conceived her.

The precariousness of existence is a problem for the CCC; intuitively, it seems that those who experience disadvantage caused by the unjust arrangements of the basic structure of society should be owed compensation. However, if the disadvantaged would not have existed but for those unjust arrangements, it can be hard to express why this should be the case: surely nobody has been made worse off, if – in the counterfactual outcome – they would not have existed at all (assuming that the lives of the disadvantaged are not so difficult that it would have been better for them never to have existed). Some would claim, as David Benatar (1997) has, that the notion that "being brought into existence … is a benefit" (p.345) – i.e., that it is better to exist than not to exist – is, as Roberts (2006) says of the CCC itself, "merely a popular assumption, having no positive argument in support of it" (p.426). However, I will assume for the purposes of this chapter that life is unambiguously worth living for a great many people, including those who suffer from various hardships and disadvantages.[13] If this assumption is correct, then numerical non-identity cases are a significant problem for the CCC, because many disadvantaged persons would not have existed in the counterfactual outcome, had certain injustices not occurred, and it becomes difficult to say that those disadvantaged persons have been harmed in the sense that they have been made worse off than they otherwise would have been. Subsequently it is difficult for the CCC to claim that any compensation is owed in those cases.

---

[13] For discussion, see Archard (2004) & Harman (2004)

In the remainder of this section of the chapter I will use Parfit's example of the 14-year-old girl who decides to have a child to help draw out the problem and to consider some responses that could be made on behalf of the CCC. The example Parfit (1986) gives is this.

> The 14-Year-Old Girl. This girl chooses to have a child. Because she is so young, she gives her child a bad start in life. Though this will have bad effects throughout this child's life, his life will, predictably, be worth living. If this girl had waited for several years, she would have had a different child, to whom she would have given a better start in life. (p.358)

Now suppose that the 14-year-old in Parfit's hypothetical example would not have chosen to have a child at that age but for certain injustices in the basic structure of society. This is plausible as we know that children from deprived backgrounds are more likely to plan to become teenage parents (see McCulloch, 2001and Cater and Coleman, 2006). And that higher levels of inequality lead to more teenage pregnancies (Wilkinson & Pickett 2010). In this case, neither the disadvantage experienced by the child of the 14-year-old nor the child's very existence would have come about if not for background conditions of injustice in the basic structure of society. The 14-year-old was wrongfully harmed by the basic structure of society. The wrongful harm she suffered then subsequently affected her ability to make a good decision about when to have a child, as well as her ability to give her child a good start in life. In other words, by damaging her capacity to make good decisions, the 14-year-old was caused to have a child when she was too young, at a time when she lacked the required emotional and mental faculties, knowledge and understanding, income, and resources to provide for her child.

This seems like a problem for my claim that victims of wrongful harm by the institutions of the state are owed full compensation. The non-identity problem might cause us to conclude that, although the lives of children born to teenage parents could be improved by changes in the basic structure of society, the children of teenage parents are not owed a better start in life on the ground that they have been harmed. If the background conditions of injustice were not present, those children would never have existed. Since it can reasonably be assumed that the lives of children born to teenage parents, though often disadvantaged, are unambiguously worth living, it seems difficult to conclude that such children have been harmed in the sense of being made worse off than they otherwise would have been, because in the counterfactual outcome, they would not have been conceived.

There is a response that the CCC can give to those concerned by the numerical non-identity problem as I have just described it. The response is this: the children of teenage parents might have a claim to counterfactual compensation against society, if we shift the counterfactual baseline to a moment in time after their conception. To see what I mean by this, consider the following point. In the case of many children of teenage parents, the state could have rearranged the basic structure of society after their conception. By failing to do this – by not rearranging the basic structure of society after their conception – the state has made them worse off than they would have been. To see this more clear, consider the following point. The state could have compensated the 14-year-old mother for the wrongful harm she suffered because of the background conditions of injustice in her society, which caused her firstly to have a child at such a young age and, consequently, to be an inadequate parent. If the state had compensated her after her child's conception, her child would have had a better start in life. So, while the child in Parfit's example might have no complaint against her mother conceiving her when they did, the child might have a harm-based complaint against the state for its failure to compensate her mother after her conception.

It is noteworthy that this kind of argument has been made in the context of the debate over reparations for slavery. As Boxil (2003) writes,

> [L]et us imagine two slaves, Tom and Beulah released from slavery. The government owed them compensation for having helped enslave them, and also for the discriminatory laws it enacted after they were released from slavery and that prevented them from recovering from slavery. At every point of their lives, they were entitled to seek reparation from the government harms these injustices caused them, including the point just after the conception of their daughter, Eulah. At that point and every succeeding point, it did not pay them what it owed them. This was a grave injustice to Tom and Beulah, but what is equally important here is that it certainly also harmed their daughter. … [I]t follows that she had a right to compensation from the government for the harm its injustice to her parents caused her. (p.88)

In the same way that the descendants of slaves might be owed compensation for the harm they suffer as a result of their parents not being compensated after their conception, the children of teenage parents might be owed compensation for the harms they suffer as a result of the uncompensated wrongful harm that their parents experienced after their conception, which made them worse off than they would have been if their parents had been properly compensated. By shifting the counterfactual baseline relative to which we consider whether somebody has been made worse off to a moment after their conception, we can see that many children of teenage parents are made worse off than they counterfactually would have been if the state would have compensated their parents (after they had been conceived) for any wrongful harm that detrimentally affected their parents' ability to give them a good start in life. So contrary to what we might first think about numerical non-identity cases, the child does

have a complaint, because they have been made worse off than they would have been if their parents had been compensated after their conception.

Still, while this response goes some way to addressing the numerical non-identity problem from the point of view of the CCC, it does not go quite far enough. It is highly unlikely that compensation can be given to 14-year-old parents that can make it so that they would be as good at being parents or as able to give their child a good start in life, as they would have been if they would have conceived their child much later in life under more just circumstances. Any outstanding disadvantage that remains after post-conception compensation has been given to the child's parents is subject to the non-identity problem: it seems that the child does not have a complaint about this outstanding disadvantage.

5.6 Conclusion

In this chapter we have seen that the CCC faces a significant problem: it is not able to guide us on what is owed in formative harm cases where the numerical non-identity problem applies. Ultimately, the CCC is underinclusive in that it fails to include as harmed those who cannot be shown to have been made worse off than they otherwise would have been, which as we have seen, includes many cases where we intuitively think the victim has been harmed and is owed substantial compensation. Thus, it appears that we need an account of compensation which does not rely on the counterfactual claim that harmed persons have been made worse off than they otherwise would have been. In the next section of the chapter, I develop the Just Shares View, which I argue can help us to understand why we must recognise as harmed and provide full compensation to those who are not included under the CCC due to the non-identity problem.

Chapter 6. The Just Shares View

6.1 Introduction

In this dissertation I have investigated the broad question of what societies owe to their disadvantaged members. Specifically, I have been concerned with whether and in which ways answers to this question might differ depending on the cause of a person's disadvantage; do societies owe more to those citizens and residents whose disadvantage is the result of state-caused wrongful harm, than they owe to those whose disadvantage is the result of bad brute luck alone?

In Chapter 2 of this dissertation I laid the conceptual groundwork by defining what I refer to as "disadvantage-as-harm", and showing that this is a very common type of disadvantage in many societies; that disadvantage-as-harm is so prevalent demonstrates the relevance and importance of identifying the difference it makes to what we owe the disadvantaged in society, when their disadvantage is the result of state-caused wrongful harm, as opposed to being the result of bad brute luck. In Chapter 3, I argued for the Threshold Version of the Difference View – this is the view that says that when the state has caused disadvantage via its own wrongdoing, then the disadvantaged are owed full compensation for this, whereas, those who are disadvantaged by bad brute luck alone may not be owed as much as full compensation. In Chapter 4, I argued that the costs of providing this full compensation to the victims of disadvantage-as-harm can justifiably be shared among the citizens and residents of the state in question. In Chapter 5, I considered one answer to the question of what it means to say that somebody is owed "full compensation", namely the standard counterfactual conception of compensation (CCC). I found that the CCC faces some significant problems, namely, the impossibility problem, the preference problem, and the non-identity problem. While there are

some persuasive replies that a proponent of the CCC could offer in response to the impossibility and preference problems, I concluded that the CCC is not able to adequately answer the numerical non-identity problem. This means that, ultimately, the CCC is underinclusive in its scope; it is not able to recognise all those who we think should be identified as victims of wrongful harm or, therefore, to advise on what these persons might be owed in compensation (indeed, it is not able to identify that any compensation is owed at all).

In this final chapter of the dissertation, I will show that, as well as being under-inclusive, the CCC can also be *over-inclusive* in identifying those who have been wrongfully harmed and for which it says full compensation is required. This is because the CCC identifies a need for full compensation based only on whether a person has been made worse off than they otherwise would have been, with no regard for whether a person has been made worse off *than they had a right to be.* As I will later suggest, persons who are made worse off than they would have been, but who are not thereby deprived of anything that they had a right to, are not wrongfully harmed and should not be identified as persons to whom a duty of full compensation is owed.

To overcome the problems the CCC faces, I propose an alternative view of compensation for disadvantage-as-harm. I call this the *Just Shares View* (JSV). As I will show, the JSV is able to address the non-identity problem. In addition, this chapter provides a plausible account of what is meant by "full compensation" for disadvantage-as-harm. This chapter therefore helps me to explain in more detail my claim from Chapter 3, that, unlike those who experience disadvantage as the result of bad brute luck alone, the disadvantage-as-harmed are owed *full compensation* by their state. Moreover, as I will later show, my arguments from respect that I developed in Chapter 3 lend conclusive support to the JSV, whereas they do not lend conclusive support to the CCC.

I will first illustrate the JSV and how it differs from the CCC. I will then explain why I believe the JSV to be the most plausible account of compensation. To do this, I will show that, as well as being under-inclusive, the CCC can also be over-inclusive, while the JSV is neither over- nor under-inclusive. I will then discuss some objections to the JSV. In my concluding remarks I will summarise the arguments that I have advanced in this dissertation and how the JSV supports the conclusions of the previous chapters.

6.2 The Just Shares View

The CCC, recall, is a conception of compensation that says that if the state has caused somebody to be worse off than they otherwise would have been, then the state ought to restore them their counterfactual outcomes, i.e., to the outcomes they would have occupied had they not suffered the harm in question. In other words, the aim of the CCC is to ensure that, as far as possible, the victims of wrongful harm are not left any worse off after receiving compensation than they would have been had they not been harmed in the first place.

Consider now an alternative view of compensation. The JSV says that the aim of states who have perpetrated wrongs should not be to ensure that persons are left no worse off than they otherwise would have been, but rather to ensure that any deficits in their just shares, for which the state is responsible, are rectified. This might well entail restoring some persons in some situations to their counterfactual outcomes or restoring the resources they counterfactually would have enjoyed, but it does not depend on and is not restricted to this standard counterfactual conception.

Two important points to note about the JSV concerns how it identifies each person's "just share". First, if it is to avoid all the problems faced by the CCC, it cannot identify a person's just share in terms of welfare – that is, it cannot assert that persons should have, for example,

equal amounts of welfare in their lives. This is because, as I explained in Ch. 5, the JSV would in that case face the preference problem; if we defined a person's just share as an equal amount of welfare, then, if a person enjoys greater welfare in terms of preference-satisfaction post-'harm', it is not clear that they are experiencing a "deficit" in their just share, and not clear, therefore, that they are owed compensation. Therefore, the JSV must assume a currency of distributive justice other than welfare, for example, resources or capabilities.

The second point is that I will not take a stance here on whether just shares should be identified in terms of resources or capabilities or on the distributive principle that identifies each person's just share. There are a number of plausible non-welfarist views that one could take about the "currency" in which to measure each person's just share and the distributive "pattern" that ought to obtain between everyone's just shares. Each of these would be compatible with the JSV. For example, Rawls (1999) would say that the currency with which to measure each person's just share is a set of goods he calls "primary goods" and that these goods should be distributed in a pattern that would emerge if the basic structure of a society were regulated by his two principles of justice. A capabilitarian might say that just shares are comprised of those goods and capabilities that create opportunities for persons to become, be and do such things as are necessary for the free and equal pursuit of their own wellbeing. In other words, a just distribution would be one that does not restrict a person's ability or opportunity to exercise their freedom to achieve wellbeing, i.e., to achieve capabilities and functionings (Robeyns, 2017). Capabilitarians can maintain that only an equal distribution of

those goods is just, or, alternatively, that only a distribution in which in which everyone has a sufficient amount of those goods is just.[1]

As I have suggested, the compensation for disadvantage-as-harm required by the JSV is compensation which will restore any deficits in the victim's just share for which the wrongdoer is responsible. We can now observe how the compensation required by the JSV is sometimes the same as the compensation required by the CCC and sometimes not. Consider the following example.

> *Tree felling accident* A local government agency, is hand-felling a large tree in the street outside Larry's house. Through his own negligence, the government agent causes an accident whereby the tree falls on top of Larry's house and causes significant structural damage to the house.

---

[1]It might be asked whether my view commits us to a non-sufficientarian account of justice. I do not believe it does. We can define sufficientarianism as the view that people are owed no more than sufficiency in assistance for their bad luck. On this definition, sufficientarians can allow that people's just shares exceed the level of sufficiency, if, for example, and assuming that all persons started out with their just shares, those individuals with more wealth or resources than the sufficiency level have worked extra time to earn more money. A sufficientarian can therefore maintain that we owe victims of bad luck sufficiency (i.e., we owe them compensation up to the minimum threshold) whereas we owe victims of wrongful harm full compensation to restore to them their just shares. This is compatible with my Threshold Version of the Difference View.

To see where the JSV and CCC recommend the same compensation and where they depart from each other, we can consider three versions of this example. This will also help us to see what the JSV means when it says that the state must restore deficits in just shares for which the state is responsible. In the first version of the example, (a) Larry, whose house is damaged, has no more or less than his just share prior to the accident. In the second version, (b) Larry has significantly more than his just share, and in the third example, (c) Larry has significantly less than his just share prior to the accident.

Let's consider version (a) of the example. Before the government agency caused the structural damage to Larry's house, Larry had his just share. However, after the accident, Larry has no home (at least until extensive and costly repairs are carried out). Larry now has a deficit in his just share for which the government agency is responsible. Larry is also worse off than he counterfactually would have been had the government agency not caused the accident. Therefore, both the CCC and the JSV would recommend that Larry is owed compensation. Furthermore, they would recommend the same amount of compensation. In order to compensate Larry so as to make up the deficit in Larry's just share, the government agency must give Larry resources that ensure that he is no worse off than he would have been had the government agency not acted negligently when felling the tree outside of Larry's house. The government agency must pay to repair the damage he has caused, and, for example, provide temporary accommodation to Larry so that he has somewhere safe to stay while his house undergoes the necessary repairs. This compensation both restores Larry to his counterfactual outcome and restores the deficit in Larry's just share for which the government agency was responsible.

Now let's consider version (b) of the example. Larry starts off with significantly more than his just share. Furthermore, we assume that the government agency's negligent action, while wrongful, does not cause a deficit in Larry's just share. Rather, Larry continues to enjoy

more than his just share, even after his house is damaged. This is because Larry owns multiple houses, in excess of his just share. Additionally, Larry is so wealthy that he can afford to repair his excess house and still retain more than his just share of wealth. The JSV would not recommend that the government agency must cover the costs of repairing Larry's home, because it has not caused Larry a deficit in his just share for which the government agency is responsible.[2] This does not contradict my claim from Chapter 3 that full compensation is necessary to show full respect for others because in this example Larry has not been made worse off than he had a right to be; Larry will not suffer any persistent or compounding harm as a result of the government agency's actions because he has an excess of his just share. If wrongful harm is to be understood as the creation of deficits in one's just shares, then Larry has been caused no wrongful harm in this version of the example. However, the CCC would recommend that the government agency should provide full compensation to Larry, i.e., that the government agency should cover the costs of repairing Larry's damaged property. This is because the agency has caused Larry to become worse off than he otherwise would have been;

[2] It might be that, although the government agency does not owe any compensation to Larry, the agent who acted negligently does owe Larry an apology for failing to take appropriate care to avoid causing damage to Larry's property, and for the inconvenience this negligence has caused him; even though the agent has not caused Larry to be worse off than he had a right to be, an apology might nonetheless be owed in order to assure Larry that there is no disrespect intended from the government agency to himself, since Larry might otherwise have reason to doubt this.

the CCC would say that Larry is owed compensation, which would ensure that he is not left any worse off than he would have been if the agency had not caused the tree-felling accident.[3]

Finally, let's consider version (c) of the example. In this version, Larry has significantly less than his just share prior to the accident. We can imagine that Larry's house is smaller than the home to which everyone is entitled as a matter of justice. The JSV says that we must restore deficits in persons' just shares for which we are responsible. In this version of the example, Larry is suffering from deficits in his just share for which the government agency is directly responsible (the damage to Larry's unjustly small house), but he also suffers deficits in his just share for which the local government agency is not responsible (the fact that his house was unjustly small to begin with). The local government agency is only responsible for any deficits that arise as a result of his negligent actions and the accident this caused. So, according the JSV, the government agency need only compensate Larry for the deficit Larry is experiencing relative to Larry's possessing the unjustly small house, and not the further deficit relative to Larry's possessing a justly-sized house. In short, the local government agency need not provide compensation so as to restore all of the deficits in Larry's just share. Here again the CCC and

---

[3] I assume the resources in Larry's possession, which the government agency destroys, belonged to the community, given that they were in excess of Larry's just share. Strictly speaking, the government agency has thus destroyed some of the community's resources. Does this imply that the government agency should compensate the community when it destroys Larry's house? It depends: If those resources really would have gone over to the community at some stage, then yes (suppose Larry was just about to sell his house in order to give the money to the community). If not, then no.

the JSV would recommend the same compensation; the CCC would say that the local government agency must provide compensation to ensure that Larry is not left worse off as a result of the agency's actions than he would otherwise have been. Therefore, the CCC would also say that the government agency must provide compensation to repair the damage its tree-feller has caused to Larry's (unjustly small) house.

6.3 Why Shift from the CCC to the JSV?

In previous chapters of the dissertation, I have discussed harming in the counterfactual sense, where to "harm" someone means to make them worse off than they otherwise would have been. I have assumed a counterfactual comparative account of harm because it is a widely used and endorsed account. Nevertheless, I now suggest that we should instead think of harming as wrongfully causing others to suffer deficits in their just shares and that the kind of compensation we owe to victims of disadvantage-as-harm should therefore involve restoring deficits in their just shares. This is compatible with my arguments from respect in Chapter 3 because what motivated my intuitions when I discussed wrongful harm is not that the victims have been made worse off than they otherwise would have been, *per se*, but rather that persons in those cases have been caused to suffer a deficit in their just shares, for which the state is responsible. This view has intuitive support. Consider the case of persons who are unjustly rich, whom the state causes to become worse off than they otherwise would have been, but not so much that they are worse off than they have a right to be. It is not clear that the state owes a duty of compensation in this case; the arguments from respect would not necessarily justify a duty of compensation in such cases. I now propose that the reason for this is because the state has not caused a deficit in just shares, and so has not wrongfully harmed the individuals in question.

Furthermore, as I will show, there is good reason to move away from the CCC and to endorse the JSV as the correct conception of compensation. In the previous chapter I explained

that the arguments from respect that I developed in Chapter 3 do not lend conclusive support for the CCC. I will now explain in detail why this is so, and why the JSV, rather, is the full and proper way to state the implications of the arguments from respect. In order to show this, I will discuss what the two arguments from respect require according to both the CCC and the JSV in version (b) of the *Tree Felling Accident* example from the previous section of this chapter. This will enable me to demonstrate that the CCC is sometimes mistaken in the compensation that it recommends, while the JSV is fully supported by the arguments from respect.

The first argument from respect begins with the premise that that we must assure others of our respect for them when they have reason to doubt this. It then adds the further claim that it is not possible to give this assurance if we fail to provide full compensation for wrongful harm we have caused. Now consider version (b) of the *Tree Felling Accident* example. Recall that in this version of the example, Larry already had significantly more than his just share. The key question is whether, in order to assure Larry of their respect for him, the government agency must necessarily compensate Larry in the way that the CCC requires? Recall that the CCC understands "harm" as causing another person to become worse off than they otherwise would have been, and "full compensation" as that compensation which ensures that the victim is left no worse off than they would have been if they had never suffered the harm in question. The CCC would therefore say that when we have wrongfully caused somebody to be worse off than they otherwise would have been, we must provide compensation to restore them to their counterfactual outcome in order to assure them of our respect for them. However, in version (b) of the example, in which Larry has more than his just share, it is not clear that full compensation is required by the assurance-based argument from respect.

The reason the argument from respect requires full compensation for wrongful harm is that it is not possible for perpetrators to offer assurance of their respect, while withholding compensation that is owed and reasonably expected. However, in the case where Larry has

more than his just share, it is not clear that compensation is either owed or that it should be expected. It is not, therefore, clear that compensation is required in order for the government agency to assure Larry of his respect for him. Rather, the agency is able to declare their respect for Larry, and thereby assure him of this, without any requirement to compensate Larry for what he would have had if the government agency had not acted as they did. It might be that the agency is required to further assure Larry that they would have provided full compensation to Larry, if Larry had suffered a genuine deficit in his just share. However, it is not the case that the government agency is required to compensate Larry in order to be able to assure him of their respect for him.

The JSV defines harm as causing deficits in another's just shares; it therefore says that we must compensate people, not when we have made them worse off than they otherwise would have been, but only when compensation is required to make up any deficits in their just shares, for which we are responsible. In version (b) of the tree felling accident, Larry is worse off than he otherwise would have been, but he has not suffered any deficit in his just share for which the government agency is responsible, so the JSV would not say that the government agency owes Larry any compensation. This is compatible with the first argument from respect.

Consider now the second argument from respect, which begins with the premise that respect requires that we avoid causing wrongful harm to others. It further claims that – due to the persisting and compounding nature of many wrongful harms – when the state fails to provide someone it has wrongfully harmed with full compensation the state is, essentially, continuing to wrongfully harm that person, and, therefore, failing in the requirement from respect that they refrain from causing wrongful harm to others. To see why the CCC doesn't follow from this argument – or in other words, why the kind of compensation the CCC requires isn't justified by this argument – consider again version (b) of the *Tree Felling Accident* example, in which Larry initially had an excess amount of property relative to his just share.

The house that the local government agency negligently destroys was one of many houses that Larry owns and was in excess of Larry's just share. Now, what exactly does the premise that the government agency should not continue to wrongfully harm Larry require the agency to do? Specifically, does it require the government agency to compensate Larry in the way the CCC requires, namely, by restoring to Larry what Larry would have had, if the government agency had not destroyed his excess house? I don't think so. If the government agency does not restore to Larry that excess house, the agency does not continue to wrongfully harm Larry. This is so for two reasons. Firstly, there will be no persistent or compounding impact on Larry's just share as a result of the government agency's omitting to provide full compensation. Secondly, to wrongfully harm Larry, plausibly construed, involves depriving Larry of something Larry had a right to and, by definition, Larry did not have a right to the house that was destroyed, as it was in excess of his just share. This argument from respect provides support to the JSV. This is because the JSV does not recommend compensating Larry in this example, but it would recommend compensating Larry if the government agency had deprived Larry of something Larry had a right to.

Further examples can demonstrate why my arguments from respect only lend conclusive support to the JSV and not the CCC. Consider the following case. A woman enjoys owning expensive cars, but does not have the financial means to buy them herself, so she steals them from show rooms. Several of the expensive cars she has stollen are parked outside her property. A drunk driver crashes into the stollen cars and destroys them. In this case, the car thief is made worse off than she otherwise would have been, due to the wrongful actions of the drunk driver (as she no longer has possession of her expensive stollen cars). The CCC would therefore recommend that the drunk driver should compensate the car thief. However, it is not clear that the arguments from respect would require this. The JSV, by contrast, would not recommend that the drunk driver must compensate the car thief for the destruction of the cars she had

stollen, because the car thief never had a legitimate claim to the cars, and she suffers no deficit in her just shares. This reasoning is supported by what Christensen, Parr and Axelsen (2022) call the "Just Holdings Condition", which implies that it is only valuable to improve the fairness of a distribution if the distribuenda are justly held. This lends support to my claim that there is no respect-based requirement to restore resources to those who have lost them, if their possession of them was clearly never just in the first place.

The arguments from respect support the JSV, which says that we must restore deficits in people's just shares for which we are responsible. The JSV contrasts with the CCC, which states that we should only compensate people to ensure that they are not left worse off, relative to the counterfactual outcome that they would have occupied if we had not acted in the way that we did. As both the car thief example and version (b) of the tree felling example show, the CCC is sometimes over-inclusive in who it claims has been wrongfully harmed and, therefore, who is owed full compensation. This is not to say that the CCC is always mistaken. In fact, the CCC is correct in many contexts. The many contexts in which the CCC is correct in its recommendations explains why it seems intuitively very appealing as an account of compensation. However, when the CCC is right, this is only because it tells us that we ought to do just what the JSV says we should do. That is, we should restore victims to the counterfactual outcome that would have materialised but for our actions when this is a counterfactual outcome in which they would have happened to possess their just share. However, the CCC is not able to guide us on what we owe others in all cases of wrongful harm because, as I have just shown, it is sometimes over-inclusive. Furthermore, as I explained in the previous chapter, the CCC also faces a problem of under-inclusiveness; it cannot guide us in numerical non-identity cases.

6.4 The JSV as a Fully Inclusive Account of Compensation

As I discussed in the previous chapter, the counterfactual accounts of harm and compensation used by the CCC render it under-inclusive in the range of compensation it justifies. This is because it cannot identify those affected by the non-identity problem as victims of wrongful harm. The JSV, by contrast, is able to justify compensation for disadvantaged persons in non-identity cases. Let us consider this in more detail.

The reason that a person has no claim to compensation under the CCC in a standard non-identity case is that the CCC states that compensation is due only when a person is worse off than she would have been, had it not been for some harmful action. However, in the standard non-identity case, the subject is not worse off than she would have been in the counterfactual outcome, because in the counterfactual outcome, she would not have existed at all. The JSV can avoid this problem because it does not state that, for us to owe somebody compensation, we must have made them worse off than they would have been if we had not acted in the way that we did. The JSV states that we have a duty to compensate others when they experience a just share deficit for which we are responsible. It is possible for somebody to experience a deficit relative to their just share, even if they would not have existed in the counterfactual outcome that would have materialized had we not acted as we did. So, when the state is responsible for causing the deficit in somebody's just share, the state can owe them compensation to make up for that deficit, even if it has not made them worse off compared to a counterfactual baseline of what their life would have been like had the state not acted as it did.

To see this reasoning more clearly, let's consider two examples. I will first outline the two examples and summarise how these are problematic for the CCC before I then show how the JSV is able to overcome the non-identity problem in both cases. The first example involves Sophie's story. Sophie was deprived of her just share in a number of respects: she did not receive an adequate education; her parents were ill-equipped to provide her with the best start

in life; she grew up in conditions of poverty such that many of her basic needs went unmet; as an adult, Sophie lacks the resources and capacities to make and pursue her own plans in life. However, due to the very fragile nature of existence, if the institutional injustices that were present at the time of Sophie's conception had not existed in her society, then she most likely would not have been born. Therefore, it seems that Sophie has not been harmed by the institutional injustices that were present at the time of her conception, nor by her parents' resultant inability to provide her with a good start in life, since if these things had been different, she would not have existed at all, and presumably it is better for Sophie that she get to live her life – however disadvantaged – than that she not exist. In other words, we cannot say that Sophie is worse off than she would have been if the institutional injustices that caused her disadvantages had not existed in society because, but for those injustices, she would never have existed in the first place, and to exist is presumably better than to not exist.

The second example involves someone's experiencing a serious brain injury:

> *Brain injury*: B causes A to experience a brain injury, X, to the extent that A is transformed into a different person, C, post-brain injury. C is unrecognizable from A, the person that existed prior to the brain injury. We cannot say that C is worse off than she would have been if B had not caused the brain injury, X, because C would not have existed were it not for X.

In this case it seems like B has effectively killed A and, in-so-doing, brought a new person, C, into existence. We can say that this was wrong of B, but it does not follow from the CCC that B ought to compensate C; it would not make sense to say that C has been made worse off as a result of X, because she would never have existed if B had not caused the brain injury to A. Furthermore, it would not be possible for B to compensate A, because she no longer exists.

In summary, appealing to the CCC to determine whether compensation is owed, leads us to question why we should compensate in either of the above cases. After all, neither Sophie nor the brain-injured person are worse off than they otherwise would have been, because in the counterfactual outcome neither would have existed. This is part of the under-inclusiveness problem that the CCC faces; it cannot include as harmed all of those who we intuitively think should be included. The CCC therefore counterintuitively concludes that no compensation is owed in such cases, since it does not recognise any harm.

By contrast, the JSV provides us with good responses to both examples. Everybody ought to have their just share; when others experience deficits in their just share, for which we are responsible, we have a duty to compensate for the deficit; both Sophie and the brain injury victim have been caused a deficit relative to their just shares and, therefore, both are owed compensation. If B caused the brain injury, he has caused the person existing after the brain injury to be living with a just share deficit, so it seems plausible that B owes C compensation to make up for that deficit. Likewise, even though Sophie may not have existed in a counterfactual reality in which her society was perfectly just, and in that sense is not worse off in her actual outcome compared to that counterfactual baseline, it is still clear that Sophie has been caused to suffer various deficits in her just shares, for which her state is responsible. It is therefore coherent to say, on the JSV, that Sophie has been harmed and is owed full compensation, i.e., she is owed the restoration of her just shares.

It is worth noting that while the JSV is distinct from the CCC, the JSV does rely on its own form of counterfactual reasoning. The JSV says that we owe compensation if we create a just share deficit compared to the distribution of shares that would have existed had we not acted as we did. Therefore, the JSV still appeals to a counterfactual consideration. Nevertheless, the JSV is importantly different from the CCC. Instead of asking, as the CCC does, if we have made somebody worse off *than they would have been* if we had not acted in a

certain way, the JSV asks us if we have created a deficit in a person's just share, which would not have existed had we not acted as we did. The important counterfactual consideration for the JSV is whether we have created a deficit in somebody's share relative to her just share. This difference between the CCC and JSV is the reason why, despite both theories appealing to counterfactual comparisons, the JSV can avoid the non-identity problem whereas the CCC cannot.

6.5 Objections

a) Eroding the distinction between wrongful harm and bad luck. It might be asked whether it is a problem for my Threshold Version of the Difference View that victims of bad luck may also suffer a deficit in their just share. I argued in Chapter 3 that it makes a difference to what states owe the disadvantaged whether they have suffered from state-caused wrongful harm or from bad luck; specifically, I argued that the state owes full compensation to those whom the state has wrongfully harmed, whereas the state may not owe as much to those who have suffered from bad luck. However, persons can suffer a deficit in their just share as a result of bad luck, so it might be thought that the JSV implies that states also ought to fully restore these deficits. It might be argued that if the state fails to provide full compensation for disadvantages that result from bad brute luck, then the state is in that sense causally responsible for resultant deficits in just shares. If this was so, it would erode the difference between what the state owes to victims of state-caused wrongful harm compared to what it owes to victims of bad luck.

I must therefore clarify the JSV's definition of state-caused wrongful harm as follows. State-caused wrongful harm occurs in cases where the state is responsible, *as a result of a violation of duty*, for the deficit in a person's just share. Wrongful harm does not occur merely insofar as the state fails to benefit others in ways that eliminate deficits caused by bad luck; it

is only when the state causes a just-share-deficit through failing to fulfil its duties that the state wrongfully harms those affected. In cases where the state does not provide full compensation for bad luck, there is no disrespect entailed, even if there is a resultant deficit in just shares, because the state was not responsible for causing the deficit *via a violation of duty*. The arguments from respect therefore require that those who suffer a deficit in just shares, which the state causes through a violation of duty, be fully compensated, whereas full compensation may not be required for those who suffer a just share deficit that is caused by bad brute luck alone.

b) Is establishing just institutions enough? One might wonder if the objection raised in the introduction (p.15) might reappear, given that I have now identified the demands of "full compensation" as restoring persons' just shares. In other words, it might be asked: if I have concluded here, that the "full compensation" that victims of disadvantage-as-harm are owed, requires giving them what they are entitled to as a matter of ideal justice, has my thesis told us anything other than that we ought to implement just institutions in society? If our background theory of justice were, for example, equality of capabilities, would giving people full compensation mean anything different than "establishing just capabilitarian institutions"? To this objection, I return a similar response to that which I gave when the objection was raised in the introduction: Once we recognise that many of the disadvantaged are victims of state-caused wrongful harm, which has deprived people of the opportunity and resources necessary for their development of equal capabilities, then capability theorists should not only establish capabilitarian institutions going forward, but they also need to compensate people for deficits in their capabilities that may at first seem to be mere bad luck, but are in fact the result of wrongful harm. This isn't the same as merely creating capabilitarian institutions afresh. It has been my aim to show that a person's just share, when they have been deprived of capabilities through institutional wrongdoing, is not necessarily the same as the just share of a person who

lacks similar capabilities as a matter of bad luck. Thus the compensation that is owed to a person who lacks capabilities due to bad luck may be different to that which is owed when a person's capability deficit is due to wrongful harm by the state. Similarly, if a sufficientarian state were to implement just sufficientarian institutions, this would not be sufficient to restore victims' just shares. The reason for this is that a sufficientarian can maintain that we owe victims of bad luck sufficiency, whereas we owe victims of wrongful harm full compensation to restore to them the just shares they would have enjoyed had they not been the victims of wrongful harm. Therefore, as victims of wrongful harm, their just share may exceed what is required by sufficiency, and implementing just institutions from now on would not be sufficient to ensure that everyone has their just share.

c) A matter of practicality. A possible objection might be raised against the JSV regarding the feasibility of implementing the theory in practice. Consider the case of a judge in a courtroom who must decide whether compensation is owed in virtue of some criminal or tortious harm that a person has inflicted on another person. The judge only asks whether the perpetrator has made the victim worse off than he otherwise would have been. The judge cannot use the JSV in the court room because she does not have all of the necessary information to be able to determine whether individuals have experienced or caused a deficit in the just shares of their victims. Determining whether a perpetrator has created a deficit in a victim's just share would require the judge to initiate a substantial investigation into the victim's background circumstances. This would be a very lengthy and complicated process; it may be difficult to say whether the victim had more than her just share to begin with and whether, as a result of some act or another, somebody has suffered a deficit in her just share. It is therefore much more practical for the judge in the courtroom to consider, not whether the victim has suffered a just share deficit, but only whether the perpetrator has made the victim worse off than he would have been if he had not acted as he did.

An implication of the practicality objection is that implementing the JSV through the legal system could lead to a lack of meaningful law and order in society. If the courts did use the JSV to determine when compensation is owed, we might worry about what it would mean for society. For example, if the victim happens to be a wrongfully rich person, then the judge could not demand that the perpetrator compensate the victim for taking anything from him, because she might determine that the perpetrator, in taking from the victim, did not cause the victim to experience a deficit relative to the victim's just share. The implication of the court making this ruling would be that it is permissible for members of society to steal from anybody who is unjustly rich (or at least, that they do not have to compensate those persons if they are caught). However, if everybody felt free to go about stealing from anybody who they thought was unjustly rich, this would create a society in which nobody could feel safe or secure; there may always be somebody worse off than us, who does not think that stealing from those who are better off than them would represent a deficit in just shares.

One way to respond to this objection is to agree that courts and private individuals should not be the ones to implement the JSV, because it would be highly impractical for them to do so. However, this does not mean that the JSV should not be implemented at all. Rather, the state should implement the JSV through its other basic institutions. It might be that the court system ought to use the standard counterfactual view of compensation, in order to avoid concerns about practicality, but this is not a reason to think that the JSV is mistaken; conceding that the JSV should not be implemented through the courts or by private individuals need not mean that the view is incorrect. It could instead imply that it is rather the whole collection of institutions in society that should ensure that the JSV is implemented. In other words, we should say that if the institutional arrangements in a society, as a whole, cause some persons to suffer deficits in their just share, then the resultant disadvantage is disadvantage-as-harm and the state owes full compensation to rectify this. Therefore, even though the JSV should not be

implemented through courts or by private individuals, it can still be used to support the arguments and conclusions of the previous chapters of the dissertation and can be used to assess whether a society is fulfilling its obligations to members who have suffered from disadvantage-as-harm.

6.5 Concluding remarks

My aim in this dissertation was to investigate what societies owe to their disadvantaged members. I have engaged with existing literature in normative political theory and found that there has been an insufficient response to this question. One reason for this is that, as I argued in Chapter 2, much of the disadvantage that obtains in society is the result of state-caused wrongful harm. Much of the existing social justice literature is heavily focused on ideal theory, that is, it generally assumes broad compliance with duties, and so is not intended to tell us what is owed to persons who suffer wrongful harm or who are disadvantaged as a result of violations of duty by the state. There is thus a strong emphasis in the existing literature on the difference it makes to what we owe the disadvantaged whether they are personally responsible for their circumstances or have suffered from bad luck.

In this dissertation I have focused on a different distinction; I asked in Chapter 3 what difference it makes to what we owe the disadvantaged if their circumstances are due, not to bad luck or personal responsibility, but to wrongful harm by the state. I concluded that the difference it makes is that victims of state-caused wrongful harm are owed *full compensation* whereas this may not be owed to persons whose disadvantage is not caused by state wrongdoing. In Chapter 4 I argued that it is justifiable to distribute the costs of providing full compensation for state-caused wrongful harm collectively to all the members of society. In Chapter 5 I asked what it means to say that a victim of wrongful harm is owed full compensation. I argued that there are significant problems with the CCC's answer to this question; specifically, the CCC faces a problem of being under-inclusive as it cannot include

as harmed those disadvantaged persons who are affected by the non-identity problem. As I have shown in this chapter, the CCC also faces a problem of being over-inclusive in some cases, as it recommends full compensation wherever people are made worse off than they otherwise would have been, even when the 'harmed' person has more than their just shares. I have proposed that an alternative account of compensation, namely, the JSV is appropriately inclusive in all cases – it is able to include for compensation those who are not included for compensation by the CCC but ought to be, while excluding those that the CCC might mistakenly include. I have also shown that the JSV is justified by the arguments from respect for the Threshold Version of the Difference View.

I am therefore able to conclude the following. Where states cause deficits in just shares as a result of violations of duty, either positive or negative, we should recognise any resultant disadvantages as disadvantage-as-harm. When states cause disadvantage-as-harm, the victims are owed full compensation to rectify this. The costs of providing full compensation can and should be shared among all of the members of society, i.e., the citizens and residents of the relevant state. Finally, full compensation for disadvantage-as-harm should take the form of fully restoring deficits in just shares, for which the state is responsible.

References

Abizadeh, A., (2004), 'Historical truth, national myths and liberal democracy: on the coherence of liberal nationalism', *Journal of Political Philosophy,* 12, pp.291–313

Advani, A. and Summers, A. (2020) 'How much tax do the rich really pay? New Evidence from tax microdata in the UK', CAGE Policy Briefing no. 27 published by CAGE Warwick and LSE International Inequalities Institute

Alston, P., (2018), Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, London: 16 November 2018.

Anderson, E. S., (1999) 'What Is the Point of Equality?' *Ethics 109*(2), pp.287–337.

Archard, D., (2004)., 'Wrongful life. *Philosophy', 79*(3), pp.403-420

Arneson, R. J., (1989), 'Equality and Equal Opportunity for Welfare', Philosophical Studies 56: 77–93: 1989.

Arneson, R. J., (2004), 'Luck Egalitarianism Interpreted and Defended', *Philosophical Topics,* SPRING & FALL 2004, Vol. 32, No. 1/2, Agency (SPRING & FALL 2004), pp. 1-20

Arneson, R. J., (2004), 'Moral Limits on the Demands of Beneficence?' In The Ethics of Assistance, Deen K. Chatterjee (ed.), (2004), Cambridge: Cambridge University Press.

Arneson R. J., (2011) 'Luck Egalitarianism – A Primer', In: Knight C and Stemplowska Z (Eds.) (2011) *Responsibility and Distributive Justice*. Oxford University Press: 2011.

Arneson, R. J, (2018), "Dworkin and Luck Egalitarianism: A Comparison", in Olsaretti, S., *The Oxford Handbook of Distributive Justice,* Oxford: Oxford University Press.

Axelsen, D. V., (2013), 'The State Made Me Do It: How Anti-cosmopolitanism is Created by the State'. *Journal of political philosophy*, *21*(4), pp.451-472

Axelsen, D. V., and Nielsen, L., (2015)., 'Sufficiency as freedom from duress'. *Journal of Political Philosophy, 23*(4), pp.406-426

Axelsen, D, V., and Nielson, L., (2020), 'Harsh and Disrespectful', *Social Theory and Practice,* Issue 46, Volume 4, pp.657-679

Barry, C., and Øverland, G., (2012), 'The Feasible Alternatives Thesis: Kicking away the livelihoods of the global poor.' Politics, Philosophy & Economics. 2012;11(1): 97-119.

Beerbohm, E., (2012), In Our Name: The Ethics of Democracy. PRINCETON; OXFORD: Princeton University Press.

Beitz, C., (1999), *Political Theory and International Relations*, Princeton, NJ: Princeton University Press 2nd edition

Benatar, D., (1997), 'Why It Is Better Never to Come into Existence.' American Philosophical Quarterly, 1997, 34:345–55

Blake, M. (2013). *Justice & Foreign Policy.* Oxford: Oxford University Press.

Bradley, B., (2012), 'Doing Away with Harm', *Philosophy and Phenomenological Research* Vol. LXXXV No. 2 September 2012.

Brinkman R.L., & Brinkman J.E., (2005) 'Cultural lag: a relevant framework for social justice', *International Journal of Social Economics* 32(3), 228–248.

Bou-Habib, P., (2013) 'Parental Subsidies: The Argument from Insurance', *Politics, Philosophy and Economics* Vol 12. pp.197-216

Boxill, B., (2003), 'A Lockean Argument for Black Reparations.' Journal of Ethics, 2003, 7:63–91.

Bradley, B., (2012), 'Doing Away with Harm', Philosophy and Phenomenological Research, Vol. LXXXV No. 2, September 2012.

Brennan, J., (2009), 'Polluting The Polls: When Citizens Should Not Vote', Australasian Journal of Philosophy, 87:4,535-549; Nathan Hanna, (2009), 'An Argument for Voting Abstention.' Public Affairs Quarterly, vol. 23, no. 4, 2009, pp. 275–286.

Broadie S and Rowe C (2002) *Aristotle Nicomachean Ethics Translation, Introduction, and Commentary*. Oxford University Press: Oxford, 2002.

Bulman, M., 'More than 17,000 sick and disabled people have died while waiting for welfare benefits, figures show', The Independent, Monday 14 January 2019.

Butt, D., (2007), 'On benefiting from injustice', *Canadian journal of philosophy*, *37*(1), pp.129-152.

Casal, P., (2007), 'Why sufficiency is not enough'. *Ethics*, *117*(2), pp.296-326

Cater, S., and Coleman, L., (2006), 'Planned' Teenage Pregnancy: Perspectives of Young Parents from Disadvantaged Backgrounds, Published for the Joseph Rowntree Foundation by The Policy Press, © Trust for the Study of Adolescence 2006

Christensen, J., Parr, T., & Axelsen, D. V., (2022), 'Justice for Millionaires?'. *Economics & Philosophy*, *38*(3), pp.333-353

Christiano, T., and Braynen, W., (2008), 'Inequality, injustice and levelling down', Ratio 21 (4): 392–420. p.402.

Clayton, M., and Stevens, D., (2004) 'School Choice and the Burdens of Justice,' *Theory and Research in Education*.

Cohen, G. A. (1989) 'On the Currency of Egalitarian Justice.' Ethics 99, 1989: 906–944

Cohen, G. A., (2001), *If You're an Egalitarian, How Come You're So Rich?* Harvard University Press, 2001, p.171.

Cohen, G. A., (2008)., *Rescuing Justice and Equality*, Harvard University Press.

Cohen, A., (2016), 'Corrective vs. Distributive Justice: the Case of Apologies', Ethical Theory and Moral Practice, June 2016, Volume 19, Number 3: 663-677.

Crisp, R., (2003)., 'Equality, priority, and compassion'. *Ethics*, *113*(4), pp.745-763

Cullity, G., (2004), *The Moral Demands of Affluence*, Oxford University Press: Oxford, 2004.

Department for Education, (2015) 'GCSE and equivalent attainment by pupil characteristics, 2013 to 2014 (revised)', issued 29 January 2015.

Department for Work and Pensions (2013), National introduction of benefit cap begins, DWP Press Release, Published 15 July 2013, Available online: https://www.gov.uk/government/news/national-introduction-of-benefit-cap-begins

Department for Work and Pensions (2020), 'Personal Independence Payment: Official Statistics', Updated 28 July 2020, ISBN: 978-1-78659-239-2.

Douglas, T., (2010) 'Should Institutions Prioritise Rectification Over Aid?', The Philosophical Quarterly, October 2010, Volume 60, Number 241: 698-719.

Dworkin, R., (1981), What is equality? Part 1: Equality of welfare. *Philosophy & public affairs*, pp.185-246

Dworkin, R., (1981), What is equality? Part 2: Equality of resources. *Philosophy & public affairs*, pp.283-345

Dworkin, R., (2000). Sovereign Virtue. Cambridge: Harvard University Press: 2000.

Dworkin, R., (2011), Justice for Hedgehogs, Harvard University Press: 2011.

Feinberg, J., (1984), The Moral Limits of Criminal Law Volume 1: Harm to Others, Oxford University Press, 1984. p.169.

Fishkin, J., (2014), Bottlenecks: A New Theory of Equal Opportunity, Oxford University Press: 2014

FitzRoy F. R., and Nolan, M. A., (2020), 'Education, income and happiness: panel evidence for the UK', Empirical Economics, 2020, 58: 2573–2592

Francis-Devine, B., (2021), 'Poverty in the UK: Statistics', House of Commons Library: Briefing Paper Number 7096, 31 March 2021.

Frankfurt, H., (1987), 'Equality as a Moral Ideal', *Ethics*. Volume 98, No. 1 (Oct 1987), pp. 21-43, The University of Chicago Press.

Frankfurt, H., (1997), 'Equality and Respect', *Social Research.* Volume 64. No. 1 The Decent Society (Spring 1997) pp. 3-15. The John Hopkins University Press.

Gaus, G. F., (1991) 'Does Compensation Restore Equality?': Nomos, Vol. 33, COMPENSATORY JUSTICE (1991), Published by American Society for Political and Legal Philosophy, pp. 45-81

Goodin, R. E., (1989), 'Theories of Compensation', Oxford Journal of Legal Studies, Vol. 9, No. 1 (Spring, 1989), pp. 56-75. Oxford University Press.

Goodin, R. E., (1988) 'What Is So Special about Our Fellow Countrymen?' Ethics, vol. 98, no. 4, 1988, pp. 663–686.

Goodin, R. E., and Saward, M., (2005), 'Dog whistles and democratic mandates', *The Political Quarterly*, *76*(4), pp.471-476

Goodman J., and Carmichael, D., (2020), 'Coronavirus: Bill Gates 'microchip' conspiracy theory and other vaccine claims fact-checked' *BBC Reality Check,* 29 May 2020, Available online: https://www.bbc.co.uk/news/52847648

Hart, H. L. A., and Honoré, T.,. (1959). Causation in the Law. Oxford, UK: Clarendon Press.

Hooker, B., (2002), Ideal Code, Real World: A Rule-consequentialist Theory of Morality, Clarendon Press: 2002.

Hunt, E., (2019), Fair access to schools? The impact of the appeals and waiting list system, Education Policy Institute, April 2019.

Hurley, S., (2003), Justice, Luck, and Knowledge. Cambridge, MA: Harvard University Press: 2003.

Huseby, R., (2010), 'Sufficiency: Restated and defended', *Journal of Political Philosophy*, *18*(2), pp.178-197

Kant, I., (1998), 'Religion within the Boundaries of Mere Reason' in Kant: Religion within the Boundaries of Mere Reason: And Other Writings'; Cambridge Texts in the History of Philosophy; Cambridge University Press: Cambridge: pp31-192.

Kavka, G., (1982), 'The Paradox of Future Individuals,' Philosophy & Public Affairs, 1982, 11: 93–112. p.93.

Klosko, G., (1994), 'Political Obligation and the Natural Duties of Justice,' *Philosophy and Public Affairs* 23: 3, pp.251-270.

Knight, C., (2021a). An Argument for All-Luck Egalitarianism. *Philosophy & Public Affairs*, *49*(4), pp.350-378.

Knight, C., (2021b), 'Enough is too much: The excessiveness objection to sufficientarianism', *Economics and Philosophy*, pp.1-25.

Knight, C., and Stemplowska, Z., (Eds.), (2011), *Responsibility and Distributive Justice*, Oxford University Press: 2011

Kymlicka, W., (1990), *Contemporary Political Philosophy*, Clarendon Press: 1990.

Haydar, B., and Øverland, G., (2014), 'The Normative Implications of Benefiting from Injustice'. Journal of Applied Philosophy, Vol. 31, No. 4, 2014

Lawford-Smith, H., (2013), 'Understanding Political Feasibility'. *Journal of Political Philosophy*, *21*(3), pp.243-259.

Lai ETC, Wickham S, Law C, *et al* (2019), 'Poverty dynamics and health in late childhood in the UK: evidence from the Millennium Cohort Study', *Archives of Disease in Childhood*, 2019.

Lichtenberg, J., (2010), 'Negative Duties, Positive Duties, and the 'New Harms'', Ethics, vol. 120, no. 3, 2010, pp. 557–578.

Loriaux, S., (2007), 'World poverty and the concept of causal responsibility.' South African Journal of Philosophy 2007;26: 252–70.

Lupton, R., (2004), 'Schools in Disadvantaged Areas: Recognising Context and Raising Quality', Centre for Analysis of Social Exclusion, London School of Economics, CASE Paper 76: January 2004. Available online: https://core.ac.uk/download/pdf/7119297.pdf

Lawford-Smith, H., (2019) Not in Their Name: Are Citizens Culpable for Their States' Actions?. Oxford University Press: 2019

Lippert-Rasmussen, K., (2001), Egalitarianism, option luck, and responsibility. *Ethics*, *111*(3), pp.548-579

Lippert-Rasmussen, K., (2009), 'Responsible nations: Miller on national responsibility', *Ethics & Global Politics*, *2*(2), 109-130

LippertRasmussen, K., (2015), Luck Egalitarianism. London: Bloomsbury: 2015.

McCulloch, A., (2001), 'Teenage childbearing in Great Britain and the spatial concentration of poverty households', Journal of Epidemiology & Community Health, 2001, 55:16-23.

McMahan, J., (2009), *Killing in war*, Oxford University Press.

Miller, D. (2007). *National Responsibility and Global Justice.* Oxford: Oxford University Press.

Mitchell, F., (2019), 'Families still affected by the UK's contaminated blood scandal', *The Lancet HIV*, Volume 6, Issue 1, January 2019.

Murphy, L. B., (1993), 'The Demands of Beneficence.' Philosophy & Public Affairs, vol. 22, no. 4, 1993, pp. 267–292.

Nagel, T. (1995). *Equality and partiality*. Oxford University Press.

Nagel, T., (1997) 'Justice and Nature', *Oxford Journal of Legal Studies*, 1997; Volume 17 Issue 2, 303–21. 315.

Nielsen, L., and Axelsen, D. V., (2017), 'Capabilitarian sufficiency: Capabilities and social justice', *Journal of Human Development and Capabilities*, *18*(1), pp.46-59

Nozick, R., (1974), Anarchy, State and Utopia. New York: Basic Books. 1974.

Nussbaum, M., (2000), *Women and Human Development: The Capabilities Approach,* Cambridge: Cambridge University Press: 2000.

Nussbaum, M., (2003) 'Capabilities as Fundamental Entitlements: Sen and Social Justice', *Feminist Economics,* 9:2-3, pp.33-59

Nussbaum, M., (2011), *Creating Capabilities – The Human Development Approach*, Harvard University Press: 2011.

O'Brien, C., (2018), 'Done Because We Are Too Menny', The International Journal of Children's Rights, Volume 26, Number 4, 2018:700-739

Osmani, S. R., (2005), 'Poverty and Human Rights: Building on the Capability Approach', *Journal of Human Development,* Volume 6, Issue 2, pp.205-219

Parr, T., (2016), 'The Moral Taintedness of Benefiting from Injustice.', Ethical Theory and Moral Practice 19, no. 4, 2016, pp.985-97.

Parrish, J., (2009), 'Collective responsibility and the state, International Theory, 1, 2009: 119–54.

Parfit, D., (1986), Reasons and Persons, Oxford: Clarendon Press.

Parfit, D., (2011), *On what matters* (Vol. 1), Oxford University Press.

Parfit, D., (2017), 'Future People, the Non-Identity Problem, and Person-Affecting Principles,' *Philosophy and Public Affairs*, 45(2), pp.118–157. 2017.

Pasternak, A., (2021), *Responsible Citizens, Irresponsible States: Should Citizens Pay for Their States' Wrongdoings?* Oxford University Press: 2021.

Patten, A., (2005), 'Should we stop thinking about poverty in terms of helping the poor?' Ethics and International Affairs, 2005;19: 19–27.

Paquette, C, E., Syvertsen, J, L., and Pollini, R, A., (2018), 'Stigma at every turn: Health services experiences among people who inject drugs', *International Journal of Drug Policy,* Volume 57, 2018, pp. 104-110,

Pogge, T., (1995), 'Three Problems with Contractarian-Consequentialist Ways of Assessing Social Institutions', Social Philosophy and Policy, 1995; 12: 241–266.

Pogge, T., (2002), 'Responsibilities for Poverty-Related Ill Health', Ethics & International Affairs, 2002; 16: 71-79.

Pogge, T., (2004), in Anand, S., Peter, F., Sen, A., (Eds), 'Relational Conceptions of Justice: Responsibilities for Health Outcomes', *Public Health, Ethics, and Equity*. New York: Oxford University Press; 2004: 135-161.

Pogge, T., (2005), 'Reply to the Critics: Severe Poverty as a Violation of Negative Duties'. Ethics & International Affairs, 2005;19(1), 55-83.

Pogge, T., (2007), 'Severe Poverty as a Human Rights Violation', in *Freedom from Poverty As a Human Right: Who Owes What to the Very Poor?'* New York: Oxford University Press: 2007.

Pogge, T. (2008). *World Poverty and Human Rights* (2nd ed.), Polity: 2008.

Pogge, T., (2010), 'Responses to the Critics', in Jaggar, A., (Ed.) (2010), *Thomas Pogge and his critics*. Polity: 2010.

Purshouse, C. (2016), A Defence of the Counterfactual Account of Harm. Bioethics, 30: 251-259.

Radzick, L., (2001), 'Collective Responsibility and Duties to Respond', Social Theory and Practice , July 2001, Volume 27, Number. 3: 455-471.

Rawls, J., (1971), A Theory of Justice, Cambridge: Harvard University Press: 1971.

Rawls, J., (1988), 'The Priority of Right and Ideas of the Good', Philosophy & Public Affairs, Vol. 17, No. 4, Autumn, 1988: 251-276.
Rawls, J., (1993), *Political liberalism*, New York: Columbia University Press.
Reader, S., (2006), 'Does a Basic Needs Approach Need Capabilities?' Journal of Political Philosophy, Volume 14, Number 3, 2006: 337-350.

Reader, S., (2007), Needs and Moral Necessity, Routledge: 2007.

Ridge, T., (2011), 'The Everyday Costs of Poverty in Childhood: A Review of Qualitative Research Exploring the Lives and Experiences of Low-Income Children in the UK', Children & Society, Volume 25. Issue 1. January 2011: 74-84

Risse, M., (2005), 'How Does the Global Order Harm the Poor?', *Philosophy & Public Affairs*, Volume 33, Issue 4, September 2005, pp.349-376.

Roberts, R. C., (2006), 'The Counterfactual Conception of Compensation', Metaphilosophy, Vol. 37. No 3/4. Special issue: Genocide's Aftermath: Responsibility and Repair (July 2006) pp.414-429 (p.415).

Roberts, R. C., (2011) Rectificatory Justice. In: Chatterjee DK (eds) *Encyclopedia of Global Justice*. Springer, Dordrecht.

Robeyns, I., (2017), *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined*. Cambridge, UK: Open Book Publishers, 2017

Satz, D., (2005), 'What do we owe the global poor?' Ethics and International Affairs 2005;19: 47–5

Scanlon, T. M., (1998), *What We Owe to Each Other*, Cambridge, MA: Harvard University Press: 1998.

Scheffler, S., (2003), 'What is egalitrianism?', *Philosophy & public affairs*, *31*(1), pp.5-39

Scheffler, S., (2005), 'Choice, circumstance, and the value of equality', *Politics, Philosophy & Economics*, *4*(1), pp.5-28

Schurer, S., Trajkovski, K., and Hariharan, T., (2019), 'Understanding the mechanisms through which adverse childhood experiences affect lifetime economic outcomes', *Labour Economics.* Volume 61: 2019.

Sen, A., (1980)., Equality of What?. *The Tanner Lecture on Human Values*, *1*, pp.197-220

Sen, A., (1983), 'Poor, relatively speaking', Oxford Economic Papers, New Series, Volume. 35, Number 2 (Jul., 1983): 153-169.

Sen, A., (1983), 'Capability and wellbeing', in Martha Nussbaum and Amartya Sen (eds), The Quality of Life, Oxford: Clarendon, 1983: 30–53.

Sen, A., (1984), *Resources, Values and Development*, Blackwell: 1984.

Sen, A., (1985), 'Wellbeing, agency and Freedom', *Journal of Philosophy,* Issue 82, Volume 4, pp.169-221.

Sen, A., (2009), *The Idea of Justice*, Cambridge: The Belknap Press of Harvard University Press.

Shelby, T., (2016), *Dark Ghettos: Injustice, Dissent and Reform*, Harvard University Press.

Sher, G., *Approximate Justice: Studies in Non-Ideal Theory*, Lanham: Rowman and Littlefield, cited in Rodney C. Roberts, 'The Counterfactual Conception of Compensation', *Metaphilosophy,* Vol. 37. No 3/4. Special issue: Genocide's Aftermath: Responsibility and Repair (July 2006) pp.414-429
(p.415).

Shields, L. (2016). Just enough: Sufficiency as a demand of justice. Edinburgh University Press: 2016.

Shields, L., (2020), 'Sufficientarianism', Philosophy Compass, Volume 15, Issue 11, November 2020.

Shue, H. (2020), *Basic rights: Subsistence, affluence, and US foreign policy*, Princeton University press: 2020.

Simmons, A. J., (1995), 'Historical Rights and Fair Shares', Law and Philosophy, Vol. 14, No. 2, Special Issue on Rights (May, 1995), pp. 149-184,

Simmons, A. J., (1979), *Moral Principles and Political Obligation*, Princeton University Press.

Singer, P., (1972), 'Famine, Affluence, and Morality,' Philosophy & Public Affairs 1 (1972): 229–43.

Sønderholm, J., (2013), 'World poverty, positive duties, and the overdemandingness objection', *Politics, Philosophy & Economics*, Volume 12, Issue 3, pp.308-327.

Spielman, A., (2018), Letter to Meg Hillier MP, 30 October 2018. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752721/HMCI_PAC_letter_311018.pdf

Spielman, A., (2018), *Letter to Meg Hillier MP*, 30 October 2018. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752721/HMCI_PAC_letter_311018.pdf

Steiner, H., (1997), 'Choice and circumstance', Ratio Volume 10, Issue 3: 296–312.

Stilz, A., (2011), 'Collective Responsibility and the State', The Journal of Political Philosophy: Volume 19, Number 2, 2011, pp. 190–208.

Stemplowska, Z., (2009), 'Making Justice Sensitive to Responsibility', *Political Studies*. Volume 57, Issue 2, pp.237-259.

Stroud, S., (2013), 'They Can't Take That Away from Me: Restricting the Reach of Morality's Demands', In: *Oxford Studies in Normative Ethics*, vol. 3, edited by Mark Timmons, pp.203–234. Oxford University Press: Oxford.

Swift, A. (2003), *How not to be a hypocrite: School choice for the morally perplexed parent*. London: Routledge.

Tan, K. C. (2004). *Justice Without Borders.* Cambridge: Cambridge University Press.

Tan, K.C., (2012), *Justice, Institutions, and Luck: The Site, Ground and Scope of Equality*, Oxford: Oxford University Press.

Temkin, L., (1993), *Inequality*, New York: Oxford University Press.

Thomson, J. J., (1991), 'Self-Defense', *Philosophy & Public Affairs*, 20(4): 283–310.

Timmer, D., (2021), 'Limitarianism: Pattern, principle, or presumption?'. *Journal of Applied Philosophy*, *38*(5), pp.760-773

Trussell Trust, cited by Human Rights Watch, (2019), Nothing Left in the Cupboards: Austerity, Welfare Cuts and the Right to Food in the UK, Copyright © 2019 Human Rights Watch, Printed in the United States of America: May 2019, ISBN: 978-1-6231-37342

Varden, H., (2011), 'Duties, Positive and Negative'. In: Chatterjee, D.K. (eds) *Encyclopedia of Global Justice*. Springer, Dordrecht.)

Verma, R., 'Windrush: we need a review into the Home Office's institutional racism', Runnymede Trust Press Release, 19 March 2020, published online: https://www.runnymedetrust.org/blog/windrush-15-race-equality-and-migrant-organisations-call-for-review-into-institutional-racism-in-the-home-office%20Accessed%20on%2019.12.2020

Voorhoeve, A., (2014), 'How should we aggregate competing claims?', *Ethics*, *125*(1), pp.64-87

Weinstock, D., (2009), 'Motivating the global demos'. *Metaphilosophy*, *40*(1), pp.92-108

Wellman, C. H., and Simmons, A. J., (2005), *Is There a Duty to Obey the Law?* Cambridge University Press.
Wenar, L., (2010), 'Realistic Reform of International Trade in Resources', In Jaggar, A., (ed.) *Thomas Pogge and His Critics*. Cambridge: Polity Press, pp. 123–150.

Wilkinson, R., & Pickett, K., (2010), *The spirit level: Why equality is better for everyone*. Penguin UK.

Williams, A., (2002), 'Dworkin on Capability', Ethics, Vol. 113, No. 1, Symposium on Ronald Dworkin's Sovereign Virtue (October 2002), pp. 23-39 (Page 34).

Williams, W., (2020), *Windrush Lessons Learned Review*, House of Commons, March 2020: Available at: https://www.gov.uk/government/publications/windrush-lessons-learned-review

Winters, J. A., (2011), *Oligarchy*. Cambridge University Press

Wolff, J., (1998), 'Fairness, respect, and the egalitarian ethos', *Philosophy & public affairs*, *27*(2), pp.97-122

Wolff, J., and de-Shalit, A., (2007), *Disadvantage.* Oxford University Press: Oxford.

Wolff, J., (2015), 'Social Equality and Social Inequality', In *Social Equality*, eds. Carina Fourie, Fabian Shuppert, and Ivo Wallimann-Helmer. Oxford: Oxford University Press, pp.209-225

Woodman, C., (2018), *Spycops in context: a brief history of political policing in Britain',* Centre for Crime and Justice Studies: December 2018. Available at: https://www.crimeandjustice.org.uk/resources/spycops-context-beneath-undercover-policing-scandal

Young, I., (2006), Responsibility and Global Justice: A social connection model. *Social Philosophy and Policy. 23*(1), pp.102-130.

Ypi, L., (2012), *Global Justice & Avant-Garde Political Agency*. Oxford: Oxford University Press.

Zakaras, A., (2018) 'Complicity and Coercion: Toward an Ethics of Political Participation,' Oxford Studies in Political Philosophy, vol. 4, Jan. 2018.