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Towards a New Theory of Exploitation

by

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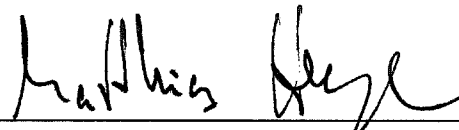
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ABSTRACT

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This work examines exploitation as a moral wrong, with the specific goal of explaining how one party might wrong another in an interaction that is to the benefit of both and fully consensual. This form of exploitation is interesting in that it involves neither harm nor certain procedural defects, such as coercion or deceit. I propose that exploitation – at least in some contexts (especially employment) and with few exceptions – occurs when one party (A) uses another (B) to attain what is needed to live a decent life while B is not given such an amount. A's use of B in this way is a significant failure of respect, meaning A wrongs B despite the fact that their interaction improves B's overall condition.

I examine several contemporary theories of exploitation, finding none of them completely satisfying. I argue that some accounts fail to track the right kinds of considerations (including, in some situations, need). Other accounts fail to explain how the alleged exploiter could be obligated to interact on specific, non-exploitative terms with the allegedly exploited. Moreover, all these accounts share an approach to exploitation that can exonerate potential exploiters for the wrong reasons. After proposing some basic desiderata for a good theory, I offer my own account of exploitation and defend it from important potential objections, including the claim that it is overly restrictive because it will prevent interactions which would otherwise be of

significant benefit to individuals in need. I conclude by discussing some connections between exploitation and structural injustice.

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CHAPTER 1: A PRIMER ON EXPLOITATION

1.1 Introduction

In January 2012, Apple reported quarterly profits of over \$13 billion.¹ At the same time, the New York Times published a story drawing attention to working conditions in Chinese factories producing some of Apple's boutique electronics. Employees were working sixty plus-hour weeks, standing so long their legs would swell painfully. Living on-site, in their off hours they would sleep in crowded dorms ("20 people to a three-bedroom apartment"). Working conditions themselves could be extremely hazardous, with a number of employees killed and maimed in fires, and others being instructed to clean iPad cases with hazardous materials despite the lack of protective clothing.

One might ask why anyone would tolerate these conditions. But the workers in these factories are not slaves (though slavery and indentured servitude is found in some sweatshops). A few may be underage, but others are college graduates glad to be making \$22 a day. Despite the working conditions, the hours, the living conditions, etc., this work provides a higher income than other available alternatives. When Apple is asked how they can be taking a profit of \$13 billion when these workers are paid so (relatively) little and suffer such conditions, the response is that Apple's wealthy customers constantly expect new things, and you can only give them what they want if you have lots of cash on hand.

It would not be terribly controversial to say these workers are being exploited. When analyzed, this claim might face some surprisingly hard questions: who exactly is

¹ Charles; Barboza Duhigg, David, "In China, Human Costs Are Built into an Ipad," *The New York Times*, Jan. 25 2012.

exploiting them – Apple, the company Apple has contracted out, the shareholders, the customers? What exactly is meant by saying “they are exploited,” apart from saying someone is benefitting from what they are doing? We benefit from the work of laborers all over the globe, in developed nations and developing nations alike. What marks the difference between *exploitative* pay and working conditions, and the *non-exploitative*? And does it not matter that many of these workers – not the ones killed or injured, anyway – might correctly think that working these jobs is actually an improvement in their overall situation?

Exploitation claims are thought to carry some significant normative weight; when someone has been exploited they have been importantly wronged: they have been a victim of injustice or degraded. But unless we can say what exactly is going on in exploitation, and what exploiters could have done to avoid these charges, these claims will ring a little hollow. It does little good to claim that Apple (or whoever) wrongfully exploits workers assembling i-Pads in China if we have no clear way of distinguishing this kind of employment interaction from one that is allegedly healthy or innocuous.

This project is an attempt to find a plausible account of exploitation – one that can explain what goes wrong in a number of putative instances of exploitation, but one that is also precise enough to function as a meaningful moral/political critique. I survey several influential, contemporary accounts of exploitation, judging the strengths and weaknesses of each. Not entirely satisfied with any of those accounts currently on offer, I eventually attempt the outline of a new theory of exploitation. This first chapter sets up the framework of the inquiry to follow, and provides a quick view of those theories I will interact with, as well as a road-map for the remainder of this thesis.

1.2 Exploitation as “Use”

Speaking of exploitation generally, Allen Wood writes,

The fundamental synonym for the verb “exploit” is “use.” The exploiter must be a person or group of people, a human or human-like subject, with the capacity for setting ends and using means; the object of exploitation is one such means. This object can be virtually anything that can be used: nonhuman things, such as natural resources, and even abstractions, such as occasions and opportunities.²

Though not as succinct as “use,” it is even more common to identify the *exploitation* of x with the *taking advantage* of x. *Wrongful* exploitation, then, is the wrongful use or advantage-taking of something or someone. Speaking broadly, I see at least five ways we might judge your putting to use of something or someone, x, as being wrongful:

- (1) the *goal* you hope to accomplish through the use of x is itself wrongful,
- (2) x should not be treated as a means to accomplish *this* goal,
- (3) x should not be treated as means to accomplish *any* goal.
- (4) x should not be treated *in this particular way* as a means to accomplish *this* goal, or
- (5) x should not be treated *in this particular way* as a means to accomplish *any* goal.

I will venture to say that wrongful exploitation does not concern (1). If the nature of your goal matters to whether or not you are wrongfully exploiting x, it would matter only insofar as this nature may affect whether and how you use x to achieve this particular goal. Your goal may be otherwise immoral, unjust, or otherwise unpalatable, but that in and of itself is a matter separate from wrongful exploitation.

² Allen W. Wood, “Exploitation,” *Social Philosophy & Policy* 12, no. 2 (1995): 141.

Wrongfully exploiting *x* is a wronging *of x*, making *x* a *victim*.³ And this can be the case, at least very often, with (2) through (5). There may be exceptions: imagine an acolyte using a key artifact from his religion for some mundane function (the Ark of the Covenant as an ottoman, or the Shroud of Turin as a bar rag). This would fall under (2) or (3). Maybe this use “deprecates” the artifact, but arguing it has been truly “victimized” or “wronged” might be a tough sale, if for no other reason than the fact that it may be controversial that we can wrong a non-conscious object.⁴ In this project, the potentially exploited things (or “parties,” as they will become) are mostly people, and people can uncontroversially be victims of wrongdoing.

I will further venture that many claims of wrongful exploitation, if they fit (2)-(5) at all, more likely fall under something closer to (4) or (5) than to (2) or (3), at least in part because “using *x* as a means” is fairly broad. In regards to (3), though Kant claimed people are supremely valuable “ends in themselves,” his prescription was not that we never treat people as means, but rather that in treating them as means we must not fail to treat them also as ends.⁵ In regards to (2), consider a couple paying a young woman, *x*, to carry their child to term. It might be argued that *x* is here being exploited, for the couple is (for whatever reason) not allowed to use *x* for the purpose of having a child. First, on Kantian grounds, it would have to be established that what *x* receives as payment is not sufficient for her to have been treated also as an end. Second, and more neatly, couples use lots of people—such as doctors and nurses, and maybe even egg or sperm donors—as means for accomplishing the birth of their children, in many different

³ Mikhail Valdman, “A Theory of Wrongful Exploitation,” *Philosopher's Imprint* 9, no. 6 (2009): 5-9.

⁴ Perhaps it could be argued that the acolyte wrongs a religious being associated with the artifact, or the other practitioners who collectively own it, but then we seem to be equivocating on the reference of *x*.

⁵ Immanuel Kant, “Groundwork of the Metaphysics of Morals,” in *Practical Philosophy*, ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 80.

ways, and at least many of these uses are not considered to wrong those used. The question of wrong, then, is a matter not of *whether* x was used, but rather of *how* x was used, and this is covered by (4) and (5).

So some person (or entity) A exploits another person (or entity) B when A uses B in some way to accomplish an objective, and A *wrongfully* exploits B when A uses B in the wrong sort of way to accomplish an objective. Now it may be that, just as an accident of language, we are unwilling to refer to an action as the “exploitation” of a person when we believe that action to be morally innocent—i.e. “exploitation,” at least when it applies to human interactions, a “moralized” concept and carries an inherent judgment of wrongdoing.⁶ As was just noted, there appear to be both wrongful and innocent uses of people. Thus, on the view of exploitation as a moralized concept, the innocent uses of people do not constitute exploitation (though there might be innocent exploitation of non-persons).

Whether the concept of exploitation of persons is moralized or not, however, makes little difference. We can agree that some uses of persons are wrongful and others innocent, regardless, say, of whether the latter constitute innocent exploitation or just innocent (and thus) non-exploitative use. The task of this project is to figure out, if possible, what constitutes the wrongful exploitation of persons, and I see no reason this cannot be done while remaining agnostic in regards to these particular linguistic matters. But given my emphasis on *wrongful* exploitation, in what follows, the word “exploitation” should (unless otherwise noted) be read as “wrongful exploitation.”

⁶ Alan Wertheimer, *Exploitation* (Princeton: Princeton University Press, 1996), 6. Ruth Sample, *Exploitation: What It Is and Why It's Wrong* (New York: Rowman & Littlefield, 2003), 24.

1.3 Contexts

I should try to be clear as possible as to what sorts of interactions are thought to constitute exploitation. To this end, I will present what might be some representative scenarios in which exploitation claims (a claim that some A is exploiting some B) arise, followed by a discussion of what it is these interactions (and exploitative interactions generally) allegedly have in common.

Pothole

While crossing the street, A encounters a large, water-filled pothole. A grabs the unsuspecting B and pushes him down into the water, in order to walk across his back to reach the curb. A's shoes are quite nice, after all.

Extra Fee

B has a significant mental disability but is capable of living alone and working a job. Knowing of his tenant's disability, the landlord, A, falsely tells B that B is required to pay an additional fee each month for some kind of special insurance on the apartment. B is confused by the requirement, but being often confused by such matters, he simply pays A the extra "fee."

Construction

A very large number of undocumented immigrant laborers working construction in Texas are being shorted on, or denied, pay.⁷ Consider the following: a worker, B, is not legally in the country, but is hired by the contractor to help build houses. When the house is finished, A refuses to pay B, knowing that B can only file a complaint with the authorities by outing himself as an undocumented immigrant,

⁷ Wade Goodwyn, "Construction Booming in Texas, but Many Workers Pay Dearly," NPR, <http://www.npr.org/2013/04/10/176677299/construction-booming-in-texas-but-many-workers-pay-dearly>.

thereby risking deportation. B says nothing and hopes the next contractor will keep his or her word.

Harassment

B had a hard time finding work due to her lack of experience and qualification, and she desperately needs a steady income in order to support her family. A has hired B, but now frequently makes unwanted sexual advances towards her. When B once confronted A, he threatened to fire her should she file an official complaint, and she believes he would make good on that. B continues quietly working for A.

“Antidote”

Mikhail Valdman provides an example in which a hiker, B, is bitten by a highly poisonous snake while on the trail.⁸ B will die unless given an antidote he does not have. But another hiker, A, discovers B in the woods and happens to have the antidote. Though it can be purchased for \$10 at a corner pharmacy, A will only administer the antidote if B pays A \$20,000. B agrees.

“Rescue”

This is the most basic version of a slightly amorphous example used by Alan Wertheimer: B’s car has broken down on a rural West Virginia highway in the midst of a snow storm. A, a local, drives around looking for stranded motorists, knowing he might be able to make a good deal of money from them in exchange for help. A finds B, and B pays handsomely for the assistance.⁹ (There are a

⁸ Valdman, "A Theory of Wrongful Exploitation," 3.

⁹ Wertheimer, *Exploitation*, 4-5. Though the example makes its first appearance here, it pops up throughout the work.

number of details that must be filled in here, even before Wertheimer himself would be comfortable calling this exploitation.)

Sweatshop

A is a clothing company based in the developed world. Though the process may be (and likely is) mediated through a series of contractors and sub-contractors, A utilizes sweatshop laborers—including B—to make some of its clothes. B works very long, hard hours, and while the work provides more for B than any other locally available alternative, B's pay makes up a very small fraction of the final price of the goods in question, and it is not enough for B to secure some basic goods, like proper shelter and ordinary medical care.

Clinical Trial

A is a pharmaceutical company in developed nation N, and it produces the drug S. A must conduct a trial proving the efficacy of S, but it is worried that in a trial in which S is compared to similar, already marketed drugs, S would not prove equally or more efficacious. A would much prefer a trial in which S would be compared only to placebo. The problem is that the standard of care in N is so high, such a trial would attract few if any participants, given that similar but proven drugs are already available. So A plans to carry out a placebo-control trial in B, the population of a relatively poor country with a much lower standard of health care. Even if S is successful, A makes no plans to make it available for sale to B, given how expensive S will be and how poor B is. However, in

carrying out the trial, A will provide B with medical equipment B does not have and could certainly use. B agrees.¹⁰

Marriage

A and B, a young couple, consider marriage. B says she would like to hold off having children for some time in order to establish herself in a career. A says he does not want to wait for children, and—knowing B will pick marriage without career development over no marriage—threatens to end the relationship should B choose to pursue her career. B chooses marriage on A's terms.

Donor

B lives on the streets and is having an increasingly difficult time finding food and basic shelter. One day she is approached by the much wealthier A, who says he will pay B \$10,000 for one of her kidneys, should it be a match for A. The kidney is a match, the transplant occurs, and B is paid the money.

Surrogacy

B, a young woman currently between jobs, is approached by a couple, who I will call A. Due to medical reasons, A cannot birth a child, and they ask that B be implanted with their embryo in order to carry it to term. In exchange, they will pay her \$10,000. B agrees.

The reader may think some of these interactions are paradigm cases of wrongful exploitation, and others not wrong at all. I do not intend them to be obvious instances of wrongful exploitation, though at the very least, in each case A does use or take advantage of B, insofar as A makes use of B as a means to accomplish some goal. For now, I just

¹⁰ Jennifer S. Hawkins, "Research Ethics, Developing Countries, and Exploitation: A Primer," in *Exploitation and Developing Countries: The Ethics of Clinical Research*, ed. Jennifer S. Hawkins and Ezekiel J. Emanuel (Princeton: Princeton University Press, 2008).

want to consider them as potential instances of wrongful exploitation in order to facilitate a discussion on what specifically might constitute the wrongful use or advantage-taking of persons.

1.4 Elements of Exploitation

1.4.1 A's Gain

Like much of this project, what follows here is heavily indebted to the work of Alan Wertheimer, particularly his first extended-length treatise on the subject.¹¹ And the first element of exploitative interactions Wertheimer identifies is that A gains through his use of B. Without a gain, it might seem that we could not say A takes advantage of B; there would be no advantage. This gain, says Wertheimer, is relative to a “non-transaction baseline”—i.e. the level of A’s welfare or utility (or something like that) without his interaction with B (hiring B, conducting a clinical trial on B, marrying B, etc.).¹²

It might be argued A has not clearly gained in every one of the cases above. In Clinical Trial, for example, it may turn out that S cannot be proven more effective than placebo, in which case the drug is not marketed and A gets no return on its investment. In Donor, B’s kidney may be a perfect match, though the transplant surgery itself may result in A facing a life-threatening infection.

In light of such considerations, and at least when the interactions in question are *transactions* (as Clinical Trial and Donor may be) Wertheimer has suggested that we give greater credence to the *ex ante* value of what a party gets out of the interaction, as opposed to the *ex post* value. He explains this within a discussion of the alleged

¹¹ Wertheimer, *Exploitation*.

¹² *Exploitation*, 20.

exploitation of college athletes. Imagine a college football player saying, “Yes, you gave me an athletic scholarship, but I did not even graduate. So I was cheated.” The *ex post* (actual) value of the player’s agreement with his school does not include graduating. However, it may be that he was given all the resources needed to graduate (tuition, time, tutoring, etc.), but the student did not put any effort into it. The student really received an *ex ante* benefit, and this is what we should be looking at in judging the validity of his claim, since the amount of effort he wants to expend is not up to his school.¹³ By the same token, if the school merely provided some amount of tuition while making unreasonable demands on the student’s time or physical well-being, then this negatively impacts the *ex ante* value the agreement holds for the student.

Returning to Clinical Trial, A here achieves an *ex ante* benefit, since without a population on which to study the drug, there is no chance of getting it marketed. The same is true in Donor, since here A needs a kidney and not every kidney transplant results in dangerous infection.

Another potential difficulty for making A’s gain a necessary feature of his exploitation of B would be the following: It was said before that A exploits x when A uses x to accomplish some goal, and this is not the same as saying A exploits x only when A *gains* by his use of x. A might be using B to the gain of some third party, C, or A might be using B to accomplish some self-destructive (or at least interest-neutral) objective. I will therefore make two assumptions to get around such concerns. First, and obviously an oversimplification, people generally act in their own self-interest, and second, most exploitation claims (or perhaps the most serious and/or plausible such claims) of the form “A is exploiting B” do involve A obtaining a personal gain from his use of B. In any

¹³ *Exploitation*, 57, 84.

case, it will remain that A *gets something he wants*, and perhaps this will be all that is really necessary.

1.4.2 Consent & Coercion

Some have taken claims of exploitation to also include or even be dependent on claims of coercion, force, or some other defect in consent.¹⁴ In Pothole, A forces B into the role of human bridge: A did not ask B to participate, let alone did he obtain B's permission. Something else is going on in Extra Fee and Harassment. In Extra Fee, B agrees to pay the extra amount, but only because A has succeeded in deceiving B, and this at least in part due to B's disability. The validity of B's consent is thus dubious.¹⁵ The case of Harassment appears to directly involve coercion. Though B's consent to work for A originally may have been perfectly legitimate, her agreement to continue working for A under conditions of sexual harassment is less valid: it is based on A's threat to make B worse off should she complain. (A word on coercion and Construction momentarily.)

But a defect in consent is much less apparent in many of the other examples, including Sweatshop, Clinical Trial, Marriage, Donor, and Surrogacy. In none of these cases is A threatening to make B worse off should A not get what he wants. In many of these, A simply finds B in a bad state. Even in Antidote and Rescue, we should hesitate to think B's (perhaps desperate) need or want for help necessarily invalidates B's consent. After all, the consent given by the very sick (but otherwise rational) to emergency, life-saving medical care in the setting of a hospital is not undermined by the desperate need of the patient. Such considerations are why a number of those working in

¹⁴ Richard Arneson, "What's Wrong with Exploitation," *Ethics* 91, no. 2 (1981).

¹⁵ Either B's impairment or A's lies would seem to be sufficient for undermining, at least to some extent, B's consent.

the recent exploitation literature—including Wood, Wertheimer, Sample, Valdman, and others—have rejected defect in consent as a necessary condition of exploitation.¹⁶

1.4.3 B: Harm and Benefit

Something like coercion appears in Construction, but not quite. Though A's success is dependent on a system being in place which threatens to make B worse off (by deporting him) if B were to speak out, A does not appear to be doing the coercing. Compare this to Harassment, in which A himself is threatening to make B worse off. But A is here *harming* B—time B spent working for A was time B could have spent either working for someone who would have actually paid B, or possibly enjoying some measure of leisure. Likewise, B is harmed in the cases of Pothole, Extra Fee, and perhaps others.

Harming someone, like coercing them or otherwise using them without their consent (at least in certain ways), is a clear way of wronging them, and above it was said that for A to (wrongfully) exploit B is for A to wrong B. But just as coercion and other defects in consent do not appear to be necessary conditions for exploitation, neither does harm to B. In fact, in some of the cases above—including Antidote, Rescue, Sweatshop and Clinical Trial, as well as (at least by some appearances) Surrogacy and Donor—B actually benefits by participating in the putatively exploitative interactions. Again, this gain is relative to B's non-transaction baseline, meaning B is better off than if the interaction with A did not take place. And of course, if B can be made better off by being

¹⁶ Nor is it the case that A can only use B innocently (non-exploitatively) if he attains B's consent to this use. Consider Joel Feinberg's example of A following B's taillights on a foggy night in order to have a better idea of where the road is going. (Joel Feinberg, *Harmless Wrongdoing*, Four vols., vol. Four, *The Moral Limits of the Criminal Law* (New York: Oxford University Press, 1990).)

exploited by A, this makes all the more sense to say B can validly consent to participate in interactions in which she is exploited.

1.5 Emphasis on Consensual, Mutually Beneficial Exploitation

In light of this, a number of those writing on the topic of exploitation, beginning (I believe) with Alan Wertheimer (though now including Sample, Valdman, and others), have explicitly narrowed their inquiries to what he calls “mutually advantageous, consensual exploitation” (“MACE”).¹⁷ By “mutually advantageous” – or as I will normally say, “mutually beneficial” – it is not meant that the parties are benefiting equally (this may or may not be the case), but that they both benefit to some degree. The reason for focusing on such interactions is something like this: it is easy to say that A wrongs B in exploitative interactions in which A harms B, or threatens or deceives B in order to get what A wants. It is harder, in the presence of these other forms of wrong, to pick out the unique wrong which is exploitation.

It is unsurprising that claims of exploitation within consensual, mutually beneficial interactions garner so much attention and controversy. In the absence of deceit, force, or coercion, if everyone comes out ahead what can be wrong? Some seem to claim that exploitation claims within the context of certain of these consensual, mutually beneficial interactions get things completely backwards. Paul Krugman, for instance, has said that given how the employment mentioned in Sweatshop betters the lives of the very badly off, but allegedly exploited workers, we should get off our

¹⁷ Alan Wertheimer, "Exploitation in Clinical Research," in *Exploitation and Developing Countries: The Ethics of Clinical Research*, ed. Jennifer S. Hawkins and Ezekiel J. Emanuel (Princeton: Princeton University Press, 2008).

developed world moral high horse and realize that this is actually one of the positive features of globalization.¹⁸

Note that this position is quite different from the view according to which A does here wrong B (by exploiting him), but all things considered, we should not meddle in their interaction. I want to stay with the logically prior question of what constitutes wrongful exploitation to begin with. And as mentioned, recent authors have attempted to approach this question by focusing most of their attention on consensual, mutually beneficial interactions. I will follow their lead.

1.6 Rectification, Moral Obligation, and Motive to Interact

In part because of this focus, I will not – at least immediately – be considering cases of alleged exploitation in which either (1) A is responsible for some past injustice such that B is now in a position to be taken advantage of by A, or (2) A has some pre-existing special moral obligation to interact with B in the specified way. Consider two modifications of Rescue, beginning with

Flat

A sees B at a diner, and, while B is inside, A causes a slow leak in one of B's tires. A then follows B at a distance, waiting for her to become stranded, at which point he pulls over and offers his assistance, for a fee.

Though B is better off with A's assistance than without it, we might hesitate to treat this the same as an interaction in which someone else is assisting B or in which A did not cause B to become stranded. Since A is directly responsible for B's condition, we might well think A is morally required to repair her situation, and for free. In fact, one might

¹⁸Paul Krugman, "We Are Not the World," *The New York Times*, February 13, 1997. "In Praise of Cheap Labor," *Slate*, March 21, 1997.

say that what appears to B as a consensual, mutually beneficial interaction is not one, once we take the larger historical picture into view. The interaction really began with A making B worse off, and at the end B is still left below her (true) pre-interaction baseline—even if her tire is as good as before, she now has less cash.

Similar claims regarding A's responsibility for the fact that B needs or wants what A is offering have been behind a number of exploitation claims, especially in cases like Sweatshop and Clinical Trial. Consider the latter:

In Clinical Trial

Developed countries—those same countries in which are based pharmaceutical companies sponsoring research on their products in developing countries—are responsible for the enforcement of international intellectual property laws which (we will assume) wrongly prevent the production of generic medicines. Given the much lower costs of the generics, they are the only affordable option for many developing world populations. *If not for these particular patent laws, B would have access to medications without having to participate in A's clinical trial.*¹⁹

A case can then be made that A here wrongs B just as in Flat above, but only once the following claims are verified: (1) A's nation really is responsible for the international policies governing how its entities, like A, interact with developing-world populations, (2) A is to some relevant extent responsible for its nation's international policies, and (3) these policies really do disadvantage the developing-world populations concerned, such that the italicized counterfactual is true. If such claims can be successfully established, then, just as with Flat above, these would only *appear* to be consensual, mutually

¹⁹ As will be seen shortly, such a charge is essentially made in Thomas Pogge, "Testing Our Drugs on the Poor Abroad," in *Exploitation and Developing Countries: The Ethics of Clinical Research*, ed. Jennifer S. Hawkins and Ezekiel J. Emanuel (Princeton: Princeton University Press, 2008).

beneficial interactions, and this appearance would vanish once we take the larger, more complicated, historical view of the interactions.

Though there is a very important, on-going debate concerning exploitation and historical wrong in these and other contexts, I spend little time considering this potential element of exploitation in this project. I do this for two reasons: First, the claims of historical responsibility are difficult to establish, require extensive empirical inquiry, and are otherwise messy and controversial. Thomas Pogge argues that such historical wrongdoing and consequent exploitation marked the widely known proposed Surfaxin trial—the basis for Clinical Trial above.²⁰ Discovery Laboratories, Inc., (hereafter D-Lab) produced Surfaxin, a new surfactant (a kind of drug that coats infants' lungs, allowing them to breathe more easily) that they were hoping to test in a placebo-control trial in Bolivia. The proposed trial was widely criticized and abandoned. Pogge suggests that the people of Bolivia and other poorer nations would already have access to drugs like surfactants if not for the Trade Related Aspects of Intellectual Property Rights agreement (TRIPS), which has prevented the production of affordable generic medicines. TRIPS, says Pogge, has been “further strengthened through various bilateral treaties pushed by the United States,” the home of D-Lab.²¹ Furthermore, D-Lab (like many other pharmaceuticals) has contributed to lobbying for the creation, continuation and/or strengthening of U.S. participation in TRIPS, and thus “shares responsibility for the unavailability of advanced life-saving drugs to the world's poor.”

But this rather straightforward analysis of D-Lab's responsibility might be prone to some doubts. For instance, in assigning responsibility for TRIPS to D-Lab, we might

²⁰ Ibid.

²¹ "Testing Our Drugs on the Poor Abroad," 114.

want to know whether D-Lab had any real say in whether there were possible alternative agreements which could have protected intellectual property without cutting off the poor (assuming that a system respecting “intellectual property” can itself be just). And we might want to press on the line of causation Pogge draws between TRIPS and D-Lab and the availability of surfactants to the world’s poor (specifically those of Bolivia). I mentioned in Clinical Trial that A would provide B with much needed medical equipment as part of B’s participation. In real life, the equipment was to be ventilators, and what Pogge’s brief analysis leaves out is that surfactants can be administered only in conjunction with this equipment. (Ventilators have also been shown to improve an infant’s chances of survival even without a surfactant.) If TRIPS has nothing to do with Bolivia’s lack or paucity of ventilators, then this could well impact whether we think D-Lab is really responsible for the population there not having access to generic surfactants. Then again, perhaps the people of Bolivia would have used more of their relatively scarce resources to acquire more ventilators if there were greater access to surfactants.²² These are difficult questions, and answering them requires significant expertise and great attention to empirical details. I am not an expert at such things, but I am hoping that the observations and conclusions I make in this project will be plausible regardless of whatever the answers to such questions happen to be.

Additionally, it is interesting to ask whether the feeling that A is exploiting (or, here, *would* have exploited) B would go away if it were demonstrated that A is not really responsible in the way Pogge claims. My thought is that there may still be desire for a meaningful and socially useful criticism of D-Labs even in the absence of such

²² Or, it may well be that D-Labs has helped support the creation or continuation of *other* agreements which prevent or hamper the sale of affordable ventilators to populations like that of Bolivia.

responsibility. One goal of this project is to construct an account of exploitation potentially capable of *supplementing* arguments like Pogge's above, such that even if we cannot, or cannot easily, explain our indignation by appeal to responsibility for past wrong, we are not left empty handed.²³

The second reason I will not focus on exploitation claims as dependent on questions of historical wrong is that, as stated above, this work follows Wertheimer and others in concentrating on consensual, (truly) mutually beneficial, exploitative interactions. It does not appear that exploitation requires A to be responsible for B's exploitability—i.e. not every consensual, mutually beneficial, exploitative interaction is only *apparently* consensual and mutually beneficial, but in fact harmful. For instance, we can imagine that there are pharmaceuticals and clothing companies based in the U.S. who benefit in the ways mentioned in Clinical Trial and Sweatshop, without having lobbied for the international policies which may have enabled this benefit. More straightforwardly, in Antidote, A is not responsible for B's snakebite; nor is A responsible for B's being stranded in the original case of Rescue. I want to focus on what features certain consensual, mutually beneficial interactions have in common that make these interactions exploitative. Harming B in a way that sets B up for future profitable use is not a universal feature of such exploitative interactions.

As noted, if A had wronged B in the past—as in Flat—then we might well think A owes B, and that if A does pull over to provide assistance (and perhaps he should do so), he should not ask for payment. But we can “owe” people outside the context of past

²³ As I say in Chapter 5, where I finally fully present and defend my own account of exploitation, I am not hopeful for its relevance to the Surfaxin case (and other cases of international clinical research). However, I also discuss there another account of exploitation which may be more helpful in such a context, though I do not argue for this.

wrongs just as a matter of basic moral obligation. This takes us to the second modification of Rescue:

Freezing

A and B have never crossed paths, and A is in no obvious way responsible for B's being stranded. If A does not assist B, she may suffer frostbite or even hypothermia. It would be relatively easy for A to help B (drop her off at a diner), and A does offer his assistance, contingent on B paying him X. B agrees.

This case is very similar to Valdman's Antidote. In either case, we might think that, if through little effort and sacrifice on the part of A, he can save B from death or severe injury, A is obligated to help. Moreover, if A really owes B this, it is not something for which he can charge B. Or, at least, it is not something for which he can charge B very much, and this amount may be correlated with the amount of effort and sacrifice A must undertake in the endeavor. For instance, if A must go a number of miles out of his way to get B to safety, perhaps he can ask B for some gas money.

According to Wertheimer, if there is such an obligation on the part of A, it changes our understanding of the potential for exploitation in this interaction by changing the relevant baselines of the parties involved. Rather than looking simply at B's non-interaction baseline (frostbite/hypothermia), we should adjust this baseline to what B is owed as a matter of A's moral obligation. B's "moralized" baseline would therefore include being rescued for nothing (or very little).²⁴ So if A simply drives away because B stubbornly refuses to pay X, A drops B below this baseline, meaning A *harms* B. Additionally, if B agrees to pay X when A should not charge B at all, then again, A drops B below her moralized baseline: much like in Flat above, A assists B but leaves her with

²⁴ Wertheimer, *Exploitation*, 110-11.

less cash than she could rightfully expect. If A succeeds in getting his desired (but illicit) price, this is actually an instance of harmful, not mutually beneficial, exploitation.²⁵

For Wertheimer, Valdman, and Sample, not every instance of A exploiting B is one in which A has improperly carried out (or failed to carry out) a moral obligation to assist B (say, by demanding payment in return for his morally required assistance). Since the presence of such an obligation complicates matters, in no small part by challenging whether the interaction even qualifies as being mutually beneficial, Wertheimer and Sample both concentrate almost exclusively on potentially exploitative interactions in which, morally speaking, A need not interact with B, and A's motivation to interact with B is self-interest.²⁶ (Though Valdman agrees with the main point, he spends considerable time discussing Antidote, and A may very likely have a duty to interact here.) In these cases, if B is in need, it is not so desperate as to morally require A to interact with B to B's benefit.

To clarify somewhat, consider the following:

- (1) B is in need, and
- (2) A conducts an interaction with B which betters B.

Wertheimer and the others mentioned above concentrate on those potential instances of exploitation in which either (1) is false, or (1) is true but in a way that does not *require*

(2). So it is also the case that

- (3) A also benefits by interacting with B.

²⁵ Ruth Sample has said that it would also be coercive, since A is threatening to drop B below her moralized baseline should she not accept A's terms of interaction. Sample, *Exploitation: What It Is and Why It's Wrong*, 20-21.

²⁶ This is overly simplistic. Say that B is in need, but not in a way that morally obligates A to interact with B to B's benefit. Furthermore, say that A could conduct a mutually beneficial interaction with either B or the less-needy C. A might choose B because not only would this better A's position, it would also help out someone in need.

Given that A *need not* interact, the only reason A *does* interact is (3). Of course, we are not considering (at least purely) charitable giving, in which there is no obvious room for exploitation: there A just gives, willingly, to B, without receiving or expecting any benefit in return.

Momentarily it will be explained that not all theorists exploring the topic of exploitation obviously agree with this approach. At the very least, one reading of Robert Goodin has it that he takes exploitation to always involve some prior obligation to assist (see Chapter 3). And this will have something, though certainly not everything, to do with the rather deep disagreements as to the larger question – so far untouched – of what exactly constitutes wrongful exploitation.

1.7 When Exploitation is Possible

Before approaching that topic specifically, I want to first consider the issue of what conditions must be in place for A to successfully exploit B, specifically within a consensual, mutually beneficial interaction. We can likely think of many ways B can be used, and used wrongly, without B's consent, much as in Pothole. In that case, A was able to get what he wanted from B (the use of his back) because B was unsuspecting of A (A casually trips B into the puddle), or on account of A's superior size and strength (B resists but is thrown down nonetheless). One of these things (or perhaps some third thing) gave A an advantage over B—an ability to use B, here without B's consent. What gives A an advantage within the realm of consensual, mutually beneficial exploitation?

If both parties are giving their consent to the interaction, then it might be natural to begin by saying that this brand of exploitation requires some inequality in bargaining

power or position. Wertheimer spends some time trying to understand what this really means. He distinguishes between what he calls

bargaining ability, which is a function of one's internal characteristics (e.g., information, toughness, patience, perceptiveness, and the like), and ... *bargaining potential*, which is primarily a function of one's external resources or circumstances. Put colloquially, bargaining ability concerns how well one plays one's cards whereas bargaining potential is a function of the cards themselves.²⁷

For instance, in my original list of examples, Extra Fee is one in which there appears to be a considerable inequality of bargaining ability: B's disability makes him less intelligent or perceptive than A, and this works to A's advantage. B's disability actually invalidates (or at least degrades) his "consent," but it should be emphasized that this invalidation is not a mere matter of inequality in bargaining ability. After all, numerous interactions occur in which one party is more intelligent or clever than the other, perhaps even vastly so; but so long as both parties are at or above some threshold, difference in ability does not (or does not necessarily) invalidate consent.

However, in each example following Extra Fee, there is no reason to think A and B must differ in bargaining ability at all – i.e. there is no need to assume that A succeeded because of some defect in B's reasoning ability, cleverness, "perceptiveness," etc. So we might instead focus on possible inequality in the parties' "cards" – their bargaining potentials, which are a matter of their "external" circumstances. And we could point out that in each case, B is in the position of wanting or needing something A is offering. This in itself is not terribly interesting, for as Goodin notes in a discussion of the exploitation of dependent others, dependency – which, for simplicity, we could define as relying

²⁷ Wertheimer, *Exploitation*, 64.

solely on one other party for some good – does not enable exploitation unless it is *asymmetrical*.²⁸ Even if A is B's only source of some good *x*, it may also be that B is A's only source of some good *y*. "No one thinks that there is anything wrong with such relationships merely by virtue of the fact that people within them depend upon one another." Exploitation, at least within consensual, mutually beneficial interactions requires dependence in the absence of *interdependence*.

This is very close to that which Wertheimer eventually recognizes as the important bargaining inequality in such interactions, what he calls A's *threat advantage*, where this is "one's relative willingness not to contract if one's proposal is not accepted":

Although the story is no doubt more complicated, we might say that a party's bargaining potential is a function of the party's utility gain from the precontractual baseline. *Ceteris paribus*, A has a threat advantage over B when A stands to lose less if agreement is not reached. Put slightly differently, although the stronger party may get the greater share of "objective resources" from a proposed bargain (relative to that party's contribution), it is not true that he or she gets more utility from the bargain. To the contrary, it is precisely because A gets *less* utility from a proposed bargain than B that A is able to get a greater share of objective resources.²⁹

Wertheimer, and at times Valdman, thus say explicitly that a necessary condition of A exploiting B in a consensual, mutually beneficial interaction is that A must hold a *monopoly* over whatever it is B would get from it. On the standard definition of monopoly—one seller, many buyers—this would indeed provide A with a threat

²⁸ Robert E. Goodin, "Reasons for Welfare: Economic, Sociological, and Political - but Ultimately Moral," in *Responsibility, Rights & Welfare*, ed. J. Donald Moon (Boulder: Westview, 1988), 37.

²⁹ Wertheimer, *Exploitation*, 67. Original emphasis.

advantage. If B is unwilling to take whatever price A offers, some other buyer will take it. On the other hand, says Wertheimer, “If B’s car battery is dead, but there are numerous sellers of automobile batteries close by, there is no reason to think that any seller has any special power over B.”³⁰ And as Goodin notes, “If there is a multitude of providers I can choose among, then no one of them (nor, absent some extraordinary feat of collective action on their part in forming a cartel, all them taken together) can exploit me.”³¹

Yet, we should follow Valdman in noting that “monopoly” must be used somewhat loosely if it is to truly be a necessary condition of exploitation in these interactions.³² First, as the last Goodin quote makes clear, cartels (as well as monopsonies), and not just monopolies proper, can produce the sorts of inequality of threat advantage allegedly required. We could also add just plain (unorganized) lack of competition, resulting from other causes. In real life, sellers may not be rational enough to compete, or it may be that it is in their best interests not to, and regardless, a threat advantage can still exist. Second, in several cases—including Antidote and Rescue—there is only one buyer, though, again, these interactions are asymmetrical in the relevant way: in Antidote, for instance, B values his life (and thus the antidote) more than A values \$20,000. It is best, then, to see the use of “monopoly” as shorthand for saying that the parties’ relationship is asymmetrical, in that one party has a threat advantage.³³

³⁰ *Exploitation*, 66.

³¹ Goodin, “Reasons for Welfare,” 37.

³² Valdman, “A Theory of Wrongful Exploitation,” 9.

³³ I should mention that Ruth Sample, who responds to both Goodin and Wertheimer, explicitly rejects this asymmetry as either a necessary or sufficient condition for exploitation. (Sample, *Exploitation: What It Is and Why It's Wrong*, 83-84.) I do not discuss this objection, because I believe the argument provided is quite clearly only a rejection of asymmetry as a sufficient condition. As the next paragraph explains, Goodin would agree with this sentiment.

1.7.1 Need, Want, & Unreasonable Refusal

There may be a third reason to read “monopoly” quite loosely. Importantly, *monopoly* may not really capture all the relevant considerations of Wertheimer’s *threat advantage*, and understanding this will show why Goodin’s *asymmetry* above is also not (or not yet) the same as the latter. Goodin imagines that he can attain figs from only one seller in his village.³⁴ He enjoys his figs, and the seller tries to make the most of this by raising his prices. The seller can do this because he holds a monopoly on figs, and in this sense, the seller appears to have a threat advantage (“there being many fig-lovers in our village who will buy his figs even if I do not”). At the same time, however, Goodin says this asymmetry fails to result in his being exploited. The reason is that Goodin does not *need* figs; therefore, “I can always protect myself by withdrawing from the relationship.” If figs were a necessity, however, Goodin would have no option but to continue purchasing them.

In this way, need appears to impact a party’s relevant bargaining position – the less B needs whatever x A is offering, the easier it is for B to refuse to transact if she is not getting x on terms she finds acceptable. Taking into account what was said in preceding paragraphs, a monopoly (properly understood) is neither necessary nor sufficient for exploitation. The monopoly must be over something needed to create a true threat advantage. And while asymmetry – one-way dependency – may in fact be necessary for exploitation, it also only constitutes a threat advantage when coupled with need.³⁵

³⁴ Goodin, “Reasons for Welfare,” 37.

³⁵ I empathize with reader who asks, “Doesn’t the term ‘dependence’ entail need?” Evidently, for Goodin it does not.

Of course, just because B *can* withdraw when A is not offering some necessity, this does not mean B *will* withdraw. Say that B goes ahead and interacts. For Goodin, Valdman, and Sample, B is not here wrongfully exploited. “There is nothing particularly unfair about seizing such advantages” when B is not in need, says Goodin, so B is not “truly” exploited.³⁶ And according to Sample, “A person [B] whose basic needs are met [without transacting with A], and who nonetheless chooses to transact in a way that would violate a putative restriction on exchange [i.e. by paying a monopolistic price], is not exploited.”³⁷ For Valdman, B can only be exploited by A if B “cannot, or cannot reasonably, refuse” what A is offering.³⁸

To the extent that Wertheimer does not discuss need to the same degree as these other three, it might be thought that need plays no important part in his understanding of the conditions under which exploitation is possible in consensual, mutually beneficial interactions. And some may find such a position plausible: after all, price gouging generally seems at least vaguely wrong, but Goodin, Sample, and Valdman seem committed to saying some gouging is wrongful exploitation (when the object of the interaction is truly a necessity) while other gouging (on “luxury” items) is not. It is unclear where Wertheimer really stands on this issue, for if threat advantage is calculated in terms of the *ability*, and not the *willingness*, to walk away from an interaction, then need would seem to be built in.³⁹ The difference between these two readings will prompt the distinction I make in Chapter 2 between what I call *needs-exploitation* on the one hand and *mere-wants exploitation* on the other.

³⁶ Goodin, “Reasons for Welfare,” 49, n. 42.

³⁷ Sample, *Exploitation: What It Is and Why It's Wrong*, 83.

³⁸ Valdman, “A Theory of Wrongful Exploitation,” 1.

³⁹ And as Goodin points out, people can be wrong about what they think they need. Goodin, “Reasons for Welfare,” 49, n. 42.

1.7.2 Commodification

But is it really the case that a threat advantage is necessary for exploitation?

Consider the last two examples above: Donor and Surrogacy. It might be said that in each, B is exploited because he/she, or some part of him/her, is wrongly commodified—B's kidney or ability to give birth is made a commodity, and there is something wrong about this. Though the issue may be quite complicated, these cases have at least the appearance of being consensual, mutually beneficial interactions. In Donor, B's gain seems especially clear, since it may be the difference between life and death.

What is interesting about Donor, however, is that A is very desperate as well, at least insofar as he will die without a new kidney. And this leads to the question as to whether the allegedly exploitative interaction is really marked by the sort of bargaining asymmetry seen above. It is true (we can assume) that B is not regularly receiving proposals for interactions which would provide her with enough resources to get safely off the streets. But without more details being provided, there is no reason to assume A commands some monopolistic (or, more accurately, monopsonistic) position as kidney buyer – e.g. that if B refuses, A can go to the next person (of several or many) willing to sell their organs. Even if there are several such other people, and even if many will be healthy, capable matches, A could be extremely low on time. In which case, everything we could say about A using B's desperate need for A's own advantage, might be flipped around and said about B's use of A. The interaction begins to look like what Goodin called non-exploitative interdependence.

Presumably, if one still maintained that A here exploits B even when A is made quite desperate, then either it is the case that Goodin, Wertheimer, and Valdman are

wrong to take threat advantage as a necessary condition of wrongful exploitation, or there are (at least) two concepts of exploitation available. This second concept would apparently track considerations of illicit commodification perhaps without thought of the parties' bargaining potentials. I will not deny that there could be multiple – and possibly non-overlapping – concepts of exploitation at play, but in this work, I will not attempt to make sense of any specific understanding of exploitation as commodification.

1.8 Theories of Exploitation, and an Overview of this Project

In the remaining sections of this chapter, I will sketch a very rough picture of some influential contemporary theories of exploitation on offer. In doing so, I will also tell the story of the project that should unfold with each successive chapter of this treatise. The central question occupying this project will be

- (1) What constitutes wrongful exploitation in consensual, mutually beneficial interactions?

In answering this question, answers to the following questions should be found as well:

- (2) What is it that exploiters should have done otherwise?
- (3) Which features of the parties to the interaction, of the terms of their interaction, and of the surrounding social and political institutions, are relevant in judging whether or not exploitation has occurred?

Scope of Inquiry: Exploitation, Morality, and Injustice

Since the publication of his *Exploitation* in 1996, anyone wishing to join the modern debate on exploitation must confront Wertheimer's framing of the issue and the theory of exploitation he outlines. My own indebtedness to this work should already be

obvious. I have already explained his focus on exploitation in consensual, mutually beneficial interactions in particular; a focus this work will share.

But in addition to distinguishing between, on the one hand, consensual and mutually beneficial exploitation, and on the other, nonconsensual and/or harmful exploitation, Wertheimer suggests that we also can and should distinguish between two *levels* of exploitation. He says that exploitation is “often a *micro-level* wrong to discrete individuals in distinct relationships and transactions.”⁴⁰ He does not give a similarly clear and succinct statement regarding exploitation as a *macro-level* wrong. Given his understanding of micro-level exploitation, one might think the macro version is something like groups or classes (rather than specific individuals) being wronged, perhaps by other groups or classes. But given other remarks, I think it is best to see macro-level wrong (and thus macro-level exploitation) more generally as something to do with *injustice*, where this is read in Rawls’ strict sense of there being something wrong with the institutions governing society.⁴¹ It may well be that this macro-level exploitation would cover the exploitation of one group or class by another, and Wertheimer specifically says that the Marxist critique of capitalism – which has it that the class of people who own capital exploits the class that does not – appeals to a sense of “systematic or structural,” i.e. macro-level, exploitation.⁴²

The distinction is important, I take it, because exploitation claims carry claims of responsibility for wrongdoing. When A has micro-level exploited B, A has morally wronged B. This means A is morally responsible for his wronging B, which – given that “ought” implies “can” – means A could have refrained (but did not) from (wrongfully)

⁴⁰ Wertheimer, *Exploitation*, 8. Emphasis added.

⁴¹ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 8-9.

⁴² Wertheimer, *Exploitation*, 217.

exploiting B. But there may be times when we want to grant that A and B have interacted (consensually, and to the benefit of both) and that B is “exploited,” but we are hesitant to saddle A with wrongdoing.

For instance, in the Surfaxin trial, we might well think that the people of Bolivia would have been *exploited*, in part because TRIPS really does wrongly cut off the world’s poor from affordable drugs (like surfactants), and because this works to the favor of those who would provide such drugs only in the context of carrying out a clinical trial. And we might continue to assert this exploitation claim even if we decide that Discovery Labs really was not importantly responsible for TRIPS (because, say, we find that they did not lobby for U.S. participation in the agreement), and therefore would also not be responsible for B being exploited. Rather, B is exploited by the system of unjust global institutions governing intellectual property rights of pharmaceuticals and the distribution of medications to the global poor. This would be exploitation at the *macro*-, but not the *micro*-level.⁴³

Chapter 2: Monopoly, Markets, & the Scope of Fairness

Say, for simplicity, that to exploit someone is to take unfair advantage of her. Considerations like those in the preceding paragraph should push us, says Wertheimer, to distinguishing between A *taking unfair advantage* of B on the one hand, and on the other, A *taking advantage of unfairness* having been done to B (by someone else, or through societal injustice). Only the former necessarily constitutes (micro-level) exploitation, and if the assumptions above hold, Discovery Labs may only be doing the latter. In Chapter 2, I examine what relation this proposed distinction may have to Wertheimer’s insistence

⁴³ Note that there is no reason to think micro-level exploitation must exclude instances of groups/classes exploiting other groups/classes; what matters is that B is wronged and that we can clearly show that A is responsible.

that in judging the fairness of an interaction, we should appeal to a principle of *transaction-specific fairness*: a principle which ignores background injustice, as well as the parties' overall pre-interaction wealth, resources, opportunities, capabilities, etc.—in effect, anything that might be relevant to questions of macro-level justice.

In this we begin to see a fairly clear response on the part of Wertheimer for question (3) above, at least in regards to what features of the parties to the interaction and of the surrounding background institutions are *not* relevant in assessing claims of exploitation. This also forms my first major point of contention with Wertheimer. Much of the first half of Chapter 2 argues that, even if we accept the distinction between micro- and macro-level exploitation, it does not follow that we should accept transaction-specific fairness.

I do, however, also focus on exploitation at the “micro” level. In each of the examples above, for instance, we can at least attempt a claim that makes B a victim of exploitation and A an exploiter, responsible for the (alleged) wronging of B. It may turn out that some (or all) of these claims cannot be explained in terms of micro-level exploitation, in which case (a) they are not instances of exploitation at all, (b) they are instances of macro-level exploitation, or (c) the distinction between micro- and macro-level exploitation must be reevaluated. These issues will extend well beyond Chapter 2.

The remainder of that chapter will consider Wertheimer's responses to questions (1) and (2), and a continuing theme for this project will concern how answers to (2) impact answers to (1) (and not just the other way around). He argues that if consensual, mutually beneficial exploitation is unfair, this unfairness must not be “procedural” – like deceit, coercion, or force – but rather “substantive.” Given that the interaction makes

both parties better off, a “social surplus” is created, and the substantive unfairness of exploitation lies in a maldistribution of this surplus.

As a way of preview: In a highly competitive market, A cannot charge B more for a good or service without pricing himself out of the market. But neither can A charge less, since competition has forced prices down to (or close to) cost – any less, and A would have no motivation to sell at all. If A cannot charge less, then it cannot be the case that he is taking too great a slice of the social surplus by charging the market price, in which case he cannot be exploiting B. Therefore the market price is fair, or at least, it realizes transaction-specific fairness. As was explained in a previous section, exploitation requires that A possess a threat advantage over B – something impossible in a highly competitive market. Thus, to figure out what would be *fair* in a transaction in which A has a threat advantage (“monopoly”), we simply ask what A would (could) charge in a competitive market. This “hypothetical competitive market price” is the fair price, and if A uses his threat advantage to take a larger slice of the social surplus, he has exploited B. A should not have charged more than this price.

It is here that I will also present, though more briefly, Valdman’s quite similar theory of exploitation. Valdman says wrongful⁴⁴ exploitation is the violation of “a moral obligation not to extract excessive benefits from people who cannot, or cannot reasonably, refuse our offers.”⁴⁵ In fleshing out what constitutes “excessive” benefit, Valdman, like Wertheimer, appeals to competitive market pricing. The most notable point of departure for the two (if it indeed is one) will be that seen above, regarding whether need is a necessary condition of exploitation.

⁴⁴ Valdman does not use “exploitation” as a moralized term, so I use the qualifier “wrongful.”

⁴⁵ Valdman, “A Theory of Wrongful Exploitation,” 1.

After sorting through some potentially important ambiguities in the market-price approach, I then criticize it on two major grounds. First, appeal to hypothetical competitive market pricing will fail, at least in a number of cases, to pick out terms of interaction that are actually fair. In fact, such pricing will sometimes be very unfair, where this is a result of abstracting away from too many details about the parties and their overall situations (i.e. insofar as the account is transaction specific). Second, the account will let potential exploiters off the hook and for the wrong kinds of reasons, including the (quite possibly immoral) actions of persons outside the interaction as well as the surrounding institutional structures (e.g. competitive markets).

Chapter 3: Vulnerability and Exploitation

In Chapter 3, I turn to accounts offered by Goodin (writing before Wertheimer) and Sample (writing after and in response to both). Both Goodin and Sample emphasize the importance of *vulnerability* in exploitation, and one of my goals here is to discover if this emphasis really provides some alternative to those theories seen in Chapter 2.

I begin with Goodin, who explains the wrong of exploitation relative to a proposed “duty to protect the vulnerable,” where B is vulnerable to A iff B’s interests are “strongly affected” by A’s “actions and choices.”⁴⁶ According to this duty, we must assist those who are “particularly vulnerable” to us, while also not pressing our advantage against them. This “advantage” is a threat advantage, and as noted above, it must (at least for Goodin) include that the party without the advantage *need* what the other party is offering. If B needs what A has, and B is (asymmetrically) dependent on A to get it, then B is vulnerable to A.

⁴⁶ Robert E. Goodin, “Exploiting a Situation and Exploiting a Person,” in *Modern Theories of Exploitation*, ed. Andrew Reeve (Beverly Hills: SAGE Publications, 1987), 187.

Goodin appears to break quite drastically with Wertheimer and Valdman, in that he does not make exploitation a matter of “outcome,” or what the others called “substantive unfairness.”⁴⁷ Roughly, and in answer to question (1) above, Goodin says A exploits B iff B is vulnerable and A benefits – presumably *at all* – from B’s vulnerability. This also highlights disagreements regarding A’s *motivation* to interact with B. Recall that Wertheimer and Valdman (as well as Sample) are looking at those cases in which A’s only motivation is self-interest. But at times, Goodin appears to be saying that if B is “particularly vulnerable” to A, then though A is not morally permitted to benefit from this vulnerability, he must nonetheless interact with B. A is apparently obligated to interact but equally obligated not to benefit from doing so.

If this is right, then Goodin’s answer to question (2) (What should A have done otherwise?) is *not* that A should not have interacted with B, nor that A should not have benefited *so much* from this interaction, but rather that he should not have benefited. And in answer to (3) (Which features matter?), B’s vulnerability – as specifically defined by Goodin – matters, “regardless of the particular source of their vulnerability.”⁴⁸ There are significant objections to this position. First, in saying A must interact with B, Goodin may be making all apparently mutually beneficial exploitation actually harmful, by bringing in moral baselines (as with Freezing above). Second, and related, not all exploitation claims assume some obligation to interact; rather they say something like, A can choose not to interact, but if he does interact he should do so on terms more beneficial to B. Third, Valdman accuses Goodin’s theory of making exploitation something A does wrong without making this a wronging of B. To say that A wrongly

⁴⁷ “Exploiting a Situation and Exploiting a Person,” in *Modern Theories of Exploitation*, ed. Andrew Reeve (Beverly Hills: SAGE Publications, 1987), 182.

⁴⁸ “Exploiting a Situation and Exploiting a Person,” 187.

benefits from B's vulnerability does not explain what immoral thing A is doing to B, like not allowing her a sufficiently large slice of the social surplus.

The second half of Chapter 3 is devoted to Sample's theory, what she calls "Exploitation as Degradation." Like Goodin, she will explicitly discuss the role of vulnerability – particularly resulting from being in need – in explaining the wrong of exploitation. Rather than simply making need a necessary condition of exploitation, however, she will make *insufficient response* to need the hallmark of many exploitative interactions. For A to exploit B is (very often) for A to benefit from B while not dividing the social surplus so as to sufficiently address B's needs. Rather than couching this in terms of substantive unfairness to B, she says this is a failing in basic moral respect for B. To exploit B by not sufficiently addressing her needs is to disrespect, and thus degrade her.

Sample then quite plainly rejects transaction-specific fairness: The terms of an interaction are judged exploitative or not by the extent to which they respond to the extra-transactional feature of B's need. This provides some answer for question (3). As for what Sample's account says exploiters should have done otherwise (question 2), the answer is, roughly, that they should have adjusted the terms of the social surplus to make B's share more responsive to her needs.

I argue that Sample's account is attractive: it avoids some of the implausible features of the transaction-specific hypothetical market accounts of Wertheimer and Valdman. Moreover, it dodges those objections listed above potentially facing Goodin's account. However, Sample faces her own difficulties. I point out that in many cases, her theory will give no true guidance on judgments of whether an interaction is exploitative.

Furthermore, her account can at least appear quite demanding, in part due to her having borrowed an understanding of need from a capabilities account of what just governments must provide their citizens.

Chapter 4: Two Approaches to Exploitation

Coming into Chapter 4, I explain that Sample's account dodges the object of being too demanding by virtue of sharing an approach to exploitation with Wertheimer and Valdman, an approach which I argue is quite troubling in its implications. Consider what I will call the *T-relative* and *T-absolute* explanations of what it is an exploiter, A, could have done otherwise, where "T" stands for "terms of interaction":

T-relative: A could have agreed to terms providing greater benefit to B without foregoing benefit for himself (and thus without foregoing any reason to interact with B).

T-absolute: A could either have agreed to terms providing greater benefit to B without foregoing benefit for himself, or, if no such alternative terms were available, he could have simply not carried out the interaction.

I argue that Wertheimer, Sample, and Valdman are best read as sharing the T-relative approach. Each one assumes that the mutually beneficial interaction can and will take place, and that it is now only a matter of which terms will be agreed upon. Whether a particular set of terms is judged exploitative or not will be determined relative to whether and what other terms are available. It may seem especially surprising that Sample's theory would fall into this category, given its emphasis on sufficiently responding to B's needs. Yet she explicitly states, for example, that if those who employ sweatshop laborers cannot pay workers more without forfeiting their own benefit, they can non-

exploitatively pay what little they can to maintain the mutually beneficial relationship, regardless of the extent to which this payment really does address the workers' needs.

The T-absolute approach, on the other hand, says that there is some level of benefit, x , which B should attain in this interaction, and that either A must carry out the interaction in a way that leaves B with x , or A cannot carry out the interaction without exploiting B. I use "absolute" since the acceptability of the terms of interaction is not determined relative to other available terms under which A might attain a benefit. Rather the *content* of the terms matter in a way not found in the T-relative approach.

There may be some good reasons to think the T-relative approach is preferable to the T-absolute. In favor of the T-relative, I will introduce the work of Jeremy Snyder,⁴⁹ who, while proposing an account similar to Sample's, seems more aware of (and speaks more in defense of) its T-relative structure. Snyder focuses specifically on sweatshop labor, and says workers should be paid a living wage. He adds, however, that where this is not compatible with A keeping enough to live a decent (though not luxurious) life, we should see the interaction as morally unproblematic. Even these interactions provide some people benefits to which they would otherwise not have access. Labeling these interactions *exploitative* just because their terms do not match some predetermined level of benefit (e.g. a living wage) might lead to fewer such interactions occurring, thereby cutting off one avenue (and perhaps the only one) these individuals had to attain much needed resources.

I will argue, however, that there are serious difficulties with the T-relative approach to exploitation, and that we should instead consider a new T-absolute theory. In particular, the T-relative approach allows the wrong sorts of considerations to influence

⁴⁹ Jeremy Snyder, "Needs Exploitation," *Ethical Theory & Moral Practice* 11(2008).

our judgments of exploitation claims. By assuming from the beginning that A and B can carry out the interaction, and by saying A must attain some benefit from it, B's level of benefit is held hostage to that of A. Specifically, the problem is that whether or not a certain set of terms of interaction between A and B will prove beneficial to A depends on the actions of parties outside the interaction. In the confines of a competitive industry, for instance, the wages A is able to offer his employee, B, while maintaining a profitable relationship might well be dependent on the wages his competitors pay their own employees. If A is paying significantly more without taking cuts elsewhere or raising prices, he may lose out to his competitors. What is more, we might judge that the competitors' wages are so low as to be immoral, and if this is the case, the immoral actions of actors outside A and B's interaction are limiting the terms upon which A can benefit, meaning A can pay B less without exploiting him.

A T-absolute approach avoids this by setting a threshold level of benefits (much the way Sample may have originally intended), and saying that if B is paid less, he is exploited – regardless of the actions of those outside the interaction (i.e. regardless of what A's competitors are paying their employees, etc.).⁵⁰ But this approach, even at an abstract level, does have its own share of concerns, and before ending this chapter, I consider several potential objections. For instance, a T-absolute approach, as compared to a T-relative one, would (as Snyder suggests) seem rather restrictive, potentially preventing many interactions that would have been to the benefit of persons very much in need (such as those who would be happy to work in sweatshops or participate in clinical trials). A defense on the part of the T-absolute camp must argue that either this is not a

⁵⁰ George Sher has helpfully suggested that, in this way, I am defining my own brand of “transaction-specific fairness.”

consequence of the approach, or, if it is a consequence, this is not really a problem. I take something more like the second option, though my most complete answer to this objection appears in Chapter 5.

Additionally, a T-absolute account might blur the lines between micro- and macro-level exploitation. After all, one can claim – as Wertheimer has – that A should not be held responsible for the possibly unjust market institution governing A and B’s employment relationship and the surrounding industry.⁵¹ Thus, I will need to show that a T-absolute account can be tougher on potential exploiters than the T-relative approach, but not so tough as to charge parties with exploitation when they cannot be shown to be adequately responsible for the relevant wrong. (Questions of macro- versus micro-exploitation will carry over into the last two chapters as well.) Following Valdman’s comments on the failings of Goodin’s theory, this entails that the T-absolute must find for B a plausible complaint of having been wronged by A, where this is something other than, “A could have granted me a larger share of the social surplus within the context of a mutually beneficial interaction.” After all, the T-absolute and T-relative split exactly where A is, due to external constraints, incapable of giving B more. I finish Chapter 4 with a brief preview of a T-absolute account I believe can answer the objections considered, though the account’s fullest details and defense are provided in the next chapter.

Chapter 5: Towards a New Theory of Exploitation

I begin Chapter 5 with a brief recap of the project and layout what I take to be three important desiderata for a theory of wrongful exploitation in consensual, mutually beneficial interactions. First, in at least some instances, the interaction is wrong because

⁵¹ Wertheimer, *Exploitation*, 217.

its terms fail to respond sufficiently to the needs of the exploited party (Needs-Responsiveness). A theory fulfills the needs-responsiveness desideratum when it can explain when and why these needs must be taken into account, as well as what constitutes a “sufficient response” to these needs. Second, a good theory will explain what kind of special obligation A has to provide B with “super-contractual” benefits – i.e. benefits beyond those the parties would have consented to transact upon (Explanation of A’s Special Obligation). If a theory cannot do this it can make no room at all for justified claims of wrongful exploitation in consensual, mutually beneficial interactions. Finally and relating to both prior desiderata, when B is exploited, the theory provides B, specifically, with a legitimate complaint of having been wronged by A, specifically, where this will (at least in some instances) be a matter of A having insufficiently responded to B’s needs (Complaint).

One of the bigger difficulties facing the formulation of a plausible T-absolute theory will be determining, for each potential interaction (or perhaps, more generally, for each *kind* of interaction), what would constitute the threshold level of benefit B must attain for A to interact non-exploitatively with him. The new theory will certainly embody Sample’s response to transaction-specific fairness: just because A is not responsible for B’s “background” conditions, this does not mean the terms of interaction can ignore these conditions, at least not in every case. Key to picking out this absolute threshold of benefit will be an understanding of not only what it is A could have done otherwise to avoid exploitation (the discussion of Chapter 4), but also the specific way the theory fulfills the Special Obligation requirement above. Essentially, explaining the

content of this obligation tells us not just *what* A could have done otherwise, but also *why* he should have done otherwise.

I examine a couple different approaches to understanding this obligation, framing the discussion largely within the vocabulary of Wertheimer's most recent contribution.⁵² Specifically, the theory must have a plausible way of denying the "non-worseness claim" (NWC), which says that "it *cannot* be morally worse for A to interact with B than not to interact with B if:

- (1) the overall interaction or package deal is better for B than non-interaction,
- (2) B consents to the interaction, and
- (3) such interaction has no negative effects on others."⁵³

I argue that a certain "strategic" argument Wertheimer proposes can answer NWC from the wrong perspective – namely, some perspective other than B's. I then examine two other approaches to grounding A's special obligation: the first, essentially the same as what can be found in Sample's work, is a *reciprocity*-based approach, which says that A's obligation is one of respect, originating from the fact that B has contributed to A's becoming better off. The other, also suggested by Sample but filled out and defended by Snyder, says that A's obligation is one of beneficence, though of a kind that has become "focused" or made "perfect" through the fact of interaction, apart from considerations of reciprocity. I argue that this beneficence approach, while perhaps plausible for some purposes, fails to explain the specific obligation A has to B because it can become too easily watered down by other duties A has on the basis of beneficence.

⁵² *Rethinking the Ethics of Clinical Research: Widening the Lens* (Oxford: Oxford University Press, 2011).

⁵³ *Rethinking the Ethics of Clinical Research: Widening the Lens* (Oxford: Oxford University Press, 2011), 259. Wertheimer also discusses this claim in the earlier work, though in less detail and, perhaps, with more optimism. (*Exploitation*, 289-93.)

So I defend a reciprocity-based, T-absolute account, where the content is understood in terms of the Humanity Formula of the Kant's Categorical Imperative: to exploit someone – especially where this means failing to sufficiently address her needs – is to treat her as a mere means. Therefore, my account will be quite similar to Sample's Exploitation as Degradation, but coupled with the T-absolute approach and (I hope) clearer in its content and prescriptions. I argue that my account's prescriptions are perhaps clearest in regards to employment, where it requires that A pay his full-time workers a living wage. Working full-time for A means not having time to work elsewhere to achieve what is needed to live a decent human life. For A to benefit from this work without granting the workers enough to flourish, even minimally, is for A to insufficiently reciprocate, thereby failing to treat his workers with the respect proper to human beings.⁵⁴ Additionally, I show what prescriptions the account may have in one-off market interactions, though I am not terribly hopeful for what it could say about other contexts (including that of international clinical trials).

I then examine what the account can have to say not only about NWC, but other potentially pressing problems as well, including what I call the *Conceptual Problem*: Why think of exploitation at all as a problem of interpersonal (i.e. micro-level) morality, rather than simply an issue of (institutional-level, or macro-level) injustice, especially when institutional reform might better address the sort of needs I am saying potential exploiters must address? Also discussed is what I call the *Practical Problem*, which is essentially the problem seen above of how restrictive an account of exploitation can plausibly be: Are we willing to accept the costs of a relatively strict theory of

⁵⁴ Even much of this is borrowed from Sample, as will become apparent in Chapter 3.

exploitation, where this might prevent many interactions that would work to the benefit of badly off individuals?

I conclude that a theory of exploitation can be judged only by whether it fulfills important desiderata while meeting standards of internal consistency. Moreover, I see no non-arbitrary method of determining *the* plausible level of restrictiveness (i.e. the bar for saying whether the theory prevents too many, or the wrong kinds of, mutually beneficial interactions). While I recognize that the Practical Problem might make many readers hesitant to accept my theory, I implore them to ask how their concerns here might point to discomfort not necessarily with any particular theory of micro-level exploitation, but with other aspects of the larger moral landscape.

Chapter 6: Beyond Micro-level Exploitation

In the final chapter, I turn to two remaining questions (without pretending these are the only ones remaining). First, if both parties consent to the exploitative interaction, does this mean that B, and not just A, is deserving of moral censure? And second, what is the relationship between exploitation (and especially exploitation as understood by the account presented and defended in Chapter 5) and macro-level injustice?

As to the first question, I argue (along with Wertheimer) that censuring B seems plausible only when his choice to interact with A defeats attempts of collective action on the part of B's more generally to secure greater benefits, e.g. attempts at unionization in order to demand higher (non-exploitative) wages.⁵⁵ However, I argue that our willingness to censure certain defecting B's in this context should lead us to also censure A's who are unwilling to work with one another to help raise wages. This leads to the issue of what role consumers have in making higher wages possible.

⁵⁵ Wertheimer, *Exploitation*, 294-95.

And this in turn leads into the second question, for we can easily imagine a situation in which consumers have such limited resources, they cannot pay the prices needed to make possible something like a living wage. When should we be willing to say that no individual, or proper subset of individuals within a society, is responsible for workers' inability to receive a living wage? At that point, the idea of micro-level exploitation is simply inapplicable; we may now be dealing with what I call *purely structural* exploitation, a form of macro-level injustice. Different theories of exploitation place the dividing line between micro-level and purely structural exploitation at different points, corresponding to how restrictive the accounts are. I spend the remainder of the chapter defending why I place the dividing line where I do, as well as commenting on what might be said of the general project of understanding micro-level exploitation.

CHAPTER 2: MONOPOLY, MARKETS, & THE SCOPE OF FAIRNESS

2.1 Introduction

Ruth Sample has called Alan Wertheimer's *Exploitation*¹ "the most important and comprehensive non-Marxist study of exploitation to date."² The work is informed by a number of other relatively recent pieces addressing exploitation (including those of Joel Feinberg,³ Robert Goodin,⁴ and Allen Wood⁵), most of which are also set within the twentieth-century liberal philosophical tradition (though at times informed by and sensitive to Marxist critiques and considerations). Wertheimer's arguments in this book are appealed to in discussions of exploitation in a number of settings, including surrogacy, sweatshop labor,⁶ and international clinical trials research.⁷ Though more recently he has concentrated his efforts on understanding exploitation specifically within this last context,⁸ the earlier book remains his most thorough treatment of exploitation generally. Therefore, this chapter will for the most part concentrate on Wertheimer's arguments in *Exploitation*. Also in this chapter will be a discussion of a more recent, but very similar account of exploitation offered by Mikhail Valdman.⁹

As mentioned in the previous chapter, the discussion here will ask the following three (overlapping) questions of the accounts currently under examination:

- (4) What constitutes wrongful exploitation in consensual, mutually beneficial interactions?

¹ *Exploitation*.

² Sample, *Exploitation: What It Is and Why It's Wrong*, 16.

³ Feinberg, *Harmless Wrongdoing*, Four.

⁴ Goodin, "Exploiting a Situation and Exploiting a Person." "Reasons for Welfare."

⁵ Wood, "Exploitation."

⁶ Matt Zwolinski, "Structural Exploitation," *ibid.* 29, no. 1 (2012).

⁷ Angela J. Ballantyne, "How to Do Research Fairly in an Unjust World," *American Journal of Bioethics* 10, no. 6 (2010).

⁸ Wertheimer, *Rethinking the Ethics of Clinical Research: Widening the Lens*.

⁹ Valdman, "A Theory of Wrongful Exploitation."

- (5) What is it that exploiters should have done otherwise?
- (6) Which features of the parties to the interaction, of the terms of their interaction, and of the surrounding social and political institutions, are relevant in judging whether or not exploitation has occurred?

Section 2.2 will look specifically at the answer to (3): if in wrongfully exploiting B, A treats B *unfairly*, then we should want to know what sort of fairness is in question, including what sorts of considerations go into making determinations not merely that B has been treated unfairly, but that he has been treated unfairly *by A*. Specifically examined will be Wertheimer's insistence on what he calls *transaction-specific* fairness – a type of fairness that allegedly ignores those features of an interaction or the parties to it which would be relevant in making claims of macro-level, or institutional, injustice.¹⁰

2.3 will look at the transaction-specific account of exploitation shared by Wertheimer and Valdman, both of whom rely on the idea of *hypothetical competitive markets* as generating fair terms of interaction. This will answer (1), while the answer for (2) will become more apparent during the critique of this market-based account in section 2.4, in which I argue that the account will call fair what are in fact unfair terms of interaction, and that it will do this at least in part due to the fact that it is transaction specific. 2.5 returns to, and casts doubt upon, one last potential justification for the transaction-specific approach.

¹⁰ See the discussion in Chapter 1 regarding Wertheimer's distinction between micro-level and macro-level injustice/unfairness.

2.2 Exploitation & Unfairness

2.2.1 Procedural vs. Substantive Unfairness

Wertheimer begins with the very general idea that for A to exploit B is for A to *take unfair advantage* of B. The major question is then one of how we should understand this unfairness. Wertheimer considers two broad categories of (un)fairness: procedural and substantive.¹¹ Under forms of *procedural* unfairness he lists coercion, for surely if A has coerced B into some interaction to A's gain, the procedural aspects of the interaction are unfair. Also included would be any other defects in consent, such as A having deceived B as to the quality of goods or services exchanged or as to the content of the terms of the interaction.

As was discussed in Chapter 1, there seems to be good reason to think such procedural defects are not essential to exploitation: a number of exploitative interactions appear to lack any defect in consent, and the exploited party can have perfect information going into the interaction. The essential unfairness of exploitation must then be *substantive*—an unfairness in outcome. Either A gains at B's loss (thus harming B), or A and B both gain but B receives less than her fair share. Again, this thesis will follow many others in focusing on consensual, mutually beneficial exploitation – consensual interactions which improve the condition of both parties but which are nonetheless exploitative. Since both parties are better off by interacting, it is said that a *social surplus* is created. To say that such an interaction is substantively unfair – and thus wrongfully exploitative – is to say that there is a maldistribution in the social surplus. More specifically, A has benefited to the exclusion of B getting her fair share.

¹¹ Wertheimer, *Exploitation*, 39-41.

2.2.2 Transaction-specific Fairness

If the unfairness of exploitation in the relevant sorts of interactions really is distributive, then claims of exploitation in these interactions must appeal to some specific principle(s) of fairness in distribution. Before suggesting anything like a full principle of fairness to which exploitation claims refer, Wertheimer first makes some remarks about what any such principle might look like—specifically about what types of considerations it would take into account, and what kinds it would leave out (question (3) above). Under the sub-heading “Background Unfairness versus Transaction-Specific Fairness,” Wertheimer says he believes

[1] that we [should] distinguish between fairness as a principle for the distribution of social resources and fairness as a principle for transactions and [2] that principles for fair transactions should bracket information that might be relevant to other moral purposes, such as justifying aid or redistribution.¹²

Wertheimer discusses exclusively *transactions*, and as he says in an earlier piece on commercial surrogacy, “I shall confine myself to exploitative transactions; there may be forms of wrongful exploitation that do not involve transactions at all.”¹³ Even then it is clear that, whatever specifically he intends to pick out with this term, it encompasses a wide range of what I have been calling more generically *interactions*, including at least some that are harmful, and possibly even nonconsensual (or at least not strictly voluntary).¹⁴ I will proceed on the assumption that there is no difference, or no significant difference, between Wertheimer’s *transactions* and my *interactions*.

¹² *Exploitation*, 216.

¹³ “Two Questions About Surrogacy and Exploitation,” *Philosophy & Public Affairs* 21, no. 3 (1992): 213.

¹⁴ “Transaction” seems to be defined as involving some element of negotiation or agreement.

In an attempt to understand transaction-specific fairness, consider the figure he provides (his 7.1) for analyzing how the social surplus is divided between A and B:

	No Transaction	Transaction
A	0	>0
B	0	>0

He says that “in setting both party’s [sic.] payoffs in the No Transaction alternative at 0,” we accomplish two things. First, this allows us to “deliberately abstract from certain elements of their background situations, such as the parties’ overall welfare. The payoffs are *transaction specific*.” Referencing the case of Rescue presented in Chapter 1, Wertheimer says that on his view, “the greedy snowstorm rescuer may be guilty of exploitation even if he is relatively poor and the rescuee is relatively affluent.”

Second, setting the non-interaction baseline at zero allows us to accurately represent the fact that A can walk away from the transaction—i.e. that he has no moral duty to interact with B in the way in question. As stated in Chapter 1, this is certainly not to say that cases of exploitation in which A does have such a duty to interact with B are impossible. Rather, since not all cases of exploitation involve this kind of failure of duty, and since we are concentrating on only the least egregious instances of exploitation, exploitation of that type will be, at least for now, set aside.

The remainder of this section will examine the first reason for assuming a zero baseline for each party to the interaction: that in doing so, we abstract from “background conditions, such as the parties’ overall welfare,” leaving us with a transaction-specific understanding of what is fair (non-exploitative) or unfair (exploitative) in the distribution of the social surplus created by an interaction. The focus will be on two questions, the

first being clarificatory in nature: Which *specific* features of an interaction, of the parties thereof, and of the surrounding institutions are relevant to determinations of transaction-specific fairness, and which are *irrelevant*? The second question is justificatory:

Assuming we can get clear on the content of transaction-specific fairness, why should we think it correctly delimits the scope of considerations relevant to judgments of the sort of unfairness tantamount to exploitation?

These questions are important for at least two reasons. First, it is natural to think that only in light of this insistence upon transaction-specific fairness can we understand the particular transaction-specific principle of fairness for which Wertheimer does argue for a limited range of interactions (see 2.3). Second, as will be noted, not all theorists assume transaction-specific fairness. Thus, as the accounts of exploitation offered by Wertheimer and (I argue) Valdman are both transaction-specific (to the extent that we can make sense of this concept), we should want to know what impact this feature may have on the plausibility of these accounts.

2.2.2.1 *What is irrelevant?*

Wertheimer says “that principles for fair transactions should bracket information that might be relevant to other moral purposes, such as justifying aid or redistribution.” Of course, philosophers are in significant disagreement as to which considerations should matter in questions of aid, redistribution, and just distribution generally. If, setting aside A and B’s interaction, these philosophers were trying to decide what A and B would each have in a just society, some might consider A and B’s subjective states of well-being, or their opportunities for well-being; others A and B’s relative and/or absolute amounts of rights, liberties, primary goods, and/or resources more generally; and still others A and

B's capabilities – freedoms to turn resources into certain essential human goods and states of being. Philosophers embracing a more “historical” conception of justice would focus upon individuals’ (just) initial holdings and the consensual transfers of property made by them, as well as past injustices and required rectification. In terms simply of whether individuals should receive *aid*, where these considerations are (if possible) separated from questions of ideal institutional justice, philosophers would likely wish to settle questions on the correct measurement of *need*, as well as the content and scope of duties of beneficence.

I take Wertheimer as holding that transaction-specific fairness ignores all such factors—only if A and B’s preexisting amounts of primary goods, resources, opportunities, capabilities, etc. are irrelevant can we set their pre-bargaining/non-transaction baseline at zero. As discussed in Chapter 1, the exception to this would be where A is responsible for B being in the position that allows A to gain advantage – interactions of this type, it was said, are being set aside since they are not truly mutually beneficial. At least in some such cases, whether the terms of such an interaction are fair would be informed by the obligation upon A created by his past actions.¹⁵ For similar reasons, whether the terms of interaction (i.e. the division of the social surplus created) are fair is by default independent of considerations of general beneficence, I take it, since (as of Chapter 1) we have been looking at cases in which A is under *no moral obligation* to carry out an interaction with B.¹⁶

¹⁵ Say A had, in the past, challenged B to a fair wager, and that B agreed and lost. In this case, though A is in a way responsible for B’s being exploitable by A, it is not obvious that this should impact that terms of their interaction. Compare this case with that of Flat in Chapter 1, in which A causes a slow leak in B’s tire in order to later take advantage of B’s need for help.

¹⁶ I say “general beneficence,” because in Chapter 5 I discuss the proposal that exploitation is a failure of some “specified” (i.e. no longer general) duty of beneficence. (Snyder, “Needs Exploitation.”)

I will call this aspect of transaction-specific fairness the *Irrelevance of Pre-existing Conditions* (hereafter IPC): whether or not the distribution of the benefits in a mutually beneficial interaction is fair is independent of considerations of the parties' preexisting conditions (holdings in primary resources, opportunities for welfare, capabilities, etc.). Additionally—and perhaps *as a result*—transaction-specific fairness also exhibits what I will call *Uniformity in the Fairness of Terms of Interaction* (hereafter UFT): for a given interaction, what terms count as fair or unfair will be constant across all potential parties to the interaction. More specifically, what counts as fair will be constant across all potential parties to the interaction *for whom the interaction would be beneficial*. (Obviously, so long as I do not require a triple bypass heart surgery, there is no price I could pay for it which would be “fair.”) Putting IPC and UFT together, this idea of fairness would hold that if A interacts non-exploitatively with B upon terms *t*, he would have also interacted non-exploitatively upon *t* had the other party instead been C, regardless of any differences, however vast, in B and C's preexisting wealth, well-being, capabilities, etc. Conversely, if A's interaction with B upon *t* was exploitative, then it would have been exploitative to interact with C upon *t* as well.

This uniformity may be qualified, however, by Wertheimer's remarks concerning the *contextual* nature of exploitation, though this is far from clear. He says, “There is no reason to think that there is a unique principle for fair transactions, given that the contexts in which such transactions occur can vary with respect to the needs of the parties, the history of their relationship, the closeness of the parties, to name but a few.”¹⁷ So an exploitation claim in one context may appeal to a principle of fairness distinct from that appealed to in another context.

¹⁷ Wertheimer, *Exploitation*, 236.

Unfortunately, Wertheimer does not say much about just how, for example, the parties' preexisting relationship might affect what counts as fair in their interaction. Moreover, his saying that the "needs of the parties" can affect context, thus affecting what counts as fair, is rather confusing given IPC above. Given IPC, a plausible reading of this would have it that these needs are relevant only to the extent of determining whether A is morally required (say, by a duty of beneficence) to interact with B. Rather than dwelling on these issues, I merely want to note that, by all appearances, Wertheimer holds that though what counts as fair can vary by context, UFT holds within each context. At least, in *Exploitation*, it is not until after his introduction of transaction-specific fairness that he then (at least explicitly) turns his attention to that limited range of interactions for which he proposes a specific principle of fairness.

2.2.2.2 *Why is it irrelevant?*

If the account above is correct in its assessment of what features of the interaction and its parties are excluded in judgments of transaction-specific fairness, the next question is one of justification: On what grounds does Wertheimer assert that (micro-level) exploitation ignores these features? After all, exploitation claims at least very often map onto great inequalities in the parties' holdings of resources, capabilities, etc. The affluent capitalist class is said to exploit the lowly proletariat, and by doing so maintain if not deepen the great and already extant wealth and resource inequality between them. As employees, and as subjects in international clinical trials, individuals (and perhaps entire peoples) in struggling developing countries are said to be exploited by billion-dollar clothing, technology, and pharmaceutical companies of the first world. If sweatshop workers can be exploited despite the fact that they benefit from being

employed, it seems natural to think that what would constitute these employees' fair (non-exploitative) share would be informed by the fact that they have so very little and their employers so very much. According to Wertheimer, "it is unreasonable to expect the better-off party to repair [the other party's] background conditions by adjusting the terms of a particular transaction."¹⁸ Yet, while it may be unreasonable to hold that Nike or Apple has a moral duty to completely *repair* the background conditions of its workers in developing countries (whatever this might entail, and where they have not caused these conditions), one could maintain that these conditions play some role (however limited) in determining how employer and employee should divide their social surplus—a role seemingly denied by the insistence upon transaction-specific fairness.

The suggestion that fair terms of interaction are, to some extent, sensitive to "background" considerations, is not immediately implausible. In fact, as will become obvious, some of those writing on the topic of exploitation – even when limiting the scope of inquiry to "micro-level" exploitation – reject transaction-specific fairness. Ruth Sample, whose account is discussed more fully in the next chapter, argues that A exploits B in their consensual, mutually beneficial interaction when A fails to set the terms of the interaction in such a way as to address, or better address, B's needs. The needs of the parties (or of just one party) would seem to be exactly the sort of thing excluded by IPT. Moreover, Sample's account also rejects UFT, for it would, at least in principle, allow that A can non-exploitatively interact with B and C on *different terms*, assuming B and C are at different levels of need.

If Wertheimer is correct in insisting upon transaction-specific fairness, then this is all mistaken. However, he does not obviously provide any real argument for this

¹⁸ *Exploitation*, 234.

insistence. So here I consider two potential justifications for transaction-specific fairness which connect, to some degree, to what Wertheimer *does* say.

2.2.2.2.1 Non-responsibility for B's background conditions: Take 1

One might think that the parties' backgrounds are irrelevant – and, specifically, that whether or not A transacts fairly with B is independent of considerations of B's background conditions (as defined above) – whenever A is *not responsible* for B's present situation. Only if A put B in a position from which A can gain, would A have to take B's needs, or level of welfare or resources, etc. into account.¹⁹

As I said in Chapter 1, I will be ignoring those cases in which A has wronged B in the past, such that A has made it possible to take advantage of B in the future. The reason was that such past wrong was not taken to be an essential feature of exploitation, and not because such cases do not constitute exploitation. It was granted that when A has wronged B in the past, this must surely have some impact on our judgments of what constitute fair terms of their present interaction. I take Wertheimer's TSF as going further, holding that A's past wrong is not only *sufficient* for making the fairness of his current interaction with B sensitive to B's background situation (at least insofar as A is responsible for it being unfortunate); responsibility for B's situation is also *necessary* for such sensitivity. The potential justification for TSF currently under examination holds that background insensitivity is somehow *grounded* in lack of responsibility.

One might attribute this view to Wertheimer on the basis of certain examples he uses, as well as one important distinction he makes. At one point he considers something like the following claim: Student athletes are exploited by universities, because (1) they

¹⁹ More specifically, only if A has *wrongly* put B in a position by which A may later gain advantage of B, might the fairness of the terms of interaction be sensitive to B's background conditions. See fn. 15 above.

typically get less of an education (or, a lower-quality education) than their non-athlete peers, and (2) they would attend college *without* playing collegiate sports if this option were similarly funded.²⁰ For the sake of argument, we can grant both (1) and (2), as well as (3) that in a more just society, no potential college student would be faced with having to decide between being a college student-athlete and *not being a college student at all* (i.e. in a more just society, college would be affordable or fully subsidized for all interested parties). If (1-3) hold, then it is also true that (4) college athletes are the victims of injustice, and (5) universities benefit from this injustice, e.g. from all the money sports programs generate for the schools. But, says Wertheimer, even if all this were true, it would not establish that universities exploit college athletes. Rather, this establishes that universities *take advantage of unfairness*; it does not show that they *take unfair advantage* of the college athletes. Only the latter is necessarily exploitation; sometimes we can gain from the unfairness or misfortune others suffer without exploiting them. This would be exploitation, however, if it could be established that (6) universities are responsible for (4) and (5). But that is an additional premise and one that may be hard to prove, as universities might be no more responsible for this injustice than any other element of society.

This distinction seems quite plausible and indeed crucial in judging the validity of exploitation claims, especially when one considers all of those whose livelihoods depend on others' being in unfortunate or unjust situations. At least some social workers make a living by helping people suffering from past injustices. An attorney will be paid for defending a client wrongly jailed because the police have planted evidence. An oncologist is not an exploiter simply to the extent that she gains from her patients'

²⁰ Wertheimer, *Exploitation*. Chapter 3.

suffering a debilitating illness. Perhaps there are ways any of these people could be exploiters, but they are not exploiters simply because they benefit from the unfortunate or unjust situations of others.

Say that, on the basis of this distinction and the example used to illustrate it, someone argued that TSF is grounded in the fact that A is not responsible for B's background conditions. In their dealings with college athletes, the universities need not respond to the background injustice named since (we will assume) they did not cause it. In the same way, A never need adjust the terms of the interaction around the fact of B's unfortunate or unjust situation, both *so long as* and *because* A did not cause it.

But this goes beyond what is clearly stated. Neither the example nor the distinction truly says anything about or presupposes TSF. For instance, one could reject TSF while accepting that not every instance of taking advantage of unfairness is exploitation: Perhaps (i) A can gain *fairly* from B's unfortunate position, and (ii) what makes this advantage-taking fair is that it is appropriately sensitive to B's unfortunate position (whatever that might mean). In the same way, one could say that the example shows *not* that (iii) B's background unfairness is irrelevant because A has not caused it, but rather (iv) more must be shown to establish that universities have taken unfair advantage of college athletes. And again, such supporting claims might well appeal to whether and how the universities, in their interactions with college athletes, have set the terms of these interactions in response, at least to some degree, to the alleged background unfairness.

2.2.2.2.2 Non-responsibility for B's background conditions: Take 2

The distinction Wertheimer makes is indeed important, but it does not show that A's lack of responsibility for B's unfortunate or unjust situation makes it the case that the fairness of their interaction is judged apart from considerations of this situation. In other words, the distinction does not show why A's lack of responsibility would ground TSF. So consider instead the following argument for TSF, also appealing to A's lack of responsibility:

- (1) Assume that, while B is in an unfortunate or unjust situation – meaning she has come to have less than she should according to the correct theory of human well-being and/or justice – while A is not in such a position.
- (2) Assume also that A is not responsible for B's position as described in (1).
- (3) We can agree that, at least outside the context of any interaction, A does not owe B, *specifically*, anything.
- (4) Final assumption: B's position as described in (1) puts A in a position to conduct a mutually consensual and beneficial interaction with B.

The issue is with how one goes from (1-4) to TSF:

- (C) A need not take B's situation (described in (1)) into account in proposing/accepting terms of their interaction (i.e. B's situation is irrelevant to the fairness of the interaction).

To reach the desired conclusion, it appears that one must add to, or at least flesh out, (1-

4). To help in this, I will add a bit of terminology:

(B's) Contractual benefit

The minimum amount of benefit B would be willing to accept to order to (consensually) interact with A.²¹

(B's) Super-contractual benefit

Benefits to B beyond contractual benefits as just defined.

Now consider additional premise

- (5) If some feature of B's situation did not create an obligation on the part of A to act to the benefit of B *prior* to their interaction, then this feature cannot *now* obligate A to act such that B receives super-contractual benefits.

What can be said of (5)? First, it is far from clear that it is a new, independent premise and not just a statement of the attempted inference from (1-4) to (C) (or just a restatement of TSF). Since the validity of this inference is currently under debate, the issue simply shifts to why anyone would think (5) is true.

Second – and this is more for clarification – it should be emphasized, at least for someone in Wertheimer's position, that what is immediately at issue is not whether A can be obligated to give B super-contractual benefits, but rather when A owes B such benefits and in what amount; this leading to the question of which features of the situation are relevant in assessing the fairness of some distribution of benefits. It was assumed at the beginning – in order to get things moving – that B's consent and benefit gained were not sufficient for non-exploitation. It can be that A should allow B a greater share of the social surplus than that which B is willing to accept. Of course, a theory of exploitation should, in identifying and explaining what makes exploitation unfair (or otherwise

²¹ This language is borrowed with little change from Wertheimer's *Rethinking the Ethics of Clinical Research: Widening the Lens*.

wrong), tell us why merely contractual benefits are sometimes insufficient. In other words, it should explain why we would reject something like

- (6) If A was not, prior to his interaction with B, obligated to act to the special benefit of B, then it cannot be the case that in their current interaction, A must provide B any super-contractual benefit.

This position certainly embraces TSF, but at the cost of denying any moral demand for super-contractual benefits – thus denying the possibility of exploitation – in exactly the sorts of interactions at the focus of this work (and the works of Wertheimer, Sample, Valdman, etc.). Again, if (6) is in fact false, then why it is false must be addressed. This, however, will have to wait.

Third, there may be a class of interactions bundled with moral obligations – so-called “moral entanglements” – which show that (5), or something very like (5), is false. Consider the following two cases given by Henry Richardson:

The Old Man and the Groceries

You see an elderly stranger struggling with his groceries. Knowing he lives nearby, you decide to help him. Once in his apartment, you realize his messy kitchen is “growing dangerous-looking colonies of mold that, apparently, he cannot see or smell.”²²

The Reporter and the Peasant

“Reporting on the likely impact of a planned hydroelectric dam on the upper Mekong, [you, a U.S. reporter, learn] from interviewing a Laotian peasant that the

²² Henry S. Richardson, *Moral Entanglements: The Ancillary-Care Obligations of Medical Researchers* (Cambridge: Oxford University Press, 2012), 66. Non-quoted material is paraphrased.

peasant is apparently unaware not only of the planned dam but also of the economic ruin that awaits him if he does not quickly get relocation help.”²³

In each case, Richardson expects the following reaction from the reader:

- (i) I am now obligated to offer some level of help to the individual, even though
- (ii) before interacting with the individual in question – either by helping with his groceries or by interviewing him – even had I known his situation, I would not have had some special obligation to assist him (as I do now).

Richardson does not expect the reader to feel compelled to fully *fix* the individual’s situation, if that were even possible. So he does not think the reader will or should say, “I have to completely clean the old man’s kitchen,” or “I have to give enough money to the peasant to help him relocate.” It may be sufficient to simply inform the individual of the problem and point him in the direction of further aid.²⁴ But even if the requirements are this limited, it would still be the case that features of an individual’s situation which previously generated no moral obligation might now, through the process of interaction, generate just such an obligation.

Of course, the original interaction in each case is not the “transactional” sort focused on in this work: in *The Old Man in the Groceries*, for instance, you gain no benefit from helping him with his groceries, while in *Reporter and the Peasant*, the peasant (presumably) did not gain anything simply by being interviewed (though he now stands to gain from your freshly generated moral obligation). Yet, these differences do not help the questionable status of (5) and its applicability to the relevant sorts of

²³ *Moral Entanglements: The Ancillary-Care Obligations of Medical Researchers* (Cambridge: Oxford University Press, 2012), 73-74.

²⁴ At the most basic level, Richardson expects the reader to feel obligated to do at least a little more than warn the individual in question.

interactions. In the case of the Old Man and the Groceries, for example, you are obligated to provide some level of assistance with his messy kitchen even though you have *already* helped him with his groceries. In this interaction, not only did you not gain, but you also have to give more. Of course, this “more” may simply be “more time and effort” or something of that sort. Even then, however, this is more demanding than a principle of fairness more inclusive than TSF, such as “you can benefit from someone’s unfortunate or unjust position, so long as they also benefit, with the distribution of the social surplus being informed to some degree by the fact of his or her unfortunate or unjust position.”

I should say, again, that Wertheimer is not – at least in any explicit way – committed to (5), unless (5) is taken as equivalent to TSF. I have been considering (5) as a candidate for the missing premise in a potential argument for TSF. The upshot of the discussion of moral entanglements is this: even if (5) is not equivalent to TSF, we have reason to think it may be false. Therefore, an argument for TSF requires either an argument for (5) or another, more acceptable premise.

2.2.2.2.3 Counterexamples to a more inclusive fairness

Rather than attempt such an argument or alternative premise here, I will now consider an argument for TSF based on alleged counterexamples to any non-TSF idea of fairness in interactions. As was seen above, Wertheimer says that if we assume the unfairness of exploitation is transaction specific, we can allow the worse off to exploit the better off: in the case of Rescue, the greedy tow truck driver “may be guilty of exploitation even if he is relatively poor and the rescuee is relatively affluent.”

It may simply be that Wertheimer mentions this as a consequence of his view of exploitative unfairness, a consequence he accepts and that carries no special weight. Alternatively, he could be saying that (1) the relatively poor can exploit the relatively rich, (2) TSF can account for (1), and (3) the most plausible theory of (un)fairness in the sorts of interaction under examination will account for (1). Though this provides some reason to find TSF attractive, it does not justify an insistence upon TSF in the absence of something like (4) *only* TSF can account for (1). The problem is that there is no reason to think (4) is true.

All that an account of fairness would have to do to make room for (1) is say that there is some price, P , that the rich, stranded driver could pay the poor tow truck driver for his services, such that P is unfair. But why should we think, for instance, that this P is unfair because it is not the price the tow truck driver would charge anyone else, including parties less wealthy than the current customer (i.e. why think (1) could be accounted for only on a conception of fairness including UFT)? Why not hold think that, instead, a fair price – especially as charged by someone who is in need – could be relative to the customer's wealth, meaning that for *any* given customer there is a fair price, and that charging more than this is exploitation? Obviously an account of exploitation which accepts this conception of fairness would have to say which prices are indeed fair, but on the face of it, such a task does not seem impossible.

These examples are indeed important, but not because they demonstrate the utter irrelevance of larger background conditions (like wealth) to considerations of the relevant kind of fairness. Rather, these examples show, first, that inequality in the parties' background conditions is not *essential* to exploitation, even if the two are often found

together;²⁵ and second, that what *is* essential is the sort of bargaining inequality discussed in Chapter 1: what Goodin called an *asymmetrical dependence*, or what Wertheimer called a *threat advantage*. Or, as Valdman has it, for A to be capable of exploiting B, it must be that B “cannot, or cannot reasonably, refuse” A’s offer.²⁶ Though the better off, due to their greater opportunities and resources, might be less likely to find themselves backed to the wall, even they can find themselves stranded on the roadside or snake-bitten in the wilderness without the antidote. And when this happens, someone – including someone worse off in terms of wealth, welfare, opportunities, etc. – can come along and unfairly take advantage of this situation. But there is no obvious reason to think that *only* by accepting TSF can we say that this inequality in bargaining position is necessary for exploitation, while inequality in background conditions is not. One might simply maintain that such background inequality is not necessary to exploitation, while also holding that it can, in at least some circumstances, make a difference in the fairness of the terms of interaction.

2.3 Fairness & Hypothetical Competitive Markets

2.3.1 A Certain Range of Cases

Rather than continuing this inquiry into the justification of TSF itself, it might help to situate it within a discussion of the more specific principle of fairness Wertheimer suggests for a “certain range of cases.”²⁷ Wertheimer argues that, within this range, an interaction is fair (non-exploitative) if and only if it is carried out on those terms that would be reached in what he calls a *hypothetical competitive market*. Valdman adopts this account with some modifications, as will be explained.

²⁵ Mikhail Valdman, "Exploitation and Injustice," *Social Theory and Practice* 34, no. 4 (2008).

²⁶ "A Theory of Wrongful Exploitation," 1.

²⁷ Wertheimer, *Exploitation*, 230.

Before explicating the idea of such a market, we might ask what exactly this range of cases is. I do not think Wertheimer actually tries to provide an answer for this, and he certainly does not provide necessary and sufficient conditions for inclusion in the class of interactions in question. The idea, I take it, is that there are a number of goods, services, and perhaps other things we can non-controversially label as subjects of fair exchanges, and we can ask what makes these fair exchanges fair without worrying too much about what and why other things cannot be subjects of such fair transactions. Thus, the account in question will not have any say in the matter of commodification as exploitation, though it might provide guidance in determining whether an interaction is fair given that a good or service being exchanged can be exchanged fairly. (For instance, it might provide guidance in determining the fair price to pay or accept in exchange for a kidney, while simply assuming that selling or buying a kidney can be fair at all.)²⁸ So this particular account of fairness in interactions is not intended as one that can non-controversially cover all potential subjects of interaction. It may be that in other contexts, this principle of fairness must be altered. It may also be that, in such contexts, a completely different principle of fairness is appropriate.

2.3.2 Competitive and Non-competitive Markets

The appeal to hypothetical competitive markets might be thought to follow naturally from certain intuitions plucked in the case of Rescue or Antidote. In each case, A is the only one who can get B out of a jam quickly. A therefore holds a monopoly position, and he wrongly pushes it to his advantage, charging B more than he could have otherwise gotten away with. *More than he could have gotten away with*, say Wertheimer

²⁸ This is not to say Wertheimer is altogether silent on issues of commodification. See "Two Questions About Surrogacy and Exploitation."

and Valdman, had the interaction instead occurred under conditions of perfect competition among tow-service providers or antidote sellers.

Take the case of Rescue. In a perfectly competitive tow-service market, A would have been one in an infinite number of tow-service sellers. B would have been one in an infinite number of tow-service consumers, all of whom can move freely from one seller to another without cost, and who have perfect information regarding both quality, which is uniform across all sellers, and price. Under such conditions, price will also be uniform across sellers, at least in the long run. Competition forces sellers to undercut one another, until price matches the costs of providing the tow. It would not be worth towing anyone for a price below this (it would, in fact, be a loss), and if anyone tried to charge more than this price, consumers would simply go elsewhere, leading the deviant seller to lose all sales and be pushed out of the market. In other words, the (equilibrium) competitive market price for a tow (or any good or service) is the lowest price one can successfully charge while both benefiting from all transactions and not getting kicked out of the market. The case of Antidote shares many of the same features. If B simply wanted to buy the antidote and could do so within a competitive market setting, he would be charged the market price – here, the price of making the antidote available – and nothing more.

In each case, A uses B's predicament as a way of charging a higher-than-market price. The relevant predicament, say Wertheimer and Valdman, is that B can get what he wants or needs only by interacting with A, and not any one of an infinite number of providers competing for business. In this way, the account captures the idea of inequality in bargaining position discussed in Chapter 1: A has a *threat advantage* in the sense that

it is easier for A to refuse to transact if his chosen terms are not accepted by B – easier, that is, than it would be for B to walk away if *his* chosen terms were not accepted by A, meaning A is more likely to get B to accept terms more to A's favor. B thus faces the sort of *asymmetrical dependence* Goodin stresses: B needs something from A more than A needs something from B. And, following Valdman, we can say there is something that only A has which B cannot, or cannot reasonably, refuse, though the opposite cannot be said. Again, A holds this superior bargaining position only to the extent that he has no competition. For A to take unfair advantage of B, therefore, is to take unfair advantage of B's inferior bargaining position, and this means charging B more than A could have charged in the confines of a competitive market.

There are really two claims being made here: (1) the terms of interaction can be exploitatively unfair only in non-competitive (or at least not perfectly competitive) markets, and (2) an interaction is exploitatively unfair when it is carried out upon terms *other* than those that would hold were the interaction set within the confines of a competitive market. A number of readers might be flabbergasted at (1) and (2), so I will attempt a faithful reconstruction of the arguments for each of the two points, concentrating on the arguments as given by Wertheimer.

2.3.3 Why (Micro-level) Exploitation can occur only in Non-competitive Markets

In examining (1), I should emphasize and explain my use of the phrase “exploitatively unfair.” Wertheimer is at pains to say that while competitive market interactions are not, and cannot be, unfair *qua* exploitation, they can be unfair in other ways, and they can certainly be unjust. Moreover, he believes such interactions might

even be characterized as “exploitative” in some way, but never in the sense of the *micro-level* exploitation with which his analysis is concerned.

When A commits micro-level exploitation in his interaction with B, A has committed a moral wrong against B. Given that “ought” implies “can,” if A could not have done otherwise, then it is not the case A has exploited B. Wertheimer is happy to accept that there may be cases in which A could not have done otherwise, yet B is still “exploited” as a result of the interaction. But here that term is referring to some sort of *structural*, or *systematic* (macro-level) exploitation, which is a wrong not on the part of A, but located instead within the wrongful institutions governing society. If this is a legitimate use of “exploitation,” it is invoking a different concept.

So within the realm of competitive market interactions, there is some action that A could not have done otherwise, and this inability prevents A’s interactions from being (micro-level) exploitative. For Wertheimer, the most significant difference between competitive and non-competitive markets is the difference in the ability to choose the terms of interaction. In the non-competitive market of Rescue, there exists a range of potential terms of mutually beneficial interaction. If exploitation is about substantive unfairness in the division of the social surplus, and if some of these terms of interaction in this non-competitive market are exploitative, then A exploits B when he carries out the interaction upon terms which do not grant B her fair share—i.e. when A *refuses* to carry out the mutually beneficial interaction upon terms which would grant B her fair share.

As already noted, within the confines of a (perfectly) competitive market A never has such room for choice in the terms of interaction, at least if that interaction is to remain mutually beneficial. For here, A can charge only the market price: no more, no

less. Again, for A to charge less would be for him to fail to recover his costs, while to charge more would be to fail to successfully transact with anyone. Therefore, it cannot possibly be the case that A has refused to allow B some greater share of the social surplus created by their interaction. In other words, there are no alternative terms of interaction that (i) make the interaction beneficial for both parties, while (ii) granting B a larger share of the social surplus. Thus, Wertheimer concludes that exploitation is not possible within competitive markets. Perhaps we think B's competitive market interaction leaves her with some unfair amount of total resources, opportunities, etc.; but, again, if we wish to call this "exploitation," it is a matter of the wrongful nature of the market itself—and perhaps that of other or even all social institutions in play—and thus outside the realm of micro-level exploitation.

2.3.4 Why Hypothetical Competitive Market Pricing is Fair

Say we grant, for now, that interactions in perfectly competitive markets cannot be (micro-level) exploitative, and therefore that they cannot be unfair in the relevant way. What does the limitation on the terms of interaction within competitive markets have to do with the further claim ((2) above) that the fair terms of interaction in any *non-competitive* market are those terms that would hold were that market so limited—i.e. the terms that hold in what Wertheimer calls the corresponding hypothetical competitive market (hereafter HCM)? The touted virtue of competitive markets, after all, is efficiency, not fairness.

Wertheimer says this HCM price

is a price at which neither party takes *special* unfair advantage of particular

defects in the other party's decision-making capacity or special vulnerabilities in

the other party's situation. It is a price at which the specific parties to this interaction do not receive greater value than they would receive if they did not encounter each other. It may or may not be a "just price," all things considered, but it may well be a non-exploitative price, for neither party takes unfair advantage of the other party.²⁹

Inline with Richard Arneson's reading of Wertheimer, the idea seems to be that, within a competitive market, the price is one no party can adjust to his or her own advantage—it is decided by factors far beyond the control of any individual in the market; factors like scarcity, total supply, total demand, and so on.³⁰ This equality in the inability to adjust pricing to one's advantage, I take it, is what makes the price fair. It is exactly this inability which is missing in the case of Rescue, for here A's monopoly position grants him the opportunity to adjust the price to his advantage, and he makes use of it. A should have instead attempted to figure out what he could have charged B, or anyone else, for a tow had they met within a competitive market. By charging B, in reality, more than the HCM price, A has exploited B.

As Sample has pointed out, we should note in the block quote above that Wertheimer's "initial understanding of exploitation as [taking] unfair advantage has been shifted to [taking] *special* unfair advantage."³¹ What does Wertheimer mean by "special"? He says that in cases like Rescue, B can be exploited because B's car has broken down and he wants a tow. However, the fact that A can gain from B given B's particular circumstances is not the problem, and this sort of advantage-taking is certainly not excluded by any of the normal assumptions and constraints of idealized competitive

²⁹ *Exploitation*, 232. Original emphasis.

³⁰ Richard Arneson, "Exploitation by Alan Wertheimer," *Mind* 439, no. 110 (2001).

³¹ Sample, *Exploitation: What It Is and Why It's Wrong*, 20.

markets. The problem is A occupying a monopoly position, for if there were innumerable other tow providers available, A would not be able to charge the high price he does.³²

Importantly, B's circumstances are simply not at issue whatever they might be, whether they are "unfortunate" in the sense (perhaps) of needing a tow or even unjust, say, in having received far less than a fair distribution of primary resources. "True," says Wertheimer, "B's background conditions may have led B to enter into transactions at prices that more just background conditions would have made unnecessary."³³ Yet the injustices of B's background conditions do not constitute the "special vulnerabilities" with which Wertheimer's HCM-based account is concerned, and taking advantage of these conditions to interact with B for gain does not constitute taking "*special unfair advantage*" of B. B is relevantly vulnerable only to the extent that B faces a monopoly in the interaction, and A only takes *special unfair advantage* of B only when he uses his monopoly position to charge B more than what holds in the HCM. Again, one can take advantage of unfairness in the other party's situation without taking unfair advantage of (i.e. exploiting) that party.

The HCM account of fairness is certainly transaction specific in the way discussed in the previous sections. As just seen in the preceding paragraphs, the account embraces what I earlier called IPC. Further, the account clearly realizes what I called UFT, in that the HCM price is the only fair price and must be offered to everyone. Again, charging more than this price when one can get away with it is what Wertheimer

³² See Wertheimer's discussion of *The Port Caledonia and the Anna*, bottom of p.232 in *Exploitation* (originally introduced on p.40).

³³ Wertheimer, *Exploitation*, 233.

(and Valdman) is equating with exploitation (at least within the limited range of interactions he has in mind).

Towards anyone (such as Sample) unhappy with the qualifier “special”—i.e. with the disregard of the HCM-based account for the parties’ overall circumstances— I see (at least) two potential responses on the part of Wertheimer. One, already seen, is Wertheimer’s proposed requirement that the relevant principle of fairness be transaction specific. Also noted, however, was that there has yet to appear any independent support for this requirement. Second, and perhaps to greater effect, Wertheimer could reiterate just why the HCM price is not, and cannot be, lower than it is. Imagine, for instance, that A actually provides B a tow at the HCM price, though B claims he was cheated by A. A could respond, says Wertheimer, by pointing out that “a competitive market price reflects the cost of providing the good or service” (this being the natural result of perfect competition).³⁴ A cannot provide B a tow at a lower price without actually losing as a result of the interaction—that is, without failing to recover the costs of providing B with the service. Perhaps under more just or fortunate circumstances, A could offer B a lower price (if B even still needed the service), or the price would be the same but not so dear for B, but as things are, A cannot offer B more favorable terms of mutually beneficial interaction. And without some prior obligation on the part of A to provide B a tow—an obligation which we have assumed does not exist—A will interact with B only if A too gains a benefit by doing so.

Wertheimer is careful to say that this proposed account is not easily applied in all situations, even when we limit ourselves to valid market interactions. In determining what would constitute the HCM price for a particular good or service, we must

³⁴ Ibid.

distinguish those features of the actual situation which we should maintain in our calculations, from those features from which we should abstract away. When figuring out the HCM price for a house, we cannot neglect to consider its location. More difficult, however, are the cases of rare and unique items. Naturally, the rareness or uniqueness of an item is an important contributing factor to its value, so abstracting away from this—say, by imagining there are an infinite number of sellers offering this good in a competitive market—would miss the mark considerably. In such examples, Wertheimer is happy to accept that the HCM-based account will not provide some determinate fair price.

Still, we now have answers for the three questions posed at the beginning of the chapter, in regards to the HCM account:

- (1) What constitutes wrongful exploitation in consensual, mutually beneficial interactions?

Answer: A wrongfully exploits B if and only if A uses his threat advantage to successfully demand an unfair share of the social surplus, where *unfair* means *greater than A receives in the relevant HCM*.

- (2) What is it that exploiters should have done otherwise?

Answer: A should have demanded only that share which he would receive in the HCM.

- (3) Which features of the parties to the interaction, of the terms of their interaction, and of the surrounding social and political institutions, are relevant in judging whether or not exploitation has occurred?

Answer: All that matters is that A has a threat advantage over B, and that A would get some particular amount, x , of the social surplus in the corresponding HCM, where x is roughly the costs of production/provision.

As will be seen, these answers may represent Wertheimer's account slightly better than that of Valdman, but the difference is not so much as to delay a critical analysis of the HCM account as presented.

2.4 Critiquing HCM-based Fairness

In this section, I want to highlight several important difficulties facing the HCM-based account. One question may well be that of how Wertheimer's account could possibly be applied in discussions of potentially exploitative friendships, sexual relationships, and other interactions where no money, goods, or services (traditionally understood) are being exchanged, and where a hypothetical market just seems inappropriate. Again, Wertheimer might well say that such interactions are outside that "certain range of cases" for which he intends the HCM account of fairness. In what follows, however, I will be concentrating on problems arising when the HCM account is applied even to much more typical market interactions.

2.4.1 The Divide between Real Cost and HCM Price

In all the examples involving parties labeled A and B, it is A who is thought to be in a position in which he can exploit B, because it is A who holds the threat advantage. On the account of fairness in question, it is fair when A successfully transacts with B at a price no higher than that required to cover the costs of producing the good or providing the service B wants. In this section and the next – though the issue will arise elsewhere as well – I will argue that the HCM account can fail to pick out fair terms of interaction

because the terms it does pick out are or can be, unfair to A. At best, the account picks out terms of interaction upon which it cannot be the case that A exploits B, but this does not mean these terms are fair.

The fair price, say Wertheimer and Valdman, is the HCM price. In real markets, however, there is no reason to think that for any particular producer or provider, what he charges to cover his costs will be the same as that of his competitors, real or hypothetical. Capabilities theorists have pointed out that, due to interpersonal variation (such as in talent and ability), people do not reap the same level of advantage from the same amount of resources.³⁵ Imagine, for instance, that A has a certain disability that informs his costs by requiring special transportation arrangements or expensive medicines or treatments. And imagine that if A receives anything from state welfare programs to help cover these costs, it is insufficient to cancel out the difference between his own costs and those of some competitor, real or imagined, without the disability. Since Wertheimer says A can demand from B enough to cover the costs of providing the good or service, it might be thought that his account allows A—when A can (perhaps under conditions of non-competition)—to set his prices in relation to his own costs, where these are in turn informed by special needs stemming from his disability.

But, to its detriment, the HCM account of fairness would not brook this. It sets the price A can fairly charge *not* at A's own costs, but at the costs of his fully-abled competitors, real or hypothetical. After all, if A could even temporarily participate in a very competitive market, he would not succeed in setting special prices to match his higher, disability-informed costs. Therefore, says the account, it would be unfair of him in a real, non-competitive market to charge such prices. In this regard, the HCM account

³⁵ Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press, 1992).

of fairness itself is quite *unfair*: it sets the “fair” price relative to the abilities of the unimpaired, in effect punishing those who differ.

Perhaps one might reply that while a more just society would distribute resources so as to offset A’s special costs, allowing him to offer the good or service at the same price as his competitors, it is not the fault of A’s potential customers that society is currently unjust in this respect. Of course, this admission does not change the fact that society *is* unjust towards A and that A’s costs really are higher than those of his able-bodied (real or hypothetical) competitors. Moreover, we would also want to know why the customers’ not being responsible for A’s unjust situation relieves them from addressing it to some extent in their mutually beneficial interactions with A. As discussed in previous sections, a principle holding that these “external” considerations are irrelevant to the fairness of an interaction is at best unsupported, and at worst simply implausible.

Perhaps one might wish to allow Wertheimer and Valdman to associate the fair price with A’s actual costs of production. Rather than making the HCM price the final word on fair terms of interaction, it would instead be a simple rule of thumb, overridden when it fails to accurately reflect the costs of a particular producer. But with such a revision, it would no longer be the case that what B gets out of an interaction with A would be the same had B met any other producer or provider, for if B had instead met the fully-abled C, C would charge less than A. And this would remove exactly that feature of Wertheimer’s account which he believes makes it fair. Moreover, this revision is only possible by sacrificing TSF. The proposed revision fails to meet both IPC (in that it decides what is fair based in part on the fact that A is disabled in a way his competitors

are not) and UFT (in that the terms of B's interaction with A would differ from those of her interaction with C).

2.4.2 The Assumptions behind Perfectly Competitive Markets

Imagine now that for one day, A did participate in a highly competitive market, and on that day he sold (or attempted to sell) his goods or services at the relatively high price informed by his greater costs. We know that a seller who charges such higher prices will not succeed, eventually getting kicked out of the market. Again, this is why sellers in competitive markets are so limited in the price they can set. But are buyers similarly constrained such that they cannot pay higher prices for A's goods or services? More specifically, the question is if buyers are constrained such that (i) if they interacted with one of A's competitors at the standard market price the interaction would be mutually beneficial, and (ii) if they instead interacted with A for the same good or service but at A's higher price, the interaction would cease to be mutually beneficial.

In the standard model of perfect competition, there are constraints on both sides of the market exchange. Sellers compete with one another for customers by lowering price, but buyers can also compete among themselves by offering to pay higher prices for goods or services. But as Richard Arneson has noted in his review of *Exploitation*, this model also includes what might be seen as *motivational* constraints for both parties, though they are really just assumptions. Sellers (producers) are assumed to be profit maximizers, thus charging as much as they can get away with, while buyers (consumers) "aim to maximize their utility from their consumption and leisure," and this includes paying as little as possible for the good or service in question.³⁶ Such a buyer cannot pay a higher-than-

³⁶ Arneson, "Exploitation by Alan Wertheimer," 890.

necessary price (like the price A is charging) for a good or service without failing to maximize his or her interest satisfaction.

Arneson points out, however, that “there need be nothing that forces individuals to have the motives that make the market perfectly competitive. Individuals could choose to act from other motives, and maybe fairness demands that they do so.” Wertheimer has it that in the move from the model competitive market to actual, non-competitive markets, sellers are morally required to give up profit maximization; otherwise they could (and would, on the standard model) charge as much as possible in every non-competitive setting. And this sacrifice is clearly in the name of fairness. Does he also require that the other half sacrifice utility maximization in the name of fairness? No: it is actually *unfair*, on the HCM account, for A to take more than the HCM price for his goods or services. Yet, individuals whose motivations are informed by fairness and who can otherwise pay higher-than-HCM prices might find A’s terms of interaction rather fair. In other words, and to return to the question posed at the end of the first paragraph in this subsection, A’s potential customers may well have a range of prices they could pay while still making the interaction mutually (though not maximally) beneficial, and once we abandon—in the name of fairness—the assumption of utility maximization, these customers can, and perhaps should, accept a price above the HCM price when doing so is more fair to A.

And Arneson’s point, I take it, is not limited to non-competitive markets. He is saying that any perfectly competitive market—one, therefore, in which the assumptions of motivation hold—can be dismantled simply by moralizing the agents within, i.e. by making them care about fairness, as is generally presumed we should. Exploitation is not

only possible in a perfectly competitive market; it can be a function of the assumed, but revisable, motivations of its actors.

Much of the issue at hand is a natural result of Wertheimer's abstracting away from cases where A holds a solid monopoly on the provision of some good or service B very much wants (e.g. a tow in the case of Rescue). In these situations, there is often little worry that B may get more than her fair share, as it is largely up to A to choose the terms of interaction and ensure that they are fair. And if B getting too much is not an issue, then the goal is to limit the amount received by A, who can easily get too much. The problem, as I have been arguing, is that the principle of fairness Wertheimer puts forward can go too far against A, protecting B at the price of denying A a fair share. Again, the account calls terms of interaction fair merely on the grounds that they do not exploit B.

2.4.3 Complex Market Interactions

Someone might argue that even if the HCM price can at times be off, it accurately locates and explains exploitation in a number of important cases where A enjoys a strong bargaining position and uses it to get unquestionably more than he needs to "cover his costs." Consider the example of Sweatshop presented in Chapter 1: billion-dollar clothing companies paying their workers a dollar or two a day to make shoes that sell for over \$100. Under perfect competition, the story is that a consumer in the labor market is backed into a corner when it comes to wages: however low current wages are, this firm cannot afford to pay more, as the owner cannot take a smaller cut than he already receives and prices cannot be raised without losing out to competitors who would keep wages low in order to gain an advantage. Wertheimer's HCM account could be read as

requiring employers in actual markets to take as small a cut as possible, (perhaps) leaving more for wages. Surely, billion-dollar companies like Nike are taking a larger cut than they need to cover costs and stay in the market, so on the HCM account, these companies exploit their sweatshop laborers.

But hopes for such an outcome should not be too high, for something Wertheimer himself says could cancel out the verdict just reached. Assume Burger King's employees complain that their (let us assume) \$8-an-hour wage—the same wage Burger King's competitors pay their employees—is exploitative. According to Wertheimer,

Burger King does not exploit its workers if, as seems likely, they could not afford to pay more, given that it operates in a highly competitive environment. It may be unjust that B [an employee] has a low income, but we should not condemn Burger King, which is constrained by the market. Here, as elsewhere, ought implies can. Exploitation is tied to the set of feasible options available to A. After all, if Burger King paid more, then it would have to raise its price (losing customers and then profits) or maintain the same price but reduce its profit margins (losing shareholders).³⁷

The example helps get at the complex nature of markets, competition, and different forces informing calculations of cost. There are markets in more things than just goods, services, and labor; there is, for instance, the capital market, in which businesses may vie for investments by promising sufficiently high returns. Assuming price really cannot be tampered with, cutting profit margins—where this cuts returns on investments—for the purpose of bolstering wages could mean the loss of miffed shareholders. When this is the case, Burger King cannot carry out the employment interaction on terms more favorable

³⁷ Wertheimer, *Rethinking the Ethics of Clinical Research: Widening the Lens*, 209.

to its workers without not only forgoing any benefit (thus forfeiting any reason to interact at all), but actually taking a loss. Therefore, the workings of the capital market, in conjunction with those of the fast-food market, bind Burger King's hands, blocking any accurate claim of exploitation.

If the person imagined at the beginning of this sub-section, arguing in favor of the HCM account since it may locate and explain exploitation in important instances like sweatshop labor, is not worried by Wertheimer's dismissal of the exploitation claim against Burger King, they may want to look closer. To apply the HCM account, we would need to ask if a sizable chunk of the difference between what workers earn for making shoes and what the shoes sell for could be explained as what is needed to keep shareholders on board. If the answer is Yes, then Wertheimer's comments above regarding Burger King could equally be clearing the names of companies utilizing sweatshop labor. But answering this question, I think, would be difficult. To the extent that shareholders can be considered constituent parts (part owners) of the company—i.e. to the extent that we identify shareholders with the company—then we would need to ask if the returns they demand are more than would be granted in the corresponding HCM. In such a market, what would be the lowest return one would reasonably expect to cover one's "costs" (risks) of investment? However difficult it may be to calculate determinate answers to such questions, it seems these answers would be needed for the HCM account to have the ability to say the company, including the body of investors, is exploiting its workers.

Alternatively, we could follow Wertheimer in considering shareholders as separate from the ownership of the company, as is their official status. In this case,

whether or not the returns they demand are merely sufficient to, or in excess of that needed to, cover the costs of their investments, would not seem to matter. Regardless of whether these investors are demanding more than they would receive in a corresponding HCM, their demands limit the company's range of mutually beneficial terms of employment it can offer, just as in the case of Burger King. In each case, the company's hands are tied, and it cannot, on the HCM account, be guilty of exploiting its workers.³⁸

Perhaps upon examination of the facts, the companies do something with profits other than paying dividends or covering other (legitimate) costs, when these profits could easily be directed towards increasing wages, in which case—regardless of the status of shareholders—the company may be, on the HCM account, guilty of exploiting its workers. Moreover, and in regards to the approach of identifying shareholders with the company, I do not want to imply that the fact that this approach in the application of the HCM account requires answers to very difficult questions (such as what investors would receive in a HCM, what returns are sufficient to cover their costs of investment, etc.) means the approach is implausible for that reason. It may well be that any attempt, on the part of any account of fairness, to locate and explain exploitation of sweatshop labor would require some understanding of what constitutes a reasonable return on an investment in a clothing company utilizing such labor. However, until such difficult questions are answered, the jury is out on whether the HCM account can locate and explain exploitation in these conditions.

³⁸ Two points: First, this leaves open the possibility that shareholders themselves are guilty of exploitation. On this, see especially my Chapter 5. Second, we should probably consider as well the hundreds of millions of dollars that may be spent in celebrity athlete endorsements, with each major company vying for the biggest stars. When endorsements are an important part of the business, it seems that the associated costs should feature into what a company can or cannot leave for wages.

If this sounds rather innocuous, one might consider that, whenever facts about pricing outcomes in HCMs are not readily available (assuming they are even determinable), the account will likely tend toward the status quo. For example, if we are unsure about just what exactly investors would settle for in the relevant hypothetical capital market, the natural result is to fall back on what investors do settle for in real, imperfectly competitive markets. Wertheimer's Burger King example above may well be proof enough of this point. Insofar as this is true, the HCM account may often in practice fail to generate philosophical grounds for useful social critique.

2.4.4 Exploitation, HCM Pricing, and Labor Generally

I said above that Wertheimer's HCM account could be read as requiring employers in actual markets to take as small a cut as possible in order to leave more for wages. The textual basis for this is in Wertheimer suggesting that if Burger King *could* pay its employees more while still benefiting from the employment relationship, it would be obligated to do so. However, even apart from considerations of capital-related costs discussed above, there are further issues that complicate what conclusions Wertheimer's account could reach regarding the wrongful exploitation of labor.

For starters, the account seems to say that Burger King is required to pay its workers more when it could only if the workers would receive that much more in a HCM. If workers received a wage greater than that paid in the relevant HCM, then by all appearances they would be guilty of exploiting their employers. Moreover, most employers are also producers selling goods to consumers, and in a competitive market producers must pay the lowest wages they can in order to pass along the lowest prices possible. This would seem to imply that whatever profit a producer could reap by

operating in a non-competitive market should not be tacked on to workers' wages but rather foregone in order to maintain low, HCM-level prices.

Above, I discussed Arneson's comments on why the HCM account may fail to identify fair shares for the parties to an interaction, in that it can lopsidedly favor consumers. This advantage granted to consumers will eventually take its toll on what is left for wages, such that if the account can be unfair to a producer, it can just as easily be unfair to his or her workers.

Yet when one maintains that workers can be (micro-level) exploited in a competitive market—a claim, as will be seen in the next chapter, that Ruth Sample wishes to defend—it is the employer who is named the exploiter, not the ultimate consumer of goods. So we might want to temporarily set aside worries of whether on the HCM account consumers are getting more than their fair share, and concentrate on its claim that employers who take no more than their HCM analogs are acting non-exploitatively towards their employees. As was seen in the previous sub-section, the idea is that the HCM wage represents the maximum the employer can pay while still making the interaction worth it. And if he or she cannot pay more without forgoing any benefit from the interaction, and if the employer is under no obligation to interact with the worker without benefit, then it cannot be that the employer ought to have paid more.

But perhaps we would like more information about the HCM wage price before simply deeming it non-exploitative. What is this wage, and what does it provide? Consider a situation similar to Wertheimer's Burger King case above, though simplified. Say L is the living wage. And say that A, an employer, might pay his worker, B, wage L if not for the fact that A's competition, C, pays *his* employees $L-1$. If A paid L and C

paid $L-1$, and assuming A cannot take a smaller cut for himself without forgoing any benefit in the employment interaction, then A would have to raise prices and suffer the consequences. Therefore, given the competitive nature of the market, A cannot pay B L .

Note what has happened here. Assume for the sake of argument that employers are morally obligated to pay a living wage. Then C does something wrong by paying $L-1$. C's wrongful action also changes the terms upon which A can carry out a mutually beneficial employment interaction with his own employees, including B. So even though it was wrong for C to pay only $L-1$, it is not *now* wrong for A to pay B only $L-1$. Of course, the HCM account cannot say that employers *exploit* their workers by not paying them L : the fair labor price is whatever the equilibrium price happens to be in the relevant hypothetical competitive labor market, and this might well be $L-1$. Moreover, C might simply be able to say that he was forced to pay only $L-1$ because some other competitor, D, was doing so. For if D was doing so, then – given the nature of competitive markets – it is not the case that C could have carried out a mutually beneficial employment interaction with his employees at L , so it is also not the case that C ought to have done so (and perhaps D could say the same of E, who could say the same of F, and so on). Finally, once C's competitors – even if it is only A – are all paying only $L-1$, C *cannot* – and thus morally *need not* – pay his workers more!

Something has gone seriously wrong here. Our judgments of wrongful exploitation should not turn so heavily upon the actions of those outside the interaction (like C, D, etc.). Such actions should not so easily let potential exploiters off the hook, especially when these actions themselves are (at least potentially) immoral. In Chapter 4, I will argue that the problem is tied directly to how the principle of “ought” implies “can”

is being applied in the HCM account (and in others as well). The remainder of this particular discussion, therefore, will have to wait.

2.4.5 Valdman on Wertheimer and the Role of Need in Exploitation

I have been proceeding in this chapter as though Wertheimer and Valdman offered the same account. There is, however, at least one potentially important difference, and one which, according to Valdman, makes it the case that Wertheimer's account misses out on an important element of exploitation. Consider the two following cases:

- (i) A billionaire offers to buy your aging Ford Taurus. She says she has promised her husband a car for his birthday and wants to play a joke on him. For whatever reason, only this exact car will do. The Kelley Blue Book value is \$4,000. You demand nothing less than \$100,000, and she accedes.
- (ii) A billionaire runs up to you, out of breath, saying she needs your car immediately, because only she can save her kidnapped husband. You do not doubt her, and there are no other cars around for her to take. She has her checkbook in her hand. The Kelley Blue Book value is \$4,000. You demand nothing less than \$100,000, and she accedes.

Valdman rightly points out that, on Wertheimer's account, you equally exploit the billionaire in both cases. In each case you use your monopolistic position to demand considerably more than market value, and this is wrongful exploitation. Yet surely these cases are very different. More specifically, in (ii) you exploit the billionaire by taking advantage of a serious *need*, while in (i) you take advantage of a merely frivolous *desire*. Wrongfully exploiting someone, says Valdman, is more than just using a monopolistic

position to charge a higher-than-market value; it is doing so when that person needs what you are offering. It must be that B cannot reasonably refuse A's offer, for it even to be possible that A could exploit B.³⁹

This leads to the possible distinction I mentioned in Chapter 1 on the topic of how to understand inequality of bargaining position, and the idea of threat advantage in particular. Again, to say A has a threat advantage over B is to say that A, compared to B, has an easier time walking away if his proposed terms of interaction are not accepted. The proposed distinction applies to how we should understand the "ease" of walking away: it is in the *ability* to walk away, or in the mere *willingness* to do so? One is *unable* to walk away from what one needs, in that it is "unreasonable to refuse" what one needs. On the other hand, one is *merely unwilling* to walk away from what one desires but does not need. Let us call the exploitation of someone who needs what you have *needs exploitation*. Valdman talks specifically about the urgent needs of potentially exploited parties, where this is taken broadly so as "to include that which one needs to live a decent life and not just that which one needs to avoid misery or death."⁴⁰ And call the exploitation of someone who merely desires what you have *mere-wants exploitation*. In this terminology, Valdman is saying wrongful exploitation is always needs exploitation and never mere-wants exploitation.

Before examining this position further, it should be noted that in making need an essential element of exploitation, Valdman is not, or is not obviously, thereby rejecting TSF. Again, the rich and the poor alike can need a snakebite antidote, and whichever you happen to come across in the wilderness, Valdman says you should charge the HCM

³⁹ Valdman, "A Theory of Wrongful Exploitation," 13.

⁴⁰ "A Theory of Wrongful Exploitation," 10.

price, as this is the price you could charge them in the absence of the “urgent need” prompting this particular interaction.⁴¹ Rather, the point seems to be that some inequalities in bargaining position are more important than others from a moral point of view; or, more specifically, some such inequalities are morally important and others are not.

I see no way of arguing for this distinction other than comparing sets of examples, such as (i) and (ii) above, or ticket scalping versus Valdman’s own Antidote example presented in Chapter 1. Within each set, one example features B simply wanting something, while the other presents B as needing something A has. While such examples make plausible Valdman’s emphasis on need as important to the moral status of exploitation, they may still fail to show that need is necessary to exploitation. For instance, one may hold a middle position in which it is always wrong to gain excessively from a threat advantage, while allowing that the seriousness of any particular instance of such advantage-taking is a function of the extent to which the other party needs what you are offering.⁴² On this view, (i) and (ii) are both instances of wrongful exploitation, though (ii) is much worse than (i).

In the next chapter, the issue of need will be discussed further, and I will examine accounts of exploitation in which it is argued that need is even more integral to exploitation than is allowed here, in that the very terms of interaction must be responsive to the sort of background considerations of need ignored by theories, such as the HCM account, embracing TSF. For now, I believe the worries expressed in the preceding

⁴¹ “A Theory of Wrongful Exploitation,” 12.

⁴² One might say that the distinction fails in another way, namely in that just because B needs what A has, this does not make it the case that B will be unwilling to walk away should he think A’s proposed terms unfair. This is not, I think, a problem, since if B does walk away, there is no interaction and thus no exploitation. A may be acting immorally in some other way, but he does not here exploit B.

section cast grave doubts upon the plausibility of the HCM account, where some of these doubts arise insofar as it embraces TSF.

2.5 Transaction-specific Fairness, again

The question then arises again: Why insist upon transaction-specific fairness to begin with? This is the last potential justification for this insistence I will consider: any non-transaction specific principle of fairness is simply too complex or too indeterminate in result. (As with the other potential justifications discussed, I do not pretend to know that Wertheimer had this in mind, or even that he thought any such justification was necessary.) Allowing the fairness of the terms of an interaction to be sensitive to such considerations as the parties' overall welfare, whether they have been victimized or benefited by injustice, etc., might make determining what is fair far too difficult. Exactly how much more would B have if society were more just, and exactly how does A go about reflecting this in the price he charges B for a tow? And given this complexity, and since it can lead to different fair terms of interaction according to the different statuses of the parties involved, people may not recognize their own interactions as fair even when they are. By instead ignoring details of welfare, injustice, etc., we streamline the process of setting terms of interaction (perhaps we simply ask what the price would be in a HCM), and parties are more likely to know when the principle is or is not being correctly applied.

Obviously, if it is extremely difficult to know when a principle of fair interaction is being applied correctly, this principle is quite useless. But to know if this problem really does plague any principle of fairness in virtue of it not being transaction specific, we should first ask which particular principle is in question. Take, for instance, the

principle that A may charge B no more than the costs of A's providing the good or service, where these are really just A's costs and *not* those of his (real or imagined) competitors. I am not suggesting that we adopt this principle or even consider its merits. Rather, I only want to point out that (1) it is not transaction specific (it appears to violate both IPC and UFT), yet (2) it sounds at least as easy to apply as the HCM-based transaction-specific principle above, if not easier given that here we need only know the costs of one actual person and not those of any hypothetical persons.

In the end, Wertheimer's insistence upon transaction-specific fairness appears to be unmotivated, while the transaction-specific account that he proposes, and that Valdman takes up, wrongly calls fair what are in fact unfair terms of interaction. In the next chapter, I discuss an account of exploitation in which the determination of the rightful terms of interaction is certainly not transaction specific. Should this account prove problematic insofar as it is sensitive to such things as the parties' overall welfare, larger considerations of (in)justice, etc., then perhaps there will be reason to revisit the concept of transaction-specific fairness examined here. In any event, Wertheimer and Valdman will both make an appearance in Chapter 4, in which I will argue that they and Sample, despite all their differences, share a very problematic approach to the topic of exploitation, an approach relevant to how each answers the second question posed at the beginning of this chapter.

CHAPTER 3: VULNERABILITY AND EXPLOITATION

3.1 Introduction

In this chapter I consider accounts of exploitation that define the phenomenon as improperly taking advantage of the vulnerable, where *being vulnerable* means something more than the bare fact of facing some kind of threat advantage. It was seen in Chapter 2 that, though Valdman agreed with Wertheimer in the use of hypothetical competitive market (HCM) pricing in determining fair (i.e. non-exploitative) terms of interaction, the two split in regards to what might be called the relevant form of vulnerability potentially exploitable parties face in interactions.

The two new accounts discussed here will follow Valdman in emphasizing larger considerations of vulnerability—especially being in need—and the chapter begins with a further discussion of his theory. Next is the account proposed by Robert Goodin, who defines exploitation and its particular form of moral wrong relative to a certain “duty to protect the vulnerable.” Finally, I examine Ruth Sample’s “Exploitation as Degradation,” an account which is (as she says quite explicitly) heavily indebted to Goodin’s, as well as to certain of Wertheimer’s insights. Sample and Valdman have claimed that the latter two accounts are importantly different from those discussed in the previous chapter. I would like to know if this is true: do Goodin and Sample truly provide alternatives, and if so, is either very plausible? Much of this discussion will center on an issue closely examined in that of Wertheimer’s account of exploitation: what features of the parties to an interaction and of their surroundings are relevant in assessing judgments of exploitation in these interactions? I will argue that Sample’s account has some real advantages over all others considered up to that point, though it is far from perfect.

3.2 Two Questions

I want to begin by reiterating an important point using some of the terminology built up in the previous chapter. Given the positions taken in accounts of exploitation, we must be careful to separate two important, cross-cutting questions:

- (1) Under what circumstances can A exploit B?
- (2) What constitutes exploitation – what makes certain kinds or instances of advantage-taking *unfair* (or wrongful in some other manner)?

It was noted as early as Chapter 1 that for it to even be possible for A to exploit B, A must hold some kind of threat advantage over B.¹ The necessity of threat advantage was seen to be generally agreed to by all theorists, except that some, including Valdman, held that some threat advantages were more important, morally speaking, than others. Using language introduced in Chapter 2, we can say Valdman holds that the only wrongful form of exploitation is *needs exploitation* – exploiting someone based on the fact that they very much need something you have. Compare this with what might be called *all-goes exploitation*, which includes both needs exploitation but also *mere-wants exploitation* – exploiting someone based on the fact that they want, but do not (or do not desperately) need what you have. According to Valdman, Wertheimer wrongly takes the position of all-goes exploitation. As will become clear, Sample (and likely Goodin) would agree with Valdman's assessment.

As I said before, one might reject Valdman's claim that moral wrongness is binary with respect to whether B is or is not in need: that Antidote is worse than ticket scalping is not proof that the latter is not to any degree exploitatively wrong. Perhaps

¹ Again, I am setting aside the issue of exploitation as commodification, which may not require the presence of this, or any, kind of bargaining inequality.

Valdman would like to say that if ticket scalping is wrong, it is wrong in some non-exploitative way, as exploitation requires the exploited party to be in urgent need. But this would be rather ad hoc, especially given that when B is in need, Valdman equates fair pricing with the HCM price – a price also surpassed in ticket scalping. Rather than maintaining this dichotomy, it is reasonable to hold instead that needs exploitation is much worse than mere-wants exploitation, though both are (or might be) wrongfully exploitative.

Valdman's appeal to HCM pricing brings us to the second question and helps show why (1) and (2) are taken to be independent. Despite their disagreement regarding (1), Valdman and Wertheimer agree that when A is in a position to take unfair advantage of B, whether he does so will be determined by comparing the actual terms of interaction to those reached in the corresponding HCM. Sample, on the other hand, will largely agree with Valdman in saying that one can only exploit the very vulnerable (robustly understood), but break with him on (2), since she holds that market pricing has nothing to do with morally acceptable terms of interaction.

3.2.1 Valdman and HCM Pricing (again)

So one can, as Valdman attempts to do, make urgent need an important element of exploitation while still making the fairness of the terms of interaction independent of such things as why the needy party is in need – whether it is because your car has simply broken down in a rural area (assuming this generates real need), or because you are poor and your community has such a low standard of medical care. Again, no matter how much B has in her bank account, and no matter how extensive her stock portfolio, she can still find herself snake-bitten in the woods without an antidote, facing the threat

advantage of a very self-interested Samaritan. All that matters is that B is in need, that A holds a threat advantage over B in regards to this need, and that some price p is what B could expect to pay if the only difference was that A did not have this advantage. This p is the HCM price, and it ignores such background features as overall wealth, resources, capabilities, etc.

It might be thought that Valdman's account – i.e. the HCM account coupled with need as a necessary condition of exploitation – is not as dismissive of background conditions as I have made it seem. After all, the problem with Sweatshop and Clinical Trial is rooted in the limited alternative opportunities available to B, which allows A to take advantage of B's situation. Valdman's account enables us to (1) recognize that it is morally significant that B is lacking in something important (that she is in "urgent need" as defined by Valdman), and (2) mitigate A's threat advantage, by obligating A to grant B her competitive market share.

As touched on in the previous chapter, the biggest problem with this suggestion is that there is no reason to think the terms of interaction picked out by the HCM will be fair. In a number of cases, these terms might well be no different than what B can expect to get if A is not restricted by considerations of fairness. Though Valdman is hopeful that his theory will generalize beyond money-for-goods exchanges,² it is far from certain that a competitive market in, say, international clinical trials is even possible, let alone that it would have provided the people of Bolivia with something beyond the controversial amount of benefit D-Labs was willing to fork over had the trial been carried out. Is there good reason to believe that if D-Labs had been competing with some other drug company for Bolivia's participation, this would have led to greater benefits for the vulnerable

² Valdman, "A Theory of Wrongful Exploitation," 13.

population – for instance, deeply discounted post-trial surfactants? If such provisions would have made it the case that interacting with this population would not be profitable, then – as explained in Chapter 2 – such super-contractual benefits would not be required. Valdman can say this population is vulnerable, but in embracing the HCM account, he lacks the tools to make the terms of interaction necessarily answerable to the vulnerability itself.

Similar worries arise regarding sweatshop labor. Why think that the low wages and terrible working conditions these workers suffer is the result of some lack of competition on the part of businesses, and that greater competition – if there really is a lack of it – would improve the workers' position further? The imposition of a minimum wage, where it is enforced, is motivated not by market failure but by the idea that markets can leave workers without enough. Valdman defines exploitation as using someone's vulnerability to extract excessive benefits from them, but insofar as "excessive" is defined relative to HCMs, the account is simply disconnected from the underlying vulnerability of many potentially exploited parties.

There is something amiss in making B's need, objectively understood, necessary for exploitation while separating B's (and possibly A's) overall objective condition from the fairness of the terms of interaction. This is exactly what reliance upon HCMs accomplishes, for a HCM only mitigates what A could do given his threat advantage. And this problem remains even if we allow that anyone – rich and poor alike – can be exploited.

Consider again the case of Sweatshop from Chapter 1. Assume that B requires \$2.50/day to meet his most basic needs; that adds up to about \$912 per year. And assume

that B is employed at a yearly salary of \$412. Now assume that in Valdman's Antidote, B is very wealthy, yet A charges B not \$20,000, but \$510 dollars, for the dose of antidote for which A paid \$10. Finally, assume (what is far from certain) that Valdman can account for B being exploited in this version of Sweatshop, in part because B fetches a yearly income of \$912 on the corresponding HCM. In each case, A is gaining excessive benefits from B's need, acquiring (or keeping) \$500 of the social surplus that should instead go to (or stay with) B. In other words, in each case A gets \$500 more than on the relevant HCM.

I posit that even though A wrongfully exploits B in each instance, shorting B \$500 in the Sweatshop case is importantly *worse*, at least in one way, than overcharging B by \$500 in the Antidote case. It is worse because the difference in value of \$500 between the two victims: for the poor worker, the loss of \$500 means falling far short of being capable of meeting his needs, while for the wealthy but snake bitten, \$500 means far less. This is a difference in the relative objective value of the money. No matter how much the wealthy snake-bite victim might desire to keep the \$500, it is not as important to his well-being as it is for the worker's. To paraphrase Harry Frankfurt, this money could bring the worker to something like *sufficiency*, which is more important than merely adding to the wealth, resources, and well-being of someone at or beyond this threshold.³ Of course, Frankfurt was concerned with how these considerations figured in theories of distributive justice, but I am proposing that they are equally relevant to judging the relative moral wrongness of different instances of exploitation.

Notice that this difference in the wrongness of exploitation based on objective differences in the value of the money to the parties – where these differences track

³ Harry Frankfurt, "Equality as a Moral Ideal," *Ethics* 98, no. 1 (1987).

differences in the overall objective conditions of the parties – parallels Valdman’s claims that needs exploitation is morally more significant than mere-wants exploitation. For Valdman, it does not matter how much B simply wants something that A has for which A can charge more than the HCM price; B must need it. I am suggesting that this analysis stops too early. It is not just *that* B is in need, for the content of this need, understood within B’s larger overall objective condition, is also important to considerations of fairness. Underpaying the worker by \$500 is not the same (morally speaking) as overcharging the wealthy snake-bite victim by \$500, nor is it the same (morally speaking) as underpaying an upper middle-class attorney \$500. These may well all be instances of wrongful exploitation, but they are not on par.

Valdman cannot account for such difference, for the deviation from the HCM price is equal across the interactions. Nor is it the case that the worker’s need (getting enough to meet basic needs) is greater or more desperate than that of the snake-bitten individual (getting the antidote which prevents certain, imminent death); if anything the reverse is true. Even worse, if we keep everything the same except stipulate that in the Antidote case, A charges B any amount *more* than \$510 – say \$550 – Valdman may be committed to saying that B is wronged here more than in the Sweatshop case (even if, for instance, we also make B very, very wealthy).

3.3 Goodin on Exploitation

It was mentioned in Chapter 1 that Goodin would, like Valdman (and Sample), reject what I have called the all-goes exploitation of Wertheimer’s account in favor of Valdman’s exclusively needs-based exploitation. To return to Goodin’s example: that a monopolist can charge Goodin a higher-than-market wage for some good is not enough

to make it the case that, if Goodin accedes, he is wrongfully exploited. It must also be the case that Goodin cannot easily walk away from the transaction – if he pays an above-market price for a luxury item such as figs, for instance, he is not wrongfully exploited. Goodin describes the difference as one in whether or not the party is relevantly *vulnerable*, where B is vulnerable to A iff B’s “interests are strongly affected by [A’s] actions and choices.”⁴ In the case of the over-priced figs, Goodin faces a monopoly but is apparently not vulnerable – his interests will apparently not be sufficiently affected by whether or not he gets the figs. This form of vulnerability has affinities with what Valdman has called *urgent need*, where (again) this includes “that which one needs to live a decent life and not just that which one needs to avoid misery or death.”⁵ One does not need figs to live a decent life; therefore in Goodin’s example he is not in urgent need. Given these authors’ shared views on the role of need in exploitation, one might then wonder if Goodin provides an account of exploitation different from, and perhaps more plausible than, that which Valdman has offered.

Goodin defines exploitation as special kind of violation of a “strong moral duty to protect the interests of those who are particularly vulnerable to (i.e. whose interests are strongly affected by) our own actions and choices, regardless of the particular source of their vulnerability.”⁶ To understand more clearly this special violation of duty, Goodin looks at four “principal” ways we can take advantage of the vulnerable in “modern society”:⁷

⁴ Goodin, "Exploiting a Situation and Exploiting a Person," 187.

⁵ Valdman, "A Theory of Wrongful Exploitation," 10.

⁶ Goodin, "Exploiting a Situation and Exploiting a Person," 187.

⁷ "Exploiting a Situation and Exploiting a Person," 184.

- (4) “First, it is thought wrong to play for advantage against other players who have renounced playing for advantage themselves. Paradigmatically, it is deemed inappropriate (unfair, exploitative) to strive for narrow, egoistic advantage over friends and lovers, who have renounced any such pursuit over you.”⁸

We might wish to add to this, for Goodin does not say in which way one party is specifically vulnerable to the other in this scenario, and it may be objected that there is no vulnerability, as the purportedly vulnerable party may at any time pursue her own “narrow, egoistic advantage” over the other party. Consider the case of Marriage presented in Chapter 1. A and B are longtime partners and now considering marriage. B would like to marry A and still pursue a career. A would rather B not pursue a career but instead immediately have and raise A's children. And A knows that B would rather be married and have children than not be married at all, even if this means losing out on an independent career. While B wants what is best for both, A is more than willing to threaten ending their relationship to get his desired outcome.

One might say that B could simply provide a similar threat and in doing so no longer be vulnerable, though this would seem to assume that A and B stand to lose equally if the relationship fails. But it may be that B wants it more; and/or it may be that by remaining unmarried, B has a harder time meeting her basic needs. Apart from these considerations is the more basic one that a healthy intimate relationship is one in which the parties do not attempt such power plays. A and B could maintain a relationship in

⁸ "Exploiting a Situation and Exploiting a Person," 185.

which each tries to get what they want through such threats, but at some point we may want to say they are no longer pursuing the kind of relationship they started out with.⁹

- (5) “Second, it is thought wrong to play for advantage against other players who are unfit or otherwise unable to play in games of advantage at all.”¹⁰

Goodin says this covers the unfairness of cheating someone by taking advantage of their blindness or low IQ. He says it may also cover, in part, the unfairness of sales of snake oil to cancer patients and drugs to addicts.

- (6) “Third, it is thought wrong to play for advantage against other players who are no match for you in games of advantage.”

Goodin says this holds where the parties have “vastly disproportionate bargaining power,” and “the strong [presses] their advantage against a hopelessly outmatched opponent.”¹¹ The “paradigm” exploiter in such cases, says Goodin, “might be the monopoly supplier of some commodity which others need desperately, or the monopsony buyer of some commodity which others must sell in order to survive.”¹²

- (7) “Fourth, it is thought wrong to play for advantage when your relative advantage derives from others’ grave misfortunes.”

It is therefore wrong, says Goodin, for a carnival to profit from the deformities of the

“Elephant Man,” even if it were the case that sideshows engaged in a bidding war

⁹ This last consideration is not unproblematic, for there are many different types of intimate relationships and many types of marriages, and we may not feel comfortable saying B is vulnerable (and that A is acting exploitatively) simply because A is unwilling to allow theirs to meet some particular ideal. We may well think that, absent abuse or deceit, whatever A and B agree to is best. At the same time, we should be careful to (1) not confuse the hesitation to *prevent* non-ideal marriages with a hesitation to judge them as exploitative, and perhaps (2) add that whatever they agree to may be best *when their decisions are made against the background of institutional features allowing either party's reasonable refusal*. Again, if B's refusal to marriage would entail her inability to easily meet her basic needs (say, due to a prevalence of sexist hiring practices), then we may be more likely to reject as acceptable whatever terms they happen to agree upon.

¹⁰ Goodin, "Exploiting a Situation and Exploiting a Person," 185.

¹¹ Ibid.

¹² "Exploiting a Situation and Exploiting a Person," 186.

proving very lucrative to him. Similarly, it is wrong to profit by sales of supplies to those rocked by natural disaster: here, “morality requires that needed materials be supplied either free or at most at cost. Making any profit at all—even the normal rate of profit—out of the distress of disaster victims is thought to constitute exploitation.”¹³

“This listing,” Goodin adds, “makes no pretence of being exhaustive.”¹⁴

Presumably, Goodin is therefore open to saying there are other forms of wrongfully taking advantage of the vulnerable and to calling these “exploitation.” In any case, he says that playing for advantage in such situations is wrong insofar as it is a violation of a two-part duty to protect the vulnerable:

[1] firstly, [this duty] involves a general duty to suspend ordinary rules of behavior in dealing with those who are particularly vulnerable to you, and, specifically, to refrain from pressing your advantage against them in the way that would have been perfectly permissible in ordinary, everyday relationships; and [2] secondly, it involves a duty to take positive measures to assist those who are particularly vulnerable to you.¹⁵

A violation of (2) is thus a violation of our duty to protect the vulnerable, but such violation—mere neglect—does not constitute exploitation. (1) is “a stronger form of delict,” not the mere failure to actively assist the vulnerable, but actively taking advantage of them.¹⁶ Goodin identifies exploitation with the violation of both (1) and (2).

¹³ Ibid.

¹⁴ “Exploiting a Situation and Exploiting a Person,” 187.

¹⁵ Ibid.

¹⁶ “Exploiting a Situation and Exploiting a Person,” 188.

3.3.1 Comparisons & Criticisms

3.3.1.1 *Obligation to interact*

It is now possible to ask how Goodin's account differs from those of Wertheimer and Valdman, and how plausible the account is in itself. As already made clear, Goodin would agree with Valdman, and presumably disagree with Wertheimer, in saying that need, or something very much like it, is essential to exploitation: mere threat advantage is not enough. The question is then one of what exactly constitutes fair terms of interaction with individuals who are in need. An answer to this will determine whether Goodin embraces something like the HCM account of these theorists, or if his account is transaction specific in some other form, or something altogether new.

In trying to answer these questions, it becomes obvious that Goodin's account is – or at least can be – very different indeed from the accounts by Wertheimer and Valdman not only in content, but also in its very approach. This is so insofar as it seems to define exploitation relative to the sort of moral baselines and preexisting moral obligations this work (following Wertheimer and others) set aside as unessential to wrongful exploitation. A could exploit B, it was said, even if A is not responsible for B's being in a position in which she needs what A has, and even if, prior to their interaction, A had no special obligation to interact with B to B's benefit. Rather A chooses to interact not because of duty, but because of self-interest.

Compare this with Goodin's claim that exploitation is a violation of both parts of the duty to protect the vulnerable: (1) A's duty to not press his advantage against the vulnerable (including B), and (2) A's duty to take positive measures to assist those particularly vulnerable to him (presumably including B). And to illustrate the point, take

the third form of taking advantage of the vulnerable seen above: it is wrong for a monopolist to “press his advantage” against those who desperately need something he has. This sounds compatible with a HCM account – it is permissible to gain from another’s needs, but not to *press* your advantage, which can be read as charging a higher price than you could otherwise get away with (similar to Wertheimer’s distinction between *taking advantage of unfairness* and *taking unfair advantage*).

But this reading is challenged by Goodin’s treatment of the examples used to discuss the fourth form of exploitation. For instance, if B is a victim of a natural disaster, and because of this disaster B urgently needs supplies A sells, it is impermissible for A to profit at all from B’s need. Presumably, profiting from this need would be a violation of (1). Of course, foregoing any profit would leave A without a self-interested reason to interact. This, I take it, is where the second, positive duty (2) comes into play: A must take positive measures to assist the vulnerable and is therefore morally required to interact with B.

Sample has argued that this threatens to make Goodin’s account far too demanding.¹⁷ In effect, Goodin has morally required A to take a loss. He does not specify how much of a loss one must face before being freed of the obligation to interact with vulnerable parties.¹⁸ Surely A must not provide so much as to cause himself to become vulnerable. But just as surely there is a significant amount of space between, on the one hand, merely (and perhaps only occasionally) offering the vulnerable (say) a discount, and on the other, discounting so much as to maintain a position just above

¹⁷ Sample, *Exploitation: What It Is and Why It's Wrong*, 47-48.

¹⁸ Neither does Wertheimer specify the conditions under which A can be morally obligated to assist B, such that charging B would be inappropriate. Unlike Goodin, however, he does not make such obligation an integral part of his understanding of exploitation.

vulnerability. However, this particular objection may miss the mark, for in the example being considered, Goodin seems to allow A to at least recoup the barest costs of providing B with the supplies. A would then not take a loss, but he would be stripped of any self-interested reason to interact, meaning he would be motivated only by the positive duty (2) to assist the vulnerable.¹⁹

More troubling, I think, is that making this positive duty (2) a central component of exploitation simply gets things wrong. Wertheimer and Valdman (and Sample) are right to think that exploitation need not involve any obligation on the part of A to interact with B, even if some kind of obligation is often in place. Assume, for instance, that being a wealthy company based in the developed world, A has some sort of duty to assist the global poor. A is also considering whether it should build a new factory in its home country or if it should contract work out to sweatshops in Bangladesh, where potential workers (call them B collectively) are undoubtedly in need and more so than those in the developed country (B*). Nothing makes it the case that A must choose B over B*, especially if A gives money to help construct wells in sub-Saharan Africa, thus discharging through other means its duty to assist vulnerable persons. A can still hire and exploit B – say, by not paying them enough – but without further argument, this has no obvious connection to some pre-existing positive duty (if there is one) to assist the vulnerable. It would therefore be best if an account could explain what exploitation is and why it is wrong without appeal to such a duty.

¹⁹ I admit to some confusion as to what exactly Sample's objection is in the passage indicated. It may instead be that a duty to assist the vulnerable, as described, cannot ground special obligations; it may be that this duty is in general too demanding, apart from any considerations of exploitation.

3.3.1.2 *The right kind of wrong*

Shedding the positive duty Goodin associates with exploitation leaves us with (1): the duty to not press your advantage against the vulnerable. As merely (1) (and if we could ignore how Goodin applies his account in the case of victims of natural disaster), it might then look very similar to Valdman's: A could interact with the vulnerable B upon the mutually advantageous terms that would hold in the absence of A's threat advantage, and if B is not vulnerable A can charge whatever he would like. Perhaps this would be the HCM price (when B is in fact vulnerable) or perhaps something different. But if, as Goodin seems to suggest, not pressing your advantage against vulnerable parties means not profiting from them at all, his account, argues Valdman, fails to correctly locate the wrong of exploitation.

Recall Valdman's Antidote example, and compare it to the following:

Rescue for Pleasure

Same as Antidote, except "A offers to help B for free simply because A gets tremendous pleasure from helping people in distress." Here, "A is motivated primarily, or even entirely, by his desire to promote his own happiness, and ... he uses B's predicament mainly, or even entirely, for this purpose."²⁰

In both Antidote and Rescue for Pleasure, A is profiting from B's vulnerability, even if not always monetarily. Yet, says Valdman, A wrongs B only in Antidote. B is not even a victim in Rescue for Pleasure, for B has no grounds for complaint. B does have grounds for complaint in Antidote, for even though B is left better off having paid the \$20,000 for A to save his life, B can say he should not have been charged so much.

Goodin cannot account for the difference between the two cases; he is forced into the

²⁰ Valdman, "A Theory of Wrongful Exploitation," 6.

strongly unintuitive position of saying they are both cases of wrongful exploitation, and perhaps equally wrongful.

This is not to say that a moral (or even legal) prohibition on merely taking advantage of the vulnerable is without merit, and we can think of good reasons for it (though they may well be outweighed²¹). For instance, if A were allowed to gain specifically from B's vulnerability, then A would have some incentive to maintain those conditions under which B is vulnerable, at least when this is possible. Moreover, even Valdman suggests that merely profiting from the vulnerable could be an important kind of exploitation, something he calls “indecent exploitation.” Gaining from the vulnerabilities of others might be wrong even if it does not wrong the vulnerable parties; it could be a sign of poor character on the part of the “indecent exploiter.” (Obviously, saying this form of “exploitation” is indeed wrong requires further argument; we might describe A’s motivations as *odd* in Rescue for Pleasure, but this does not make it the case that he is acting viciously in any way.)

While Goodin’s account is indeed an alternative to those of Wertheimer and Valdman, it is not a more plausible option. Though it shares Valdman’s emphasis on the role of need in exploitation, its connecting exploitation with a positive duty of assisting the vulnerable is confusing and unintuitive: it just is not the case that exploitation claims are necessarily predicated on such a duty. And as just seen, problems remain even without this positive duty, as the account fails to recognize exploitation as a wrongdoing of the exploited.

²¹ For instance, telling A he cannot profit from interactions with the vulnerable B would – without the positive duty Goodin included – take away any incentive A had to carry out the interaction. B might have no other means of securing this much needed good or service (e.g. it is not provided by some social safety net). I discuss this issue in Chapters 4 and 5.

3.4 Sample's "Exploitation as Degradation"

Like Goodin, Sample would agree with Valdman in emphasizing the role of need, objectively understood, in exploitation. But unlike Goodin, she does not tie exploitation to pre-interaction obligations to the vulnerable; nor would she agree with him in saying that exploitation is merely gaining from those in need. Moreover, she breaks with Valdman and Wertheimer by rejecting transaction-specific fairness, including transaction-specific HCM accounts of what makes terms of interaction exploitative or not. For Sample, it is not just that vulnerability is necessary for exploitation; it is also the case that the terms of interaction must be adjusted so as to be informed by, and sufficiently responsive to, this vulnerability.

3.4.1 Respect (Not Protect)

The central idea of Sample's account is that all exploitation is a failure to respect the value of those with whom we interact for our own benefit, thus her entitling the account "Exploitation as Degradation." You may degrade me by harming, coercing, or defrauding me without benefit to yourself, though this would not be exploitation. Following Wertheimer, A can exploit B only if A benefits from their interaction. And while harming, coercing, and defrauding are obvious candidates for forms of degradation, Sample does not believe exploitation must involve such elements, and she too focuses upon those interactions that are putatively exploitative, yet mutually beneficial and consensual. Thus, her particular task is to explain how it is that A can interact with B to B's benefit and with B's consent, yet somehow fail to properly respect B.

It might be thought that A can degrade B in this way whenever A has treated B unfairly: not just procedurally—as in coercion, fraud, etc.—but also in outcome, as when

A succeeds in getting B to agree to terms of interaction which provide for an unfair division of the social surplus. To treat someone unfairly might mean to treat them as something of less than equal value. Of course, exploitation as a form of distributive unfairness is the tack taken by Wertheimer, as discussed in the previous chapter, though there is no (at least explicit) attempt to connect this unfairness with a failure to perform a Kantian duty of respect.

Sample, however, is uncomfortable with exploitation as distributive unfairness. Her reason, I gather, is that she believes such an approach gives short shrift to the larger context of vulnerability of the exploited parties. Yet, as will become obvious, she clearly does think exploitation in the sorts of interaction in question is at least in large part a matter of how the social surplus is distributed so as to be responsive to the needs of the vulnerable party. Thus, I will phrase her disagreement as one not with an emphasis on distribution as such, but rather with the notion of a transaction-specific approach to exploitation.

3.4.2 Exploitative Disrespect

I should begin by saying more about the duty of respect and how it is supposed to explain the wrong of exploitation. In terms of what such a duty requires, Sample leans upon work by Joseph Raz, who she says

argues that the duty of respect is not a duty to seek out, identify, and engage with whatever has value. Rather, it is a duty to acknowledge, and to refrain from harming, and to some degree to preserve what valuable things we do encounter.

In the case of ends in themselves [e.g. human beings], this may mean not only not

worsening their chances for a good life as human beings, but also assisting them in their attempts to succeed.²²

That such a duty would require us to not harm others seems obvious, which is why the application to mutually beneficial, consensual interactions is the interesting case. Though properly respecting human beings does not, or does not always, require me to seek people out and help them, when I do interact with them, my duty of respect is not sufficiently discharged by refraining from harming them. Sometimes we must benefit them, and—says Sample—this is especially true when we have benefited from our interaction. And this benefit must be *sufficient*, else, though “we benefit our interactors, we reject their value.”²³

This may become clearer when we see just how, according to Sample, the duty of respect should inform the terms of our mutually beneficial, consensual interactions with vulnerable individuals. This affords a look at the specific ways Sample believes we may fail to respect people in such interactions, as well as an understanding of what she believes constitutes vulnerability. She lists what she calls “three broad divisions” of forms of disrespect:

[1] First, we can fail to respect a person by neglecting what is necessary for that person’s well-being or flourishing. [2] Second, we can fail to respect a person by taking advantage of an injustice done to him. [3] Third, we can fail to respect a person by commodifying, or treating as a fungible object of market exchange, an aspect of that person’s being that ought not be commodified.²⁴

²² Sample, *Exploitation: What It Is and Why It's Wrong*, 68.

²³ Ibid.

²⁴ *Exploitation: What It Is and Why It's Wrong*, 57.

She admits to having very little to say about (3) given its controversial nature—it seems an open question as to what sorts of things can and cannot be acceptably commodified.²⁵ Of the remaining two forms of disrespect, Sample says much more about (1) than (2). Though I will reflect on this difference in attention momentarily, for now concentrating on (1) will prove helpful for understanding what Sample is trying to get at with the duty of respect.

Sample suggests that we understand the relevant notion of respect through the lens of what some have called Kant's "Humanity Formula" of the Categorical Imperative: "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means."²⁶ In a way this is unsurprising, since Kant equates being an end—or "end in itself"—with having a certain intrinsic value (dignity); a value every moral agent has and must respect in others. Attempting to use this as a means of clarification may also be surprising, however, given how difficult it is to pin down just what it means to treat someone as an end or as a mere means. For instance, Sample recognizes that it just meant refraining from treating someone in a way to which they would not consent, then there would be no way to fail to treat someone as an end in any consensual interaction (including those we might wish to call exploitative).²⁷

3.4.3 Exploitation & Need

But she says that "A commonsense way to interpret [the Humanity Formula] is to say that to treat a person as an end in herself is to take seriously the requirements of living a human life":

²⁵ *Exploitation: What It Is and Why It's Wrong*, 58.

²⁶ Kant, "Groundwork of the Metaphysics of Morals," 80.

²⁷ Sample, *Exploitation: What It Is and Why It's Wrong*, 69.

When what brings a person to interact with us in the first place is a need to meet his basic needs, then that person is vulnerable to us. If we can compensate our interactor in a way that would allow him to meet these basic needs, but nonetheless compensate him only minimally, that appears to be closer to what Kant had in mind with this formula of the moral law. To ignore our vulnerable interactor's basic needs in this case is merely to use him.²⁸

In this way, Kant's dictum and the duty of respect may be equally explained by appeal to need. People have basic needs, and I may be able to address these needs within the context of a mutually beneficial, consensual interaction. By helping someone meet his basic needs, I help "preserve" him (to use Sample's earlier language) and in doing so respect his value as an end in itself.

This tact raises two important and potentially difficult questions. First, what are these basic needs? If an account simply stopped at equating A's wrongfully exploiting B with A's failing to address B's needs in their interaction, it is not as though the account would be failing to say anything interesting about the phenomenon. Proof enough is the fact that such a view is in contrast with Wertheimer's even most basic understanding of exploitation as transaction-specific distributive unfairness—unfairness which is cut off from any consideration of how much the parties have or need. However, if we do not know what these basic needs are, then we are in no position to say whether B has any unfulfilled needs, and if so, whether A has addressed them within their interaction. This challenges the account's ability to reach clear conclusions in specific putative cases of exploitation and, with it, our own ability to judge the intuitive appeal of the theory.

²⁸ *Exploitation: What It Is and Why It's Wrong*, 70.

Second, at what point do we say that A has addressed these needs sufficiently?

This is important because we are looking specifically at mutually beneficial interactions, so even the exploitative ones will provide some manner of advantage for the needy party. As already noted, sweatshop labor does often pay more than local alternative employment, yet some (including Sample) believe these relationships are exploitative nonetheless.²⁹ So when is *some* not *enough*?

In response to the first question, Sample borrows from Martha Nussbaum's capabilities account of justice, where capabilities are freedoms to attain certain ends ("functionings") which constitute human flourishing. These capabilities

include not only life ("being able to live to the end of a human life of normal length") and bodily health, but also bodily integrity, sense, imagination, and thought ("being able to use the sense to imagine, think, and reason, among other things"), emotional capability ("being able to have attachments to things and people outside ourselves"), practical reason, affiliation with others, affiliation with other species and nature, play, and control over one's political and material environment.³⁰

To be just, a society need only ensure that each of its citizens attain a "minimum level" or "threshold" of these capabilities. But Sample is not interested in such a threshold as a requirement of justice. Rather, she thinks it provides a strong understanding of basic human need and (at least one form of) vulnerability: someone is vulnerable (or vulnerable as being in need) when she has less than her capabilities threshold. Thus, if I interact to

²⁹ *Exploitation: What It Is and Why It's Wrong*, 8.

³⁰ *Exploitation: What It Is and Why It's Wrong*, 78. Quoted material from Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2001). See also "Human Functioning and Social Justice: In Defense of Aristotelian Essentialism," *Political Theory* 20, no. 2 (1992).

my benefit with someone below this threshold, I should adjust the terms of our interaction so as to address this condition.³¹ Failing to do so is a failure to properly respect the individual, and this is the wrong of one kind of exploitation (the first of the three kinds Sample mentions).

Or, more specifically, failing to adjust the terms so as to sufficiently address her needs is exploitation, and quickly we run into the second question: if the interaction is (as stipulated) already to the needy individual's benefit, how much more is required to avoid exploiting her? Now, if in every interaction with a needy individual, I managed to bring him up to the capabilities threshold, then I could not be said to have exploited him.³² Depending on what this threshold is, however, Sample's "duty of non-exploitation" could easily prove very demanding. Say I wish to buy a basket from a poor craftswoman in a developing country that has poor health care infrastructure and endemic malaria, as well as a history of severe gender inequality and autocratic rule. Given the list of capabilities above, it does not seem reasonable to suggest that I could adjust the terms of the proposed interaction so as to bring her up to the threshold, even on a miserly interpretation of what this threshold requires.

But neither, says Sample, is such an extreme adjustment required in every instance to avoid exploitation, for there are different kinds of interaction. Importantly, there are "individual," or one-off, interactions, like the basket-buying case above; and there are "repeating," or on-going, interactions, such as the relationships of employer and employee, husband and wife, parent and child, etc.³³ "[N]onexploitaiton does not require

³¹ Sample, *Exploitation: What It Is and Why It's Wrong*, 81.

³² Unless I somehow nonetheless take advantage of some injustice having been done to this person in the past. More on this shortly.

³³ Sample, *Exploitation: What It Is and Why It's Wrong*, 81.

that we ensure the capabilities of our interactors in individual transactions. Rather, it requires that we in some way take their needs into account.” But on-going interactions “tend to preclude other relationships from occupying the same role.”

Thus an employer is aware that the full-time employee will necessarily be relying solely on the wages obtained from that employer for subsistence and that accepting such employment precludes her from obtaining subsistence in other ways. If an employer fails to compensate an employee in a way that provides her with adequate income when such compensation is possible, then the relationship is exploitative. The employer is, at the very least, taking advantage of the surplus of labor in order to neglect the objective needs of the employee. This neglect can be measured in terms of the employee’s inability to function. The employer’s greater involvement seems to entail a greater commitment to the well-being of his interactor.³⁴

Likewise, family members are in a unique and important position to provide for certain needs of other family members, and reaping advantage from this relationship while failing to fulfill something like others’ “capability of emotion, or of affiliation” is exploitation.³⁵ In other words, the answer to the second question seems to be something like this: if a needy individual, B, repeatedly interacts with another (non-needy) individual, A, as a unique means of achieving some threshold level of capability, then A must adjust the distribution of the social surplus as necessary so as to make sure B attains this threshold. When this dependency does not hold, A must merely adjust the terms of

³⁴ Ibid. As will become obvious in Chapter 5, I borrow heavily, with small changes, from this insight in formulating my own account of exploitation in employment.

³⁵ *Exploitation: What It Is and Why It's Wrong*, 81-82.

the interaction (the division of the social surplus) so as to address B's sub-threshold condition. (More on this will be said.)

3.4.4 Taking Advantage of Injustice

Before weighing the pros and cons of Sample's account of exploitation, I want to return to the different ways she said we can disrespectfully interact with someone (i.e. exploit him) within the context of a mutually beneficial, consensual interaction. Specifically, I want to now look at the second way: taking advantage of the fact that they have been victimized by injustice. Sample says that we can do this to people "even when their threshold capabilities are met."³⁶ This raises at least three questions: First, what does it mean to take advantage of injustice? Second, how does this constitute a failure of respect? And third, is it possible to interact *non-exploitatively* with someone vulnerable in this way (and if so, how)?

Consider an example Sample provides. Due to historical sexual and racial inequality, women and minorities can often expect smaller wages than those of equally qualified white men. A system in which differences in wages track differences in race or gender is unjust because it disrespects a fundamental (moral) equality of all citizens. "The vulnerability, in this case," says Sample, "is not an unfulfilled basic need, but [that] the person's bargaining position is lower than it would have been without the injustice."³⁷ Say that an employer, A, could hire a white male, B1, at wage x , or A could hire an equally qualified woman, B2, at wage $x-y$ (where y is some positive number). A takes advantage of injustice when he hires B2 at $x-y$ and pockets y .

³⁶ *Exploitation: What It Is and Why It's Wrong*, 82.

³⁷ *Ibid.*

I think this answers the first question (How does one take advantage of injustice?), but I am not sure if it answers the second (How is this exploitatively disrespectful?). Perhaps it is something like this: by hiring B2 at lower wages than B1 would receive, A displays his acceptance of a system which disrespects B2's moral equality. It is one thing to suffer such an institution's existence (or to not actively fight it); it is another to profit from it. And this may provide an answer to the third question (How could A have avoided exploiting B2?), which is that A could have paid B2 the same wages as B1. Or—and this raises a rather thorny issue—perhaps A could have abstained from exploiting B2 by simply hiring B1 to begin with.³⁸

3.4.5 Potential Advantages

I hope to have presented Sample's theory as fairly and accurately as space permits. There are a number of potential problems to address and further clarifications to be made. But before doing so, I would first like to consider potential benefits of adopting this account, particularly as it compares to the accounts offered by Goodin, Wertheimer, and Valdman.

First, the account appears to avoid at least some of the difficulties mentioned above for Goodin's theory. Again, Goodin posited a duty for A to interact with the vulnerable B, and to forego any benefit in doing so. Sample posits no such thing. I said that such a duty was not a necessary feature of exploitation claims, so it would be better if an account could explain these claims without positing this duty. Moreover, it was this

³⁸ Imagine A telling B1 that he could hire B2 at $x-y$, at which point they agree that A will hire B1 at $x-.5y$. There is a real sense in which A has used B2 to his advantage – getting the employee that he prefers for less than he would have had to pay – yet he has not actually transacted with B2. Has he exploited B2 without even hiring her? I believe the answer might be Yes, though it is not clear how to account for this with anything seen so far. Perhaps this is due to the preoccupation with *mutually beneficial* exploitation, whereas here B2 does not benefit.

duty that raised Sample's worry that Goodin's account might be too demanding—it was unclear how much A might have to sacrifice in carrying out the interaction. On Sample's account, A can actually benefit from the interaction, though to an extent limited by B's needs. Lastly, Exploitation as Degradation seems capable of explaining the wrong of exploitation as a wronging of the exploited. To treat someone with insufficient respect is to treat them wrongly, even if they benefit by you doing so.

Second, in saying that the terms of interaction should be responsive to certain extra-transactional features of the parties involved—like B's being in need—Sample's account presumably avoids some of the pitfalls I pointed out in Chapter 2 for the transaction-specific market approach. In particular, I argued that equating non-exploitative terms of interaction with those that would occur if A and B were transacting in an ideally competitive market was unfounded. Even if it were the case that in this ideal market, A can only offer one price, call it p , and that this lack of freedom in setting price meant that p was not unfair, this is not sufficient to show that p is fair in the context of a real-world market. (Recall in particular the discussion of Arneson's comments that price is in part a function of the behavior of the market's actors, and that we might find the profit-maximizing behavior of actors in ideal markets to be morally abhorrent in real people.)

What Sample's account would call the non-exploitative terms for a particular interaction would, in some cases—and particularly where B is vulnerable due to need—not be based on any such ideal, and is firmly based on actual features of the interaction and the parties to it. (I say “in some cases” because if B has her needs met but has been a victim of injustice, then the terms of the interaction are (presumably) set relative to what

B would receive under more ideally just circumstances.) Therefore, Sample appears to avoid the problem I presented for the HCM account in Chapter 2, where I argued that it can be unfair to the disabled and less talented by preventing them from charging more (when possible) to cover their extra costs. Having embraced a capabilities approach to need, Sample could say that what individuals on either side of the interaction require to meet their needs will vary, and that this should be taken into account when considering the terms of a particular interaction.

Moreover, these same considerations show how Sample skirts Valdman's problem – discussed earlier in this chapter – of incompletely accounting for how need impacts considerations of exploitation. This resulted from Valdman's reliance upon HCMs as generating non-exploitative terms of interaction, and the fact that HCMs ignore the overall objective conditions of the parties to the interaction. Sample, on the other hand, appears to make the terms of interaction directly answerable to just these conditions.

In the same vein, Sample's account features what I will call a putative final advantage: unlike an HCM account, hers (she hopes) allows for exploitation within the context of competitive markets.³⁹ This is a potential advantage insofar as exploitation claims appear to be made without regard as to whether the terms of an interaction are the result of competition or not. Sample's theory supposedly not only recognizes need and vulnerability as morally relevant to exploitation, but also makes the terms of interaction responsive to these extra-transactional vulnerabilities. Again, there is no reason to think that need-responsive terms will necessarily match those set within a competitive market.

³⁹ Sample, *Exploitation: What It Is and Why It's Wrong*, 61.

3.4.6 Potential Difficulties

3.4.6.1 *Exploiting those in need but not needy*

That being said, the account faces significant problems which threaten to outweigh, or expose as chimerical, these alleged advantages. In my discussion of Valdman's account earlier in this chapter, I suggested that it is implausible to the extent that it fails to capture why underpaying a poor sweatshop worker by \$500 is worse than overcharging a very wealthy snake-bite victim by the same amount. The idea was that, though both parties very much need something, \$500 means much more the worker, yet Valdman cannot take this into account. I did say, however, that his account might be capable of showing why both individuals were wrongfully exploited, assuming that the worker is paid at least \$500 less than on the relevant HCM.

Whereas for Valdman, the question was whether he really could account for the worker being exploited, Sample does not appear to have this problem. I stipulated that a living wage for the worker was \$912, and since he was being paid \$412, Sample seems poised to say that he is clearly being exploited; \$412 is simply not sufficiently responsive to his needs. Instead, Sample may suffer from the opposite problem: she may not be able to say why overcharging the wealthy snake-bite victim is wrong at all. This person is clearly in need, in that they will die without the antidote. But the wealthy are not what we would typically call "needy"; to borrow Sample's terminology, they are (apart from the deadly snake bite) well above the capabilities threshold. Sample has (at least in many cases) defined exploitation relative to this threshold. Getting the wealthy but snake-bitten to pay an extra \$500 for the antidote would not likely bring them below this threshold, so what could be wrongfully exploitative about charging them this amount? Yet taking

advantage of this person does seem wrongful, and the HCM account, for all its shortcomings, does put a clear upper bound on how much we could charge this unfortunate person.

Perhaps Sample would take a page out of Wertheimer's book and say that the wrong here is relative to a moral baseline including an obligation on the part of A to help the wealthy, snake-bitten B. If A can very easily save B, then he is obligated to do it, meaning that if he charges B at all (or more than the cost of the antidote), he is actually making B worse off. But Sample would not appear to have an answer whenever the following three features are true of the situation in question:

- (1) B is above her capabilities threshold.
- (2) B is in need.
- (3) This need is not so great that A is obligated to assist B.

In Sample's terminology, (1) and (2) cannot strictly both be true, since need is defined as being below the capabilities threshold. One might say that in the case of Antidote being considered, the wealthy B is, despite her wealth, below the threshold in that she clearly does not have what is needed to live a minimally decent life. Regardless, if Sample is saying that A must adjust the terms of their interaction so as to help enable B to meet her threshold, then A need only provide the antidote at some price that does not bring B below this threshold. And given B's wealth, this seems compatible with charging B an exorbitant amount.

Earlier, I said that one may dislike Goodin and Valdman's (and Sample's) dismissal of the possibility of wrongfully exploiting someone who does not strictly need what you have. Sample would appear to be committed to something similar here, but

even less acceptable: it is not that the wealthy B cannot be exploited, for she is in fact in need; it is that what A can get away with before he is guilty of exploitation on Sample's account is simply too much. This is a significant worry, and one that must be answered. This problem does not arise in transaction-specific accounts, though I have said they suffer enough difficulties of their own.

I think tools sufficient to answer this problem, at least to some extent and in some contexts, can be found within the idea of exploitation as a failure of respect. In Chapter 5, while working out the implications of my own account, indebted to Sample's, I suggest that A's charging B more than what A needs to lead a good life (and enough to allow any employees to lead good lives) betrays a lack of respect for B, since it unnecessarily cuts into B's own ability to pursue a good life of her own. Charging B more than this, just because A can get away with it, would be exploitative. However, this may not be enough to address the issue of how much A can charge B when the latter is the wealthy snake-bite victim. Even if A needs a lot of resources to reach the capabilities threshold, and even if B is very, very wealthy, we might not be comfortable saying A may charge B whatever it takes to meet his needs. This is a fairly thorny issue, with some messy intuitions.⁴⁰ And I hope to avoid these issues to some extent by focusing mostly on what A might owe B at a minimum within the context of an employment relationship.

⁴⁰ For instance, one might ask why B has so much, and A so little, to begin with. Is this the result of macro-level injustice? If so, should a theory of exploitation aim to address existing distributive injustice by allowing A to take a great deal from B? Or could A be responsible for the inequality between them, because he has wasted his own resources, or failed to try to attain more, etc.? Throughout, I try to avoid making the plausibility of my account turn on the acceptability of any particular theory of macro-level justice. (In the next section, however, I note that some claims of exploitation might really depend on a theory of justice). Yet this is not the same as suggesting that a theory of exploitation should ignore all considerations relevant to questions of macro-level justice, which is what Wertheimer suggests with his insistence on TSF.

3.4.6.2 *Injustice and exploitation*

The second difficulty I consider pertains to exploitation as taking advantage of injustice, and it actually begins with what might be another potential advantage Sample's account has over that of Wertheimer. In the last chapter, I noted Wertheimer's comment that "it is unreasonable to expect the better-off party to repair [the other party's] background conditions by adjusting the terms of a particular transaction."⁴¹ And I said that, strictly speaking, this might be correct, but Wertheimer takes it too far: A might well be incapable of adjusting the terms so as to "repair" these "background conditions," but this does not rule out the possibility that A could adjust the terms so as to address, to some extent, B's suffering from need and/or injustice.

In the case of sexist/racist hiring practices discussed above, A took advantage of the fact that women are generally paid less than white men, and hired a woman, B2, at a wage less than a white male, B1, would command for the same job. Wertheimer could say A exploits B2 here only if it could be found that B2's wage is less than that in the corresponding HCM. If it is not below this market price, then A is at most "taking advantage of injustice" and not "taking unfair advantage." If, however, the terms of interaction should be responsive to these background conditions (i.e. the surrounding injustice in hiring practices), and if A's taking advantage of injustice here is not so responsive, A exploits B2, and Sample's account seems positioned to call the interaction exploitative.

At the same time, this threatens to become a liability when we try to fill out what demands are made upon us in barring us from taking advantage of injustice. After trying and failing in Chapter 2 to explain Wertheimer's insistence upon transaction-specific

⁴¹ Wertheimer, *Exploitation*, 234.

fairness, I noted at last that it may have something to do with just how messy and difficult it would be to make the terms of interactions between individuals responsive to things like need and whether or not parties have suffered due to surrounding (institutional) injustice. This messiness is something Sample's theory would have to deal with head-on. On the assumption that there is a significant amount of injustice in and across societies, there may be a very large number of interactions in which one party is taking advantage of an injustice suffered by the other. For instance, if private property is, on the true theory of justice, *unjust*, then it is likely that every private employer is exploiting his or her workers by not handing over to them (or the community/state?) control of the means of production. Generally speaking, classifying the taking advantage of injustice as exploitation will lead different people to very different judgments of exploitation claims, given disagreements in conceptions of justice. It might be unsettling to think that a theory of exploitation will, in a great number of alleged instances of exploitation, simply throw up its hands and say, "That depends—what is the true theory of justice?"

I see two potential responses. First, it may be that there is some coarse conception of justice, or some overlap of conceptions of justice, which people can and perhaps do generally agree to and by which they make and judge claims of exploitation as taking advantage of injustice. No rational conception of justice, one might say, would allow differences in income to track differences in race or sex. While we might still disagree as to whether B1 (the white male) should be commanding the wages he does (maybe he should receive more, maybe less), we agree that it would be unjust for B2 to receive lesser wages simply because she is a woman, and thus we agree that A exploits B2 by paying her less.

The second response is to say there is no reason to think judgments of exploitation can or should be neat and tidy; such judgments might well be wrapped up in difficult questions about the demands of justice broadly construed. I have certainly argued that accounts of wrongful exploitation can – as the transaction-specific accounts of Wertheimer and Valdman do – sever fairness in transaction from such larger considerations of “background” conditions, only by surrendering a significant degree of plausibility.

3.4.6.3 Under-determination and sub-threshold benefit in individual interactions

The next two objections considered here revolve around one particular worry—that the account is unable to answer, or answer plausibly, a question asked above: On Sample’s account, to what extent must we address the needs of those with whom we interact in order to avoid exploiting them? I discuss this issue in two parts, corresponding to Sample’s distinction between individual and repeating interactions.

Recall that Sample says A need not bring B up to the capabilities threshold when theirs is an individual interaction—one not marked by a strong dependency, as a full-time employee is dependent on her boss, or as one family member is on another. Perhaps more accurately, individual interactions lack a strong dependency upon any particular person or entity (like an employer), and so no similar interaction may ever occur between these same two parties. It does not matter which five customers a basket weaver attracts, but fewer than five would provide less than sufficient income for the weaver to meet the capabilities threshold. There is dependency here, but not upon specific parties.

But in such interactions, Sample’s theory fails to give real guidance as to how the social surplus should be divided between A and the vulnerable B. Not exploiting

someone, she says, “requires that we in some way take their needs into account.”⁴² But we are only discussing mutually beneficial interactions, and I can only assume that anything that B gets out of her interaction with A that would count as being a benefit would necessarily be something responsive to B’s needs, at least to some extent, however small. So then how can it be the some of these interactions are exploitative and others are not? For a particular individual interaction, there may be (and likely are) numerous ways to divide the social surplus. Some divisions will leave B with what we think is quite a paltry share—we might think it is so little as to actually be degrading. At the same time, since A need not bring B to the threshold, there is some sufficient *sub-threshold* level of benefit which, if allowed to B, affords her proper respect, and this is all that is required. The problem is that what we want to call paltry, and what is allegedly sufficient, all respond to B’s condition of need. The account gives us no obvious way of distinguishing within individual interactions between the paltry (i.e. the disrespectful and exploitative) and the sufficient (i.e. the respectful and non-exploitative).

It should be noted that if we can determine what the hypothetical market price is for the good or service which is the subject of A and B’s interaction (assuming it is a good or service), then Wertheimer’s account would avoid this particular difficulty. It would provide exact non-exploitative terms of interaction. If the objections raised against that account in the last chapter have any merit, however, then it would provide us this clear guidance at the cost of providing us with a plausible idea of what is clearly fair.

3.4.6.4 Demandingness & repeat interactions

So the problem with Sample’s account in mutually beneficial individual interactions is that it does not seem capable of explaining the difference between

⁴² Sample, *Exploitation: What It Is and Why It's Wrong*, 81.

exploitative and non-exploitative terms of interaction. Given some of Sample's remarks about terms of interaction in repeating (long-term) mutually beneficial interactions, however, it would appear there is no such issue here. Sample quite clearly states that when B is uniquely dependent on A for that which B needs to meet her capabilities threshold, A must supply this amount. Given the extensive list of capabilities Sample borrows from Nussbaum, however, we might think Sample is unwittingly demanding far too much of A.

Before fully considering this objection, I should note that I do so not because I think it ultimately sticks, but rather because it does not. The fact that it does not will bring to light a very central feature of the account which I will argue is (1) also true of Wertheimer and Valdman's accounts, and (2) problematic insofar as it can allow the wrong sorts of considerations to influence evaluations of exploitation claims. This same feature likely undercuts her claim that Exploitation as Degradation can account for exploitation within competitive markets. I discussed this issue somewhat in Chapter 2, and though I broach it again later in the present chapter, I consider it in much greater depth in Chapter 4.

The objection itself goes something like this: If B is far below the threshold in a very poor community, it might be very costly to ensure that she receives access to, say, the sort of food, water, and medical resources necessary "to live to the end of a human life of normal length." And it is unclear how, say, Nike could ensure that their workers in developing countries achieve "bodily integrity" or sufficient use of imagination, "emotional capability," or "practical reason," let alone "control over one's political and

material environment.” Even if B is heavily dependent on A, it is too much to ask that A actually address all of these needs.

In response, we might point out that some of those parties with whom B interacts are better suited than others at helping B achieve particular capabilities, and that we should therefore recognize a sort of division of labor in this regard. Money from full-time employment buys some things (like food and shelter), while other things (presumably whatever “emotional capability” encompasses) are likely solely provided by family and friends. It would be implausible to burden Nike with the task of ensuring that B attain those capabilities which only a family could provide.

The problem remains, however, especially within the context of interactions between parties in the first world and vulnerable parties in developing countries—interactions like sweatshop labor and international clinical trials. Just as people vary greatly in their abilities and talents, societies vary greatly in what sorts of institutions they may or may not have in place that—apart from things like full-time employment and family life—would help citizens achieve the capabilities threshold. Among those nations in which, say, there is or could be endemic malaria, some societies will have the resources to pull off engineering and public health feats to protect their citizens from this threat, and other societies will not. Even ensuring something as basic as adequate food, shelter, and clean water may prove very difficult, as these might not be available at all within a particular society, or because there is insufficient infrastructure to give people access to them.

Perhaps the problem is Sample’s application of a theory of justice—Nussbaum’s capabilities account—to the division of the social surplus in a mutually beneficial

interaction between two individuals or individual entities. The capabilities account of justice makes demands on the total structure of a society's institutions: a society is just when its institutions are arranged such that its citizens attain this basic threshold of capabilities.⁴³ In a just society, there may be a number of institutions which would, in conjunction with full-time employment, work to bring citizens (including workers) up to the threshold. However, it is uncontroversial to say that a great many sweatshop workers are located in societies that either do not or cannot arrange institutions and distribute resources so as to help meet citizens' needs in this way. So even if we allow that *some* capabilities are best or uniquely achieved through the institutions of family and friends, the employers' task of helping its workers achieve the capabilities threshold remains extremely demanding, if not impossible.

One response would be to simply bite the bullet and say that interacting with vulnerable persons for gain—at least when such interactions involve the kind of dependency full-time employees have upon their employers—really does require a great sacrifice in terms of the amount of that gain. As I will explain momentarily, Sample does say something like this. (Moreover, as will become obvious in coming chapters, I think the bigger worry is for a theory to be not demanding enough.) But some may claim that this potential demandingness is not just problematic in itself, but also because it would have the consequence of preventing a great number of interactions which would have been to the benefit of vulnerable persons: the requirements of interacting non-exploitatively would limit A's gain so much as to make it less likely for him to interact with the vulnerable B at all.

⁴³ Nussbaum, "Human Functioning and Social Justice: In Defense of Aristotelian Essentialism."

It is important to note that this would not necessarily be a consequence of demanding that A greatly skew the social surplus to B's advantage. Like Wertheimer, Sample is happy to say that just because an interaction is exploitative, this does not mean it should be prevented, in part because "the consequences for the exploited person are often worse if he is not exploited."⁴⁴

3.4.6.5 *Limitations imposed by A's benefit*

The reason Sample would say her account is *not* overly demanding is that it says the degree to which A must address B's needs—even in these repeat interactions—should be informed by the fact that A must attain some gain, lest the interaction simply not take place. Consider Sample's remarks specifically on the issue of sweatshop labor:

If the workers are lifted out of poverty, even if only slightly, while the factory owner makes very little profit, we might not regard his treatment of them as exploitative. If the *only* way to complete a transaction for mutual advantage involves a gross inequality in the distribution of the social surplus—and this condition seems unlikely—then we cannot fault the factory owner. He is not degrading the workers but simply doing the best that he can. He is not guilty of exploitation.⁴⁵

If dividing the social surplus so as to actually allow B to meet her needs would entail that A gets no benefit, A can carry out the interaction on terms allowing B some sub-threshold benefit. And if Nike or Apple cannot conduct a mutually beneficial interaction with workers in developing countries on terms providing for, say, threshold-level health care, shelter, food, "control over one's political and material environments" (however that

⁴⁴ Sample, *Exploitation: What It Is and Why It's Wrong*, 86.

⁴⁵ *Exploitation: What It Is and Why It's Wrong*, 89.

might possibly be impacted by employment), etc., B's potential benefit can be scaled back to the point where A gets some gain.

As discussed in Chapter 2, a similar consideration was seen in Wertheimer's account: *ought* implies *can*, spelled out as *If A cannot arrange the social surplus to B's greater benefit, their interaction cannot be exploitative*. It is not exploitative because for A to carry out an exploitative interaction is to do something immoral, and one cannot do what is immoral if one could not have done otherwise. But this consideration is exactly what led Wertheimer to argue that exploitation could not occur within the context of a competitive market: the actions of A's competitors force him to lower his prices, and if he tries to charge more, he will be kicked out of the market. Thus, only one price is possible—a mutually beneficial interaction cannot occur upon any other terms. Even if A's customer was the vulnerable B, the surrounding competitive market would not allow A to adjust the terms so as to address B's needs. It seems that Sample would say this mutually beneficial interaction is therefore non-exploitative.

In the specific context of sweatshop labor, the effect of (alleged) competition upon prices (in conjunction with a desire to maximize profit) would lead employers (e.g. Nike, Apple, etc.) to lower wages when possible. Should A's competitors lower wages and A not, then—assuming they are all taking equal amounts of profit—these competitors will be capable of offering consumers prices lower than those of A, causing A to suffer. A could not then continue leaving profits and wages where they are without actually being made worse off. Again, Sample would seem to be committed to agreeing with someone like Wertheimer in saying that exploitation is not possible here.

It appears that Sample's account was more limited than she thought: it is not capable of locating exploitation in competitive markets. How serious is this limitation? It may not be that serious at all. If many of the industries employing sweatshop labor are in fact not (or not very) competitive, then Sample is right in saying they could pay their workers more within the context of a mutually advantageous employment relationship, and since these workers require greater payment to meet their needs, they are being exploited. Of course, if these workers could be paid more, then perhaps Wertheimer and Valdman might agree that they are exploited.

3.5 A Legitimate Limitation?

In the next chapter I discuss this limitation at greater length, and ask if it is really something an account of exploitation should be willing to live with. The key issue will be this: Sample, Wertheimer, and Valdman share an approach to exploitation allowing for B's share of the social surplus to be restricted by the fact that A must be able to gain, yet which terms of interaction would allow A to gain is (at least to some extent) a function of the actions of persons outside the interaction—for example, in the case above, whether or not certain terms of employment would be beneficial for A depends on the actions of his competitors. Therefore B's share of the social surplus from her interaction with A was limited by the actions of those outside the interaction itself. The particular worry will be that this allows the actions of these extra-transactional parties (actions which we might wish to call exploitative or otherwise immoral) to implausibly impact judgments of exploitation, letting potential exploiters too easily off the hook.

CHAPTER 4: TWO APPROACHES TO EXPLOITATION

4.1 Introduction

In this chapter, I argue the following four claims.

- (1) There are (at least) two approaches to understanding exploitation as a moral wrong, where these differ by how they explain what it is that exploiters *could have done otherwise*. I call these the *T-relative* and *T-absolute* approaches, where “T” means “terms of interaction.”
- (2) Despite the fact that Wertheimer, Valdman, and Sample offer differing accounts of exploitation, they are all best viewed as embracing the T-relative approach. I also discuss in this chapter another T-relative account of exploitation, proposed by Jeremy Snyder.¹
- (3) Insofar as accounts embracing the T-relative approach will suffer implausibility because of this embrace, it behooves us to consider the merits of a T-absolute account.
- (4) Though the T-absolute approach appears to face a very serious obstacle – namely, the inability to provide for B a legitimate claim of being wronged specifically by A – I suggest that a plausible claim really is available to B, and I briefly discuss how this claim might work.

My hope is to make room for a plausible T-absolute account of exploitation, the full details and defense of which I take up in the next chapter.

4.2 Two Approaches

As was mentioned in Chapter 1, and again in the discussion of Goodin in Chapter 3, it is plausible to suggest that A can exploit B in their interaction even when A is under

¹ Snyder, “Needs Exploitation,” 105.

no obligation to so interact. Without such a moral motivation, it is assumed that A is interacting with B for personal gain. (Or, at least, A interacts to meet some non-B serving goal. I want to set aside, among other things, certain possibilities, including A acting supererogatorily to B's benefit but exploiting B nonetheless.) Therefore, if A cannot gain from interacting with B, he will not do so, and in the absence of an interaction, A cannot be said to wrongfully exploit B.

I think this fact – that when A is not obligated to interact with B, he will do so only for self-interested reasons – plays a significant role in the first of the two approaches to exploitation I here discuss. On this approach, this fact informs our understanding of what it is a potential exploiter could or could not have done otherwise within the mutually beneficial interaction. Recall that for Wertheimer, Valdman, and (I have argued) Sample, an essential part of wrongful exploitation is that A took more than his fair share of the social surplus of the interaction. To understand this approach, say that the following are true: (1) A interacts with B upon terms T1, and (2) an alternative set of terms of interaction T2 would (i) provide B a greater share of the social surplus (compared to T1) though (ii) the interaction would still be to the benefit of both parties. With this in mind, call the first approach the *term-relative* (hereafter *T-relative*) approach:

T-relative: A exploits B only if he could have interacted with B upon T2.²

The approach is relative in that whether a particular interaction is exploitative will depend on what (if any) alternative terms of interaction were available, meaning that if no terms could satisfy both (i) and (ii), then the interaction is not exploitative. Here, if T2

² As will be explained, some accounts seem to say this is not only a necessary condition of exploitation, but also sufficient.

had not been available, interacting on T1 would have been non-exploitative. As mentioned in Chapter 2, for instance, Wertheimer suggests that Burger King's employees cannot complain of being exploited by their employer so long as no higher wage could be granted within the context of a mutually beneficial interaction.

What I call the *term-absolute* (hereafter *T-absolute*) approach begins by positing some absolute amount of the social surplus A must grant to B. If my arguments below are correct, some T-relative accounts (namely those of Sample and Snyder) *begin* by positing some absolute amount, but then abandon it in calculations of fairness in certain contexts. What this absolute amount is could vary among different T-absolute accounts, but in order to show the contrast with the T-relative, let us say that a T-absolute account sets this amount at T2. Now consider the T-absolute approach to the “could have done otherwise” of exploitation:

T-absolute: A exploits B only if *either*

- a. he could have interacted with B upon T2, *or*
- b. if T2 was not available, A could have simply not carried out his interaction with B.

(Note that, given this work's focus upon consensual, mutually beneficial exploitation, the choice to not carry out the interaction, mentioned in condition (b), is always available.)

The definition will be revised shortly, but the difference between the accounts is already apparent. A cannot be found innocent of having exploited B merely on the grounds that no other terms were available which would have given B a greater share of the social surplus while still making the interaction mutually beneficial (i.e. that satisfies both (i) and (ii) above). This is what gives this approach its *absolute* sense: the determination of

whether A has exploited B is not just a matter of what other terms were or were not available. The *content* of the terms matter in a way the T-relative approach does not capture. Here, the terms of T1 are insufficient in some way – in what benefit they provide for B – and A's interacting with B upon these terms is exploitative even when T2 is not available.³

The T-absolute picks out T2 because it is *sufficient* in some sense. Whatever it is that would make T2 sufficient, it is something more than just how these terms compare with other available, mutually beneficial terms of interaction. (On the face of it, this focus on the content of the terms also allows that A could interact non-exploitatively with B upon T2 even when there is some other set of terms, T3, where T3 is both mutually beneficial and grants B an even larger share of the social surplus than T2. If T2 is sufficient, then A need not grant B any greater a share.) Again, the T-absolute approach does not agree with the T-relative in saying, what for many might seem natural, that when A has exploited B, A could have provided B with a greater benefit. The T-absolute approach says that either A could have provided B a sufficient amount (and did not), or – when providing B with such a benefit was not possible within the context of a mutually beneficial interaction – A could have simply not carried out the interaction.

Before continuing any further, I should say that no-one, to my knowledge, has either made this distinction, or (with one exception soon to be discussed) explicitly endorsed either approach mentioned. Moreover, it might be thought that neither approach really captures any existing account of exploitation. In the next section, however, I argue that the accounts by Wertheimer, Valdman, and Sample examined in

³ We can also ask if B does something wrong by interacting upon these terms, but I postpone addressing this issue until Chapter 6.

earlier chapters are best seen as embracing the T-relative approach. Later, I argue that these accounts are problematic for that very reason, and that this should lead us to consider a T-absolute theory of exploitation.

4.2.1 The Market Approach as T-Relative

Of all those theorists so-far discussed, Wertheimer is the most explicit in explaining what he takes to be that which exploiters could have done otherwise and what the upshot of this is for his account. Consider Wertheimer's imagined conversation between the captain of a tugboat (call him A) and the captain of a ferry in need of a tow (B), where A's tugboat is the only one immediately available. A offers to tow B's ship for the normal market price, and B agrees to pay that amount while nonetheless complaining that it is too high. A responds,

“True, I could have rescued *you* for less. But I don't think that you can complain that I have treated you unfairly when I charged you the same price that you would have had to pay if numerous rescuers had been competing for the privilege of rescuing you. After all, a competitive market price reflects the cost of providing the good or service. No one would get into the rescue business, as I have, if they were unable to cover their costs.”⁴

This is a perfect illustration of why Wertheimer rejects the possibility of (micro-level) exploitation within the context of a competitive market, but also of why his hypothetical competitive market (HCM) account is T-relative just as defined above. In the context of a competitive market, competition forces A to charge little more than enough to cover costs. While charging more than this would get A pushed out of the market, to charge less would be to fail to recover the costs of providing the good or service. Compared to

⁴ Wertheimer, *Exploitation*, 233. Original emphasis.

the market price, then, there are no other terms of interaction that are both mutually beneficial and to the greater benefit of B; to satisfy the second conjunct we would have to fail the first.⁵

One might respond, however, that this analysis ignores the sense in which the HCM price is absolute. This price is the outcome of a particular procedure for setting terms of interaction, one that is allegedly fair in its facelessness and anonymity: “It is a price at which the specific parties to this particular transaction do not receive greater value than they would receive if they did not encounter each other.”⁶ So it is not so much A’s costs that set the price, but rather the costs of A’s (real or imagined) competitors. Therefore, this response continues, regardless of A’s particular costs, there is an absolute division of the social surplus A must abide, namely the HCM price. The HCM market account could then be T-absolute: A exploits B if he charges B more than this price, and if he could not have offered the HCM price within the context of a mutually beneficial interaction, he should have simply not carried out the interaction.

However, the T-relative interpretation is the more charitable fit. The response above reintroduces the ambiguity, first discussed in Chapter 2, in the HCM account regarding what counts as the relevant costs: A’s actual costs, or those of his actual or hypothetical competitors? The response says it is the latter, and as I have suggested, this may be the best way to understand Wertheimer’s account in light of his insistence upon transaction-specific fairness (TSF). I also argued, however, that focusing upon competitors’ costs, rather than A’s actual costs, could be unfair to A. It is unfair to allow A’s competitors (real or imagined) to cover their costs, but not A, when (say) they do not

⁵ *Exploitation*, 218.

⁶ *Exploitation*, 232.

share some disability which increases A's costs. Additionally, I argued that there is nothing obviously in favor of Wertheimer's insistence upon TSF. Since consistency with TSF is then not obviously a virtue for an account of exploitation, and since by giving up on TSF the account can at least avoid the potential unfairness to A just noted, the HCM account (at least that as given by Wertheimer) should be understood as equating the relevant costs with A's costs. Thus, if A could not have granted B a larger share of the social surplus – in the sense that doing so would have dropped him below his own costs, thereby nullifying the mutually beneficial character of the proposed interaction – A does not exploit B. This is a thoroughly T-relative account of exploitation.

Finally, I should point out that despite some differences with Wertheimer, Valdman's appeal to HCM pricing places his account just as squarely within the T-relative camp. Their most significant departure concerns the circumstances in which B can be exploited by A, with Valdman saying B must be in need and Wertheimer not making any such (at least explicit) claim. But they agree that when A has exploited B, A could and should have granted B a larger share of the social surplus, where this share is limited by the fact that A must also benefit from the interaction. Since the HCM price is basically equivalent to A's costs, there is no other price (i.e. no other terms of interaction) which would allow B a greater share and provide for a mutually beneficial exchange.

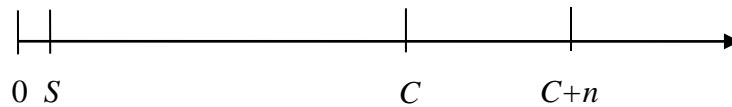
4.2.2 Sample's Account as T-Relative?

It might be thought that by requiring the terms of interaction to be sufficiently responsive to B's needs, Sample's account is clearly T-absolute as defined above. In effect, I will be arguing that this account should be T-absolute. But first I must point out that certain comments (examined at the end of the previous chapter) show that Sample in

fact embraces the T-relative approach. In §3.4.6.5, it was seen that Sample would, in certain situations, allow those employing sweatshop labor to pay workers less than is required for meeting their basic needs. These situations would be those in which A (the employer) cannot pay B more without sacrificing A's own benefit, i.e. paying B more (say, enough to allow B to meet the capabilities threshold) would prevent the interaction from being beneficial for A. Again, as A has no moral reason to interact, he must be enticed by the promise of his own gain (or something sufficiently like it).

In effect, and likely against Sample's intentions, her account successfully imposes only an absolute *maximum* on what A owes B; not a robust absolute minimum.

Figure 4.1



In Figure 4.1, C is the amount B requires to meet her capabilities threshold, while S is a bare subsistence wage. On Sample's account, A is required in every situation to pay B some amount x such that $0 < x \leq C$. Exactly what x will be, however – whether $x < S$, $x = S$, $S < x < C$, or $x = C$ – depends upon how the social surplus can be divided so as to provide A with some benefit. Thus, the only absolute minimum for B will be that which is necessary for a mutually beneficial interaction at all, $x > 0$, the amount below which B would not consensually interact (except in the sort of gift or charitable interactions with which I am not currently concerned). Meanwhile, A need never pay $x > C$, even if A could grant B $C+n$ while still making a handsome profit. Of course, as discussed in Chapter 3, depending on where we put C , it may not be some trivial amount. Regardless, Sample is

clearly allowing that A could have exploited B in their mutually beneficial interaction only if there was some other set of terms available to A which would have granted B a larger share while still providing a benefit to each party. Therefore, Sample clearly embraces the T-relative approach as defined above.

4.3 Some Pros and Cons

4.3.1 Snyder, and the T-Absolute as Overly Restrictive

Perhaps the reasons for preferring the T-relative approach over the T-absolute have seemed so obvious that little in the way of argument for this superiority has been thought necessary. One exception to the silence on this comparison is the work of Jeremy Snyder, whose own account of exploitation very closely resembles that of Sample. Though Snyder does not clearly define the two approaches as I have above, remarks made in defense of his own account are certainly applicable to any comparison of them.

In short, Snyder argues that, in the case of sweatshop employment, employers are required to pay their workers a living wage *if they can*. The determination of whether they can is made against the background assumption that employers are allowed to maintain some level of flourishing, but not more. If sweatshop employees (B) are making less than the minimum needed to flourish, and if employers (A) are living in luxury, then A must grant B a larger share of the social surplus, with the aim of bringing B up to flourishing.⁷ However, it is not the case that A must bring B to this level if in doing so, A drops into deficiency. (Employers, Snyder maintains, are not even required to drop as low as the deficiency-flourishing threshold, though this seems to be the maximum they are required to pay their employees.) Snyder's account is therefore much

⁷ Snyder, "Needs Exploitation," 398.

like Sample's, though instead of simply saying B's gain can be limited by the fact that A must benefit as well, Snyder gives a more specific range of benefit A is allowed to enjoy. And this account is just as surely T-relative: A can exploit B (by paying B less than a living wage) only if A could have paid B a living wage while remaining within this specific range.

Unlike Sample, however, Snyder explicitly addresses why he adopts what I have called the T-relative approach over the T-absolute. A position holding that A exploits B when A fails to pay B a living wage (regardless of whether A could have paid this wage within the context of a mutually beneficial employment interaction), says Snyder, "gives credence to the moral libertarian's charge that those condemning sweatshop labor insufficiently stress the benefits created by these jobs and the costs that can accompany mandating a living wage."⁸ Though Snyder never clearly says what this moral libertarianism is, I assume it is something like what Russ Shafer-Landau has in mind when he says

Libertarians claim that our moral duties have only two sources: consent and reparation. In other words, any duty we have to another person stems either from our voluntarily agreeing to accept that duty (i.e., our consent), or from our having violated someone's rights, and so owing a duty to repair the wrong we have done.⁹

In the presence of consent and the absence of past wrongs, such an outlook certainly is in the position of emphasizing what Snyder calls the "benefit and relative desirability" of

⁸ "Needs Exploitation," 394.

⁹ Russ Shafer-Landau, *The Fundamentals of Ethics* (Oxford University Press, 2009), 105. Snyder may very well have in mind a position like that seen in Matt Zwolinski, "Sweatshops, Choice, and Exploitation," *Business Ethics Quarterly* 17, no. 4 (2007).

sweatshop labor.¹⁰ The upshot, I take it, is that an account of exploitation loses plausibility when it underemphasizes either (1) the fact that these interactions are a boon for the laborers, who voluntarily enter into these transactions, or (2) the fact that making a living wage necessary for a non-exploitative relationship might deny such significant, albeit sub-flourishing, benefits to these vulnerable parties.

But this might seem quite irrelevant. Like Wertheimer, Sample, and Valdman, Snyder is clearly not that concerned with the moral libertarian position. This is obvious from the fact that he, like the others, begins by assuming that fully consensual, mutually beneficial interactions can nonetheless be wrongly exploitative. Meanwhile, the moral libertarian cannot brook any such moral claim, at least so long as it includes a negative assessment of A's involvement, and this is the central feature of what Wertheimer called micro-level exploitation.

4.3.1.1 Striking a balance

Snyder must then be suggesting there is a certain balance a theory of exploitation, at least as it applies to things like sweatshop labor, must strike between being too restrictive (morally censuring too many consensual, mutually beneficial interactions) on the one hand, and on the other, not being restrictive enough (approving just any consensual, mutually beneficial employment interaction as non-exploitative). He believes the correct theory of exploitation (again, at least in this context) strikes this balance by allowing A to gain from B's labor up to the point where A's share of the social surplus created begins carrying him beyond flourishing and into luxury. A T-absolute account which sets the absolute B is owed at the living wage, on the other hand, is overly restrictive.

¹⁰ Snyder, "Needs Exploitation," 390.

Yet, why should we think Snyder has struck the proper balance, or that striking this balance requires making the fair terms of interaction a matter, in part, of what other terms are available? Naturally, an account on either approach would pick out a set of consensual, mutually beneficial interactions in which A's participation earns him moral censure. And it is clear the T-absolute would call exploitative some interactions which the T-relative would deem innocent, though the reverse would not necessarily be true. For instance, compare Snyder's account as-is, S, with a similar T-absolute account, S*. S* is similar in that it also calls for paying B a living wage, but it says A is required to pay this amount; if he cannot, he should not interact with B. Now, if conditions prevented A from paying B the amount needed to reach this threshold, S would say their interaction is not exploitative, while S* would say it is. The only way in which the T-absolute could avoid ruling out a larger set of potential interactions than the T-relative, would be to set the amount B is owed small enough to make it more easily attainable in conjunction with A's benefit. Say that T-absolute account S** sets B's required amount sufficiently low such that S** never says A has exploited B unless S concludes the same. We would then have to set the required amount in S** *below* the living/flourishing wage: after all, according to S, B is not necessarily exploited just because he is paid less than that needed to flourish. But a T-absolute account like S** makes no sense: there are no grounds for an account of exploitation which demands that B receive some arbitrary fraction of a living wage.¹¹ Therefore, any reasonable T-absolute account of exploitation (should there prove to be one) would insist on a robust minimum, such that, compared to

¹¹ By this I do not mean to suggest a T-absolute account would be implausible simply because it demands that B receive some share which is not equivalent to a living wage. I only mean that it would (at least appear to) be senseless to literally pick out some specific percentage (e.g. 65%) of a living wage and require that A pay B this.

a T-relative account, it will pick out a larger set of consensual, mutually beneficial interactions from which A is barred.

Again, the worry is that a T-absolute account requiring such a robust minimum will then be overly restrictive, failing to achieve that balance with which Snyder (and perhaps others, albeit less explicitly) is concerned. On such an account, there will be more consensual, mutually beneficial potential interactions A now has a moral reason to avoid. When A's participation is deemed wrongly exploitative, then others also have some reason to avoid supporting A's participation: for instance, consumers would have some reason to avoid supporting A by buying his company's clothes produced by under-paid sweatshop workers. I repeat, this will happen to some extent no matter which (non "moral-libertarian") account of exploitation we adopt, T-relative or T-absolute, but it will occur more often with the latter. This may prevent a greater number of people, some of whom are very much in need, from transacting seemingly autonomously in relations of employment to better their lives, even if this betterment is not sufficient for flourishing. Furthermore this prevention might be all but assured if, as would seem natural, we use this account of exploitation as a guide to crafting laws and regulations (such as international trade regulations).¹² Though this is perhaps most obviously true in cases like sweatshop labor, it might well hold in purely domestic cases as well, where people in unfortunate positions for whatever reasons will be less able to interact in ways that could

¹² Of course, no legal ramifications need result from accepting any particular account of immoral exploitation, just as no legal ramifications need result from an account of the immorality of adultery. For instance, perhaps regulations intended to prevent exploitation would, like those trying to prevent adultery, prove too invasive or impractical. However, I suspect that many (including myself), would be very disappointed if the best account of exploitation could not, for such reasons or others, inform robust legal sanctions.

prove significantly beneficial, all because the terms of such interactions cannot be set so as to provide the needy with the sufficient amount of benefit, whatever that might be.

A T-relative account like Snyder's, applied to the issue of sweatshop labor, does look attractive, at least compared to the status quo. Perhaps many object to this kind of employment not simply because workers fail to achieve a living wage, but because this failure coincides with the corporations who ultimately employ this labor simultaneously raking in billions in profits. And perhaps if these employers were living short of luxury, then it would be clear that they are doing what they can to give sweatshop employees a fair wage, regardless if this is also a "living" wage.

Take for instance a fact that might easily be overlooked: not all of those taking a share of those massive profits are themselves millionaires, billionaires, or anything of the sort. Many are simply pension holders, whose money has been invested in these companies with the goal of one day having enough for a decent, but not *luxurious*, retirement.¹³ Perhaps if all investors were in this position (and if, say, executive pay was greatly deflated), our objections to sub-flourishing wages for sweatshop employees would disappear, so long as these workers received as much as possible in conjunction with the investors' ability to flourish well enough in retirement. If so, then this may well count in favor of Snyder's T-relative account of exploitation, and against the need for the sort of absolute, robust minimum of the T-absolute.

While I agree that this scenario seems less objectionable than cases in which those profiting are living lives of true luxury, I am not convinced that this situation lacks an element of wrongful exploitation. Imagine that our pension holders above can ensure

¹³ I thank Baruch Brody for bringing this important point to my attention. It is also the case, of course, that many who are not technically shareholders are still greatly invested in the workings of the company.

their sufficient (though relatively modest) profits only when these are the product of sweatshop labor in which, due to market conditions, wages are kept at bare subsistence. On Snyder's account, this scenario is equivalent to one in which everything is the same except that market conditions allow the workers a living wage. But the relative modesty of each individual shareholder's goal does not erase my own misgivings about how it might be achieved.

Moreover, I do not think there is a sufficiently wide array of examples in which there is largely agreement on both (1) whether or not each interaction is consensual and mutually beneficial, and (2) whether each is wrongly exploitative. Without this, then so far all we have is that the T-absolute is more restrictive than the T-relative, and again, this is not enough: If greater restriction on participation in consensual, mutually beneficial interactions was the problem, then we should just accept the moral libertarian position. So there must be something else pushing us away from the T-absolute. And there are, I believe, important worries for this approach.

4.3.2 Restrictions, Complaints, and Constraints

Consider a very basic example that might be thought to counter the claim that the T-absolute is overly restrictive. Here, let us say that A can give B a greater share of the social surplus – nothing prevents A from doing so, except his own greed. Given B's great need and A's relative disinterest, A has decided that he will either interact with B upon what some T-relative account, TR, would call exploitative terms of interaction (call them ET), or A will simply refuse to interact. That is, he refuses to interact upon what TR would call *fair* (non-exploitative) terms, FT. If ET are exploitative according to TR, then they would be exploitative according to a similar T-absolute account, TA, which

says B is really owed $FT+n$, an amount which A could not grant B within the context of a mutually beneficial interaction. But even though TR would say A exploits B by transacting upon ET, the TR theorist might say that there is a sense in which it would be better for B to be exploited than to not get what she needs at all. Consider Sample's remarks on this issue:

Much exploitation seems to be an activity with which we should not interfere.

There are two reasons for this. First, the consequences for the exploited person are often worse if he is not exploited. ...It is far from clear that we should interfere with exploitation, even if it is wrong, when it has overall better consequences than noninteraction.¹⁴

Assume, momentarily, that this claim really is open to the TR theorist: sometimes, it is better to let A exploit B, even though A is nonetheless wronging B. But if this move is open to the TR theorist, why not also for the TA theorist? And if it is open to the TA theorist, why could he not resort to this strategy in any case where his theory seems overly restrictive? Moreover, if we are not to interfere with A's wronging B whenever the consequences of exploitation are better, as Sample suggests above, then why would we also relax the requirements of fairness in interaction, as is done by taking the T-relative approach over the T-absolute?

I want to set aside the issue of whether a T-relative theorist really could make the claim which I assumed is available to them. If they cannot – that is, if they are not permitted to say that sometimes it is better to let A exploit B – then this claim could be equally unavailable to the T-absolute theorist. More importantly for now, the example

¹⁴ Sample, *Exploitation: What It Is and Why It's Wrong*, 86. Wertheimer also asks on what grounds we might think we are justified in interfering with wrongful exploitation when it is to the benefit of all involved. See Wertheimer, *Rethinking the Ethics of Clinical Research: Widening the Lens*, 219.

above might show that the issue with the T-absolute is not (just) that it is more restrictive, but that it is also restrictive *in the wrong ways* and fails to provide B with a plausible complaint. Recall, from Chapter 3, Valdman's argument that not everyone who Goodin would call "exploited" actually has a plausible complaint against her alleged exploiter. Just because A has taken advantage of B's vulnerability, this does not mean B has a legitimate complaint against A's action (see Rescue for Pleasure). A theory of wrongful exploitation must give B such a complaint if that theory is to explain exploitation as a moral wrong A perpetrates against B. It is not enough that B was wronged or even that A acted wrongly; the theory must explain how A wronged B, and this is B's complaint. Whatever constitutes such a legitimate complaint will presumably be the answer to the question with which I began this chapter: What is it that an exploiter could and should have done otherwise?

In the example above, the TR theorist allows B to say, "A should have given me more of the social surplus." Specifically, A could have given B the amount specified in terms FT and should have done so. Meanwhile, the T-absolute theorist above cannot say, "A should have given me the amount specified in FT+n," since it was stipulated that (for whatever reason) doing so was not possible. Given the nature of the T-absolute approach, such a theory would appear to leave B with only one other complaint: "A should not have interacted with me." But surely B would prefer to get some amount less than that in FT+n (say, like the amount in FT) than to get nothing. "The real question," the TR theorist might tell us, "is not 'What is it A could and should have done otherwise?' but rather 'What is it A could and should have done otherwise *for the greater benefit of B?*'" Not interacting is not for the greater benefit of B, so in cases where A

cannot allow B whatever amount the T-absolute account requires, such a theory cannot give B a plausible complaint against A.

Now change the example such that A decides to transact with B at FT. As this is still less than $FT+n$, the TA theorist must say A has exploited B. Snyder essentially says such a theory is unrealistic, in that it implausibly makes A responsible for certain “non-ideal” factors outside of A’s control which can prevent the social surplus from being large enough such that both A and B can flourish. Whatever this surplus is, of course, Snyder allows A enough of it to flourish, but factors like market competition put downward pressure on the size of the surplus and therefore on what is left of it for B.¹⁵ This is not, Snyder maintains, something that should prevent the consensual, mutually beneficial employment interaction from occurring; rather, it is a legitimate constraint on what A can and cannot do in his interaction with B. In this, Snyder sounds much like Wertheimer and (the at times unsuspecting) Sample. But whereas Wertheimer appears to hold that under *any* conditions – whether actually competitive or not – A need pay B only the HCM wage, Snyder shares with Sample the more plausible position that when competitive forces (or the lack thereof) allow it, A must pay B a wage responsive to B’s needs, regardless of whether this is the same as the HCM wage. To this, Snyder simply adds that A must first be allowed his share required for flourishing.

Snyder would tell us there are better and worse ways a theory of exploitation can cope with the non-ideal features of the real world. One way that is worse is to hold A responsible for such features – like the constraints imposed by a competitive market – thereby making it less likely that B gets more of what she needs. Wertheimer might say such an account fails to appreciate his distinction between *taking unfair advantage*, and

¹⁵ Snyder, “Needs Exploitation,” 398.

taking advantage of unfairness. Only the former is necessarily exploitation, and the latter is not always the former. A better account recognizes that A is not responsible for these constraints, and holds him accountable only for allowing B what A can within the context of a mutually beneficial interaction.

Furthermore, if no T-absolute account can be formulated so as to provide B with a legitimate complaint against A – a complaint which explains just how it is A has wronged B – then this approach is not really an option for a theory of micro-level wrongful exploitation. This is a serious problem, and I will examine it further in later sections of this chapter, and in the next chapter as well. But for now I want to turn to what I see as an equally serious problem for any T-relative account, a problem which should force us to consider the potential pros and cons of the T-absolute more carefully.

4.3.3 The Problem with the T-Relative Approach

Letting such external factors as market competition help determine what counts as B's "fair" allotment of the social surplus is not a virtue of a theory of exploitation. This understanding of what A "can" or "cannot" do given such external factors – the approach I have called T-relative – has surprising and unacceptable consequences, specifically within the context of a competitive market. Such views certainly avoid the moral libertarian's charge of being overly restrictive, but at the cost of being not restrictive enough – exonerating A of exploitation based simply on the (potentially wrongful) actions of those external to the interaction.

This is easiest to see in the context of Wertheimer's claims about wages in a competitive market, though so long as we stipulate that the potentially exploited party needs what they get out of the interaction, Valdman's position will be equally

represented. Here I return to the criticism of the HCM account broached in §2.4.4 (and again in §3.4.6.5). In that section, I discussed a very simple case in which B works for factory owner A. Say A pays B some amount L which allows B to flourish (satisfying, I will assume for now, the accounts of both Sample and Snyder). Also, assume that A has a competitor, A^* , who, up to this point, has also been paying his own employee, B^* , wage L . But now A^* realizes that he can cut wages to $L-n$ without losing B^* , or the ability to easily replace B^* ; after all, this factory work does not call for rare skill. Why might A^* do this?

Assume A and A^* had before been taking the same cut, x , of the social surplus, and selling their products to customers at price p . Further, assume that x is not what Snyder would call a “luxurious” cut; it is sufficient for flourishing, while much less than x would not be. A^* might be cutting wages by n to achieve one of the following (though this list is not intended to be exhaustive):

- (1) *More gain*: A^* pockets the savings in labor costs, now taking $x+n$ for himself.
- (2) *Lower prices*: A^* passes the savings onto consumers, who now pay $p-n$.
- (3) *Reinvestment*: A^* uses n to buy more efficient machines, increasing B^* 's output, and lowering prices.
- (4) *Some combination including (1)*: E.g. A^* now keeps $x+.5n$ and offers his goods at $p-.5n$.

Wertheimer's T-relative HCM account would (or might) say that A^* exploits B^* in (1), though not because B^* now makes less than L . Rather, it is because A^* could clearly provide B^* with a greater share yet still benefit from the employment interaction (i.e. A^*

could keep only x , or perhaps even some smaller amount). For the same reason, the account might well say (4) is exploitation as well.

The more interesting cases are (2) and (3), either of which could provide A^* with a competitive edge over A . Can Wertheimer say A^* is exploiting B^* here? The answer, I think, is No, since these are exactly the kinds of actions we would expect from those functioning within a truly competitive market. Of course, we would also expect behavior like (1), given the normal assumption of producers being profit maximizers. However, (a) Wertheimer says they are not permitted to maximize profit (lest they be guilty of exploitation), and (b) neither (2) nor (3) is clearly an attempt at gaining additional (exploitative) profits. A^* knows that if these options are available to himself, they are also available to A and to any other present or future competitor. Thus, he may be acting only preemptively in order to secure his position within the market.

But if this is correct, then neither Sample nor Snyder seem capable of saying A^* exploits B^* in (2) or (3). If A^* is not acting to secure greater profits, then he is not acting to secure a position of “luxury.” Perhaps they would be satisfied with this, happy to condemn only (1) and (likely) (4). However, this is unlikely; after all, we have not even specified just what n is – 5% of L ? 25%? 50%? The needier and more desperate for work B^* is, the more capable A^* will be of deeper wage cuts without significant risk of losing (or being unable to replace) employees.

Given that A^* is not necessarily acting to achieve greater profits, what fault could Sample or Snyder find with A^* 's actions? Perhaps they could say that A^* did not really require such wage cuts: perhaps none of his competitors would have been willing to cut wages, in which case this cutting was not necessary to secure his place within the market.

In Snyder's language, these cuts might not have been necessary to maintain A^* 's status as flourishing. Alternatively, even if A^* had good reason to think his competitors would otherwise cut wages first, one might think A^* should have waited to see if they would. Similarly, these theorists might hold that preemptively lowering wages by n to secure one's place in a competitive market is in a very real sense no different from simply pocketing n : either way, A^* gets more benefit only by now granting B^* an amount insufficient for flourishing.¹⁶ Again, I think Sample and Snyder would *like* to have something to say against A^* 's cutting wages in this fashion, especially when this cut would take B^* well below flourishing. Whether such an objection would be similar to what I have hinted at, I am unsure.

For my argument, however, nothing turns on whether Snyder or Sample would object at all to A^* 's pursuing (2) or (3), let alone what such an objection might be. Rather, I will focus on what they *can* and what they *should* say about A 's response to A^* 's actions. If, as seems likely, A wishes to remain competitive, then he will follow A^* 's lead and cut B 's wages from L to $L-n$.

Even if they do have grounds for an objection against A^* 's preemptive wage-cutting, neither Sample nor Snyder can challenge A 's now following suit. Even if A^* was greedy, A is now just responding to the demands of market competition, defensively acting to secure his own place in the market. He can no longer keep wages at L and still benefit from the employment interaction (he would be pushed out). Perhaps these theorists would say A must implore A^* to keep wages at L , promising that he will not lower wages unless A^* does. Of course, A^* might simply laugh this off as a feint, this

¹⁶ As explained in the next paragraph, this potential objection on the behalf of Snyder/Sample to A^* 's actions would work only against the *first* competitor to lower wages.

lack of trust being a potential failing belonging at best to A*, and not A. In which case A can throw his hands up and innocently cut wages. What counts as B's "fair" share of the social surplus has dwindled, but this is no fault of A's.¹⁷

Further, imagine that Snyder and Sample do object to A*'s original wage-cutting. Now that A has done the same, however, A* cannot obviously go back to paying B* L . Therefore, they cannot in any obvious way object to A*'s continuing to pay $L-n$.

Something has gone very wrong. What constitutes B's or (B*'s) *fair share* should not be so dependent on the actions of those outside the interaction. This should be obvious especially to Snyder and Sample, both of whom begin by equating workers' fair share with that which respects them as human beings, where this is the amount required for at least some minimum level of flourishing. But in taking the T-relative route, they then limit B's share by tying it to constraints on A's own gain (i.e. some benefit within the context of a mutually beneficial interaction). Some forms of such constraint – especially market competition – will determine which terms of interaction between A and B would actually be beneficial for A. At one time, paying B L still provided A with a benefit, but now (due to A*'s actions), A can only benefit by paying B $L-n$. Under these constraints, the adoption of the T-relative approach can completely overwhelm the supposed emphasis upon B receiving enough to flourish. We now see a more complete picture of something I noted about Sample's theory above (though it is obviously true of Snyder's as well): that in requiring A to pay a B a living/flourishing wage *when he can*, this threshold can fail to function as a true minimum and serve instead only as the

¹⁷ I see no reason for anything to be different if one or the other, either A or A*, was just now entering the market.

maximum amount A must grant B (assuming conditions are favorable enough to allow that).

To say *some amount m is B's fair share of the social surplus* at least appears to fix the content of A's moral obligation: to grant B a share less than m is violate this obligation. Normally, the content of a moral obligation is not allowed to vary due to the sorts of external factors the T-relative approach brings into consideration. For example, A would not be allowed to deceive or manipulate customers just because, due to market competition, this is the only way A could stay in the market (see the relevant example below). Perhaps obligations pertaining to *fairness*, however, are particularly situational, and in at least some sense this is certainly true. If A was in charge of fairly cutting and distributing shares of a cake to which he and B had equally contributed, then though A might be obligated to give B half, what exactly this amounts to in absolute terms would depend on the overall size of the cake. And just as the size of the cake is a very real limitation on what will constitute a fair share of it in absolute terms, A*'s action above is a very real limitation on the size of the social surplus A divides with B in their employment relationship, and thus also on the absolute size of the shares of this surplus. I do not deny this, and perhaps if Sample had paid more attention to this fact, she would have seen the problem it spelled out for her account's ability to find exploitation in a competitive market, as she hoped it would.

But note that, on Sample and Snyder's accounts, as the social surplus shrinks, the only share that shrinks in both absolute and relative terms is B's. A's share might maintain the same absolute size: that which A needs to live a flourishing life, somewhere between deficiency and luxury. (It may have shrunken in absolute size if, before A*

acted, A was paying B a living wage *and* there was more than enough left over for flourishing, but his share will never shrink to below what is needed for him to flourish.) As the whole surplus shrinks, A's share becomes relatively larger and larger, and B's smaller and smaller. Again, the more desperate B is, the greater the relative size A's share can be before it cuts into some amount below which it is no longer worth it for B to interact. And it is no toss-up who gets to cut: A will always get to carve for himself the same flourishing-sized piece; B needs A more than A needs B, and this bargaining inequality ensures that A always holds the knife. But then it is hard to see how this is supposed to be a fair arrangement for B, since that fairness was initially associated with B receiving a particular absolute amount – i.e. that share sufficient for his own flourishing.

To expand on a point made above, imagine another situation, one which I do not pretend to call a matter of exploitation or necessarily even of fairness, but which is, I believe, related to the issue at hand. C is one of a number of sellers of elixir in a small group of villages. Like the other salesmen, C believes – correctly, we will say – that the elixir does as has been heretofore advertised: it prevents headaches and indigestion. So successful and popular has the elixir become, that more salesmen have entered the fray, ratcheting up competition. In response, one of C's competitors, C*, begins making a claim which both he and the other salesmen know to be false: that these elixirs also prevent heart disease. Potential customers, however, have no trouble believing the claim, and they flock to C*. His competitors take notice, and they are unable to convince potential customers of C*'s deception.

Under what conditions would it be permissible for C to follow C* in making false claims about the elixir? Perhaps if some terrible evil would occur if C did not. Assume

enough other salesmen now lie about their product, such that C would fail to survive as an elixir salesman should he choose to cling to veracity. In other words, he would be “pushed out of the market.” Is this a sufficiently evil outcome to warrant C lying? If getting pushed out of the market means, say, *starving* or some other, equally dire threat to C’s well-being, then I think the answer might be yes, the same way one might condone stealing food when the individual is faced with starvation and has no other option. But whether such conditions hold here for C is something we would need to know in order to exonerate him; not just any inconvenience will suffice. We cannot just say, “C benefits by taking part in this enterprise, and unless he does *X* he will be unable to continue in it; therefore he may *X* as necessary.” We need to know what that *X*-ing is and to consider its moral status, in addition to knowing how badly C might need to continue in his current endeavor.

Again, I do not intend this example to be at all a matter of exploitation, nor do I think C’s action equally wrong to what A might be doing (whatever that might mean). But its relevance to my critique of the T-relative approach to exploitation is perhaps clear (though likely contentious). We start by saying A owes B some amount of the social surplus, such that granting less would be wrong. By then taking the T-relative approach, we add that this amount owed can vary given the actions of people outside of A and B’s interaction; people like A’s market competitors, including A*. But allowing the content of A’s obligation to B to fluctuate due to the actions of A* would be akin to letting C lie to potential customers just because, due to C*’s willingness to lie, C would otherwise take a hit in terms of self-interest. And that is unacceptable.

This is what I mean when I say the T-relative fails to account for the importance of the *content* of the terms of interaction. We do not say C's *X-ing* is acceptable just because C must *X* to continue doing whatever it is that promotes his self-interest. The content of the action – deceiving customers for self-gain – must be considered. I am suggesting that, in the same way, a good theory of exploitation does not OK the terms of a consensual, mutually beneficial interaction without examining the content of these terms.

In the kind of context I am thinking of, insisting upon B getting some amount sufficient for flourishing accomplishes either nothing or very little when paired with the T-relative approach. Here, B does not get the flourishing amount, yet A is innocent of exploiting him. In theory, B can wind up with exactly the same amount he would get on the moral libertarian account of fair interactions – i.e. the smallest amount B would be willing to accept to interact. For the same reason, it does no good to point to the consensual, mutually beneficial nature of the interaction. The fact that an interaction is consensual and mutually beneficial was not supposed to be a reason for thinking it was fair (non-exploitative), and this set our theorists apart from the moral libertarian. To now allow these same features to exonerate A would be to act in bad faith.

This is why I find Sample and Snyder's adoption of the T-relative approach so surprising, or, at least, much more surprising than the fact that it characterizes Wertheimer and Valdman's hypothetical market accounts. Sample and Snyder actually pick out some amount as what A owes B – essentially, that which B needs to flourish. This seems like a clear specification of the required content of the terms upon which it is morally permissible for A to interact with B. But again, in a context like a competitive

market, what these accounts specify is only a maximum A must provide. The market accounts, on the other hand, do not attempt any such specification. Yet, in the end, because all of these accounts take the T-relative approach, they each turn a blind eye to content, at least in certain contexts.

4.4 Response on the Part of T-Relative

I now want to consider what might be said in defense of the T-relative approach. First, I should stress again that very little has been said regarding (what I call) the distinction between the T-relative and T-absolute, let alone what all could be said for and against each approach. However, I believe I can muster strong enough responses to my objection to make for an interesting discussion. The first response says my objection is moot, since in the real world, markets are not competitive enough to create the sort of conditions I have described in which a T-relative theory like that of Sample or Snyder would actually exonerate someone who pays less than a living wage. The second response, which is independent of the first and more serious, says that even when things like market competition do exonerate potential exploiters on the T-relative approach, this does not preclude a correct judgment that B has nonetheless been wronged, for the surrounding institution(s) may be unjust. Further – and bringing the discussion full circle – given that, in these (potentially unjust) circumstances, B cannot have a legitimate complaint against A, the T-relative approach is our only real option. This will lead back to the issue discussed earlier: what legitimate complaint could a T-absolute theory generate for B against A?

4.4.1 Response 1: Competitive Markets & Reality

The first response argues that my objection to the T-relative is not sufficiently motivated given the nature of exploitation as it occurs in the real world. For instance, in potential cases of sweatshop exploitation, the problem is not about workers being denied a living wage due to competitive market forces. Rather, the relevant markets are not all that competitive, and the money which would go to the workers is being pocketed by everyone else (managers, executives, shareholders, etc.). Rejecting theories of exploitation on the ground that they cannot account for exploitation within competitive markets is quite useless when real markets are only very rarely marked by the sort of ideal competition that someone like Sample or Snyder would recognize as a true constraint on A's ability to pay B more.

While I do recognize that employment interactions would likely be better than the status quo if employers began acting in accordance with the account of Sample or Snyder, I also believe real problems would remain. It may well be that some markets are more competitive than others, and that some (potentially including international clothing markets) are much more competitive than they seem.¹⁸ Moreover, and as already noted, Snyder says quite explicitly that market competition is one of those non-ideal, real-world features which a theory of exploitation should take into account as a limitation on A's ability to pay B a living wage.

I agree with Sample's original sentiment that finding out A and B are interacting within the context of a very competitive market should not change our intuition that A might nonetheless be exploiting B. But by accepting her account in full, or that of Snyder, one effectively agrees with Wertheimer and Valdman in denying the possibility

¹⁸ Zwolinski, "Structural Exploitation," 166.

of the (micro-level) exploitation of labor in very competitive markets. And as I have said previously (Chapters 2 and 3), there is something very wrong about this. Exploitation is worst (or perhaps only occurs) when it involves A taking advantage of B's need, and as I argued near the beginning of Chapter 3, this means the terms of their interaction should be responsive to this need. Additionally, there is no good reason to think that market forces will set the terms of this interaction so as to make B's share responsive to her needs. So the accounts of Snyder and Sample – insofar as they emphasize needs-responsiveness, then let it slip away in the face of market competition – are deeply troubled, theoretically speaking. I believe that if a plausible alternative could be offered which avoided such a significant theoretical difficulty, it would be clearly preferable.

4.4.2 Response 2: Confusing Micro- and Macro-level Unfairness

The second response begins by claiming I am misrepresenting all the tools a T-relative approach has available to it, especially those found strictly outside any theory of exploitation itself. Recall (from as early as Chapter 1) how Wertheimer narrowed the scope of investigation to what he called *micro-level* exploitation. Again, the idea was that if exploitation is a moral wrong A commits against B, it must be that A has wronged B. Therefore, it cannot just be that we think B has been treated unfairly, that B has been disrespected, etc. It must be that A has treated B unfairly, that A has disrespected B, etc. And it means A could have acted so as not to have treated B unfairly, disrespected B, etc. But one could say B has less than justice demands without saying that A has (micro-level) exploited her.

Say that we agree with Nussbaum, or Sample, or whoever, that the fact that B has less than the minimum required for flourishing, is a sign that B is the victim of injustice.

More specifically, we could say that B is the victim of *macro-level* injustice, a wrong in the institutions governing society. A, an individual (or an individual entity), is not responsible (or not sufficiently responsible) for these institutions being structured as they are. This includes A's not being responsible for the structure of the competitive market which is currently preventing A from paying B a living wage.

With this two-level breakdown of unfairness to B in place, the T-relative proponent draws out two consequences. First, we do not simply throw up our hands when market competition leaves B with an amount insufficient for flourishing. No, it is not exploitation as has been here understood, and it is certainly not the case that A has exploited B, but we can still say B has been wronged. B is a victim of macro-level injustice. Social institutions do not meet the ideal and should be restructured according to the correct theory of justice.

Second, under such conditions, any complaint one can try to generate for B against A will actually be against these surrounding institutions. So a T-absolute theory, which will try to provide B with a complaint against A even under conditions of market competition, will essentially collapse this two-level analysis, implausibly saddling A with a wrong he could do nothing to right. As mentioned above, if B cannot say, "A should have granted me a larger share of the social surplus," then what kind of legitimate complaint against A could B have? The T-relative approach, on the other hand, will not blame A for institutional injustice, and is therefore the only viable option for a theory of wrongful micro-level exploitation. If this means that an emphasis on granting B a share sufficient for flourishing will, in some contexts, come to naught, then so be it. There is

no plausible alternative approach that can maintain this insistence upon a robust minimum.

4.4.3 Justice, Exploitation, & Special Obligations

Before addressing head-on the question of how the T-absolute might provide B with the required complaint against A, I should say a bit more about exploitation and considerations of justice, since, given the response above, one might ask why it was ever the responsibility of A to provide B what in Chapter 2 were called *super-contractual benefits* – i.e. benefits above those B would have agreed to accept. The idea was that B may be in too weak a position to insist upon getting his fair share, so that whatever B actually agrees to (his *contractual benefit*) might not be the share he is really owed. But consider that one might say

- (1) A and B are morally permitted to transact upon whatever mutually beneficial terms of interaction to which both parties consent (meaning A has no moral obligation to provide B with super-contractual benefits),

but also

- (2) If, at the end of the day, B ends up with less than he should according to the correct theory of justice (*J*), this is to be remedied through redistributive measures, such as taxing the wealthy and giving to B and others in her position.

Of course, if A ends up rather wealthy because he has kept a large portion of the social surplus, then he would be one of those whose money is redistributed to those who, like B, are worse off. However, (a) even if A did keep a large portion of the social surplus, he might not be wealthy enough to contribute significantly to redistributive measures, (b) even if A does end up contributing significantly, his money may not go to B in any direct

way, and (relatedly) (c) A's contributions would be no greater or less than those of all similarly positioned, wealthy individuals, including those who do not interact with B in any meaningful way.

Now compare (1) with the view captured by all theories discussed so far in this work:

(3) Some terms of consensual, mutually beneficial interaction are fair, while others are unfair (i.e. exploitative), and A must interact with B on only the former. (For now, set aside the issue of whether "fair" is being specified by a T-relative or T-absolute account.)

Like (1), (3) may also be consistent with (2), especially if giving B his fair share of the social surplus does not guarantee that B gets what he needs according to *J*. And in rejecting the moral libertarian position – as all the theorists I have discussed do – one is presumably taking (3) over (1) alone. But why take (3) over the conjunction of (1) and (2)?

The answer for all these theorists appears to be that, by interacting with B, A takes on some special obligation to provide B with whatever amount of the social surplus is deemed fair. Importantly, this is an obligation apart from whatever duties of justice a wealthy individual might have within a just society. Whatever this special obligation requires A to grant B, it is not (these theorists maintain) necessarily the same as what B is owed according to *J*. For Wertheimer, this was obvious given his insistence that the (un)fairness of micro-level interactions be determined apart from larger considerations of justice. Even Sample, who bases her idea of what A should grant B upon Nussbaum's idea of what a just society owes its citizens, eases off of this by taking the T-relative approach: the amount A grants B must approximate what justice requires, up until the

point at which a mutually beneficial interaction is impossible.¹⁹ In theory (as I have discussed above), these specified amounts could diverge considerably.

A theory of exploitation in consensual, mutually beneficial interactions must specify what amount A owes B in their interactions, and the T-relative and T-absolute offer different ways of approaching this issue: should this amount be indexed to what is possible in such an interaction, given certain external constraints on the size of the social surplus and how much of it can go to B, or should such considerations not matter? But none of this, by itself, goes to the question of why (or how) A acquires the special obligation that these theorists have assumed. The question remains: If social institutions could be arranged such that (1) and (2) are satisfied, would anyone care how much of the social surplus A grants B in their interaction? Does the idea that A can owe B super-contractual benefits presuppose a background of social institutions lacking the redistributive measures in (2)? Or should we be committed to such special obligations to the point of somehow building them into *J*?

These are important questions, and I address some of them in the next chapter. The upshot for the present discussion, however, is this: in providing a legitimate complaint to B, a good T-absolute theory of exploitation must not only specify *when* and *in what amount* A must grant B super-contractual benefits. It must also explain why A specifically is responsible for providing these benefits, such that any failure on his part to do so is always a moral failure – a wronging of B. In Chapter 5 I call this the *Conceptual Problem*: why must A always grant B some specific amount of super-contractual benefit when we could just use redistributive measures to ensure that B always has enough? This

¹⁹ Alternatively to either, one could presumably claim that A owes B super-contractual benefits while denying that justice requires any form of redistribution.

question will acquire additional urgency when placed alongside the *Practical Problem*: by not placing the burden upon redistributive measures, we encourage fewer interactions that would be to the benefit of those most in need. (This is obviously related to Snyder's worry above that a T-absolute account would be overly restrictive.) Naturally, a T-relative account will face similar issues, but presumably with less to fear, given that (according to the second response above) the T-relative more readily moves the burden of addressing B's needs off of A and onto social institutions. With this in mind, I now turn to the question of what kinds of complaint a T-absolute theory can (and cannot) offer purportedly exploited parties.

4.5. In Defense of the T-Absolute

4.5.1 The Nature of the Complaint

As discussed above, in any situation in which a T-absolute theory would differ from a similar T-relevant one, B's complaint really cannot be, "A should have given me more of the social surplus," for in such situations (like in a highly competitive market), A cannot give B the amount specified by the T-absolute account while still being (non-morally) motivated to interact at all. Or, at least, what in many cases may come to the same thing, A cannot give B the required amount without himself dropping below some threshold for flourishing. Since the T-absolute tells A to not interact unless he can provide B the required amount, and since he cannot do so in the relevant cases, the complaint against A left to B seems to be, "A should not have interacted with me." But why would B complain about the mere fact of A's participation? After all, B surely wants what he can get from the interaction, which is better than the result of non-interaction.

Of course, this is not to say that just because B gains from a consensual interaction, he must have received his fair share. Only the moral libertarian might accept this. Equally insufficient for deciding fairness would be whether or not B *actually* complains despite having consented. He might be very happy or even grateful for some paltry unfair amount when desperate; alternatively, he might rail against what is in fact a perfectly fair amount. The problem is that, if B cannot get more because of the structure of the surrounding institutions, why put this on A and not (as was suggested above on the part of the T-relative theorist) just on the institutions themselves?

4.5.2 Incentives & Strategy

The question, then, is this: Can B legitimately complain that A should not have interacted with B, even when A could not pay B whatever amount is required on the T-absolute account in question? For now, I will continue discussing a T-absolute account similar to the T-relative accounts of Snyder and Sample, meaning it requires A to give B a share of the social surplus sufficient for flourishing (or something very much like that). I do this because their accounts, in insisting on such a share when possible, give some clue as to the absolute amount a T-absolute theory might insist upon. So I discuss this kind of T-absolute theory largely out of convenience, and not because I pretend to have shown that such an account is unproblematic or that it can be defended from very real objections. For additional convenience, let me stipulate that the absolute amount this theory calls for in the given context is *F* and that terms of interaction which fail to grant B this amount are sub-*F* terms.

One might argue that B's complaint is legitimate because, strategically speaking, not allowing A to interact upon sub-*F* terms could help lead to the establishment of

institutions in which A *could* provide B with *F*. Wertheimer discusses something like this “strategic argument” as a justification for interfering in consensual, mutually beneficial interactions that have already been established as exploitative.²⁰ However, one might try to adapt this argument to justify the moral prohibitions on A’s participation generated by the T-absolute account under discussion.²¹ The idea is that we look at the “class of B’s,” as well as the class of A’s.²² For instance, even if B is willing to work for less than the specified minimum wage, there is good reason to prevent A from hiring B at this price, for allowing this interaction “will alter the bargaining position of still other B’s.”²³ In other words, if A can pay B a sub-minimum wage, A and all those similarly positioned will then be able to push all the B’s into also accepting a sub-minimum wage. Therefore, even though B would have consented to working for less, it is better on the whole to enforce the minimum wage and prevent this particular interaction.

To this, the T-absolute theorist replaces “minimum wage” with “*F*,” though important additional changes are necessary to make the argument work here. Since Wertheimer is a T-relative theorist, and since the example above assumed that the interaction in question would have been exploitative, it must also have been assumed that it was possible for A to pay B more. He just did not want to. The T-absolute theorist, on the other hand, is concerned with those situations in which A cannot pay B amount *F*. In preventing all A’s from transacting with all B’s on sub-*F* terms, the hope is then not that A will pay B the fair amount (which is impossible as is), but rather that all A’s become

²⁰ Wertheimer, *Exploitation*, 300-05. Also see *Rethinking the Ethics of Clinical Research: Widening the Lens*.

²¹ In the next chapter, I argue that Wertheimer essentially attempts just this in *Rethinking the Ethics of Clinical Research: Widening the Lens*, 304-07.

²² *Exploitation*, 300.

²³ *Exploitation*, 301.

incentivized to alter or replace existing institutions so that A *can* profitably interact with B while granting him *F*.

Though interesting, the strategic argument as adapted by the T-absolute theorist runs into some real problems. First, it seems to assume that there *are* alternative arrangements in which A can profit while granting B *F*, though this may not be possible. At the very least, this is an empirical matter and would need to be settled before claiming there is some good that could come to the B's by preventing sub-*F* interactions. Perhaps in response, the T-absolute theorist could make a move similar to the T-relative approach, except whereas an account of that type says an interaction is fair when terms better for B are unavailable, the T-absolute theory might say terms are acceptable only when *institutional arrangements* better for B (and which can allow B *F*) are impossible or unlikely.²⁴

Of greater concern, however, is the shift in focus this argument takes, as here given by the T-absolute theorist, from what is better for *B* to what is better for the *class* of B's.²⁵ Even if prohibiting sub-*F* interactions did, eventually, work for the benefit of the B's, there may be no good reason to think that at the end of the day, such prohibition will benefit B himself. Institutional changes, even when possible, could take years to implement, and even if B is at the front of the line today, he may not be tomorrow. But unless it can be shown that this prohibition will specifically make B better off than he would have been without it, B still has no complaint against A interacting with him on sub-*F* terms.

²⁴ In the next chapter, I consider this (with some hesitation) as an amendment to my own theory.

²⁵ Wertheimer, on the other hand, is aware of this (at least at times), and as he uses the strategic argument (at least at times) for a different purpose (i.e. as a potential justification for interference with mutually beneficial but exploitative interactions), it is not an issue for him in this particular endeavor.

4.5.3 An Issue of Respect

Because there is (at least often) no reason to think prohibiting sub-*F* interactions will ultimately lead to B's greater benefit, the T-absolute theorist should not rely on this in making sense of B's complaint against A. There must be something wrong about the interaction – and specifically, some way it includes A wronging B – apart from any potential benefits that would have accrued had the interaction (and interactions between A and other B's, and between other A's and B's) been prohibited. In this section I present an idea as to what I think this might be, although a complete presentation and defense of it will have to wait until the next chapter. There I will present an account similar to, but not identical with, the kind of T-absolute account I have been discussing in this chapter (the kind requiring that A grant B a share sufficient for flourishing).

Right now, I simply want to float something like the following: A wrongfully exploits B if A attains (or maintains) a flourishing life by interacting with B, while B's share of the social surplus is not sufficient to attain (or maintain) his own flourishing. This is a little too coarse as given, and it only suggests a sufficient condition for wrongful exploitation in consensual, mutually beneficial interactions, but it will function well enough for now. The central idea is that when A flourishes in this way while B does not, A seriously fails to respect B as a human being. Such an account will be very close to that of Sample, given its focus on how the terms of these interactions can reflect a serious lack of respect on the part of exploiters.

Consider what has become the necessity of migrant labor in modern day American farming. Entire families migrate, often illegally, from Latin America to perform seasonal work on U.S. farms. They come due to limited opportunities in their

home countries, and though the work does pay better, the workers' return for extremely taxing physical labor is often sub-minimum wages (due to payments as "piece rates"), poor housing, jeopardized educational opportunities for children, lack of security, and little to no access to state-provided medical care, workers' compensation, food stamps, etc.²⁶

Now imagine that A is a U.S. famer who relies upon migrant labor, and that he functions in a competitive market in which providing these workers a greater share of the social surplus would mean A dropping out of the flourishing range Snyder places between deficiency and luxury. Perhaps not all the issues above can be ameliorated by paying higher wages, but it is plausible to say this could go a long way to improving the workers' standard of living.

An important question, I think, is this: If the workers do not get to flourish, then why does A? It is true that these workers would not have as much as they do if not for A, but neither would he be in this position of flourishing if not for migrant labor. However, it is not because of *these particular* migrant laborers – or any particular *set* of migrant laborers – that A is allowed to flourish. A gets to flourish because, as I said above, he holds the knife: the inequality in bargaining position ensures that he can always cut the social surplus so as to provide for himself enough to flourish. A consistently uses this inequality to cut for himself a flourishing slice at the cost of greater benefits to those dependent on him. Even when it is not possible to distribute enough for all to flourish, A demonstrates that he knows what it takes to live a minimally good human life (i.e. what he keeps for himself). By denying this to those he uses to achieve this kind of life, he

²⁶Migrant Worker Health Project (<http://www.migrantworkerhealth.ca/BackgroundWorkers.html>); National Center for Farmworker Health (<http://www.ncfh.org/>).

fails to properly respect the workers as human beings. This can be a form of disrespect the offended parties feel, even as they consent to, and benefit in no small way from, interacting with A. And it is something they could not experience if A did not consent to hiring them.

In his explanation of why micro-level exploitation is not possible within a competitive market, Wertheimer briefly recognizes the potential legitimacy of something like what I have in mind. That such markets fix prices and wages “does not mean that moral assessment of individual actions in a perfectly competitive market is impossible. We can, for example, evaluate an individual’s decision to become a seller or employer.”²⁷ We could add, I think, A’s decision to *remain* a seller or employer within a highly competitive market. But Wertheimer treats all of this as a completely separate moral issue, as though A’s becoming or remaining, say, an employer in such a market has no impact on how we evaluate the employment interaction he carries out with B. The T-absolute approach, as applied here, suggests that these are not separate issues at all. The fact that Wertheimer recognizes it would be possible to morally evaluate A’s decision demonstrates that not even he sees it as some purely macro-level evaluation.

It may be that, even though A’s participation is consensual (in the rather inclusive sense assumed since Chapter 1), he lacks a choice for which we would hold him morally responsible or blameworthy. If choosing to not transact means not just failure to continue flourishing as farmer (or factory-owner, or shareholder, or whatever), but rather poverty, starvation, etc., then we might excuse his staying in the market, even if it means paying B less than a living wage. But recall, from an earlier example, that we might excuse the

²⁷ Wertheimer, *Exploitation*, 217.

salesman C's acts of deception against his customers on similar grounds, without thereby denying that deception is wrongful.

My objection to the T-relative approach was based largely on the idea that it had an implausible account of what it is exploiters could have done otherwise, and that this allowed potential exploiters to be too easily exonerated, at least in some circumstances. The response on behalf of the T-relative proponent charged that the T-absolute account was too hard on A, holding him responsible for factors beyond his control which worked to diminish B's share. But rather than holding A responsible for, say, the forces of market competition, the T-absolute holds A responsible only for how he chooses to react to such factors in his dealings with B. I have suggested, with currently insufficient argument, that some such reactions may plausibly be seen as embodying a failure of A to respect B.

4.6 Looking Forward

I do not pretend to have shown that the correct theory of exploitation must assume the T-absolute approach. Obviously, many questions must be answered before we could accept such an account: What is the correct absolute to insist upon? Is this absolute contextual? What about B's role in being exploited? Is it not still true that the T-absolute will make too many consensual, mutually beneficial interactions impermissible? Of special importance will be those questions regarding the special obligation assumed by such an account, and the questions associated with what I called the Conceptual and Practical Problems. In this chapter, I have simply argued that the T-relative – the approach which nearly every other theory discussed in this work has embraced – suffers

from a severe problem, and that the alternative T-absolute approach, which avoids this issue, may not be as implausible as it at first seemed.

Moreover, much of what I have done has been somewhat backwards. In defending the plausibility of the T-absolute, I have more or less cobbled together such an account based on the T-relative accounts of Sample and Snyder. To truly consider the acceptability of such an account, we would need much more detail, as well as an actual argument in its favor. In the next chapter, I will try to provide detail and arguments sufficient for the outline of a plausible T-absolute account, while also recognizing that it may have significant limits in application.

CHAPTER 5: TOWARDS A NEW THEORY OF EXPLOITATION

5.1 Introduction

In this chapter, I propose, and attempt to defend, at least the beginnings of a (somewhat) novel theory of wrongful exploitation in consensual, mutually beneficial interactions. Naturally, I intend that this theory share the virtues of previously discussed accounts, while avoiding all their vices and any significant new ones. I begin with a brief recap of the previous chapters, in hopes of formulating meaningful desiderata for a successful theory.

5.2 Recap, with Desiderata for a New Theory

5.2.1 HCM Accounts

Wertheimer holds that, given the focus on consensual, mutually beneficial interactions, the unfairness of such exploitation must be located in the distribution of the social surplus created. And as Wertheimer (and Goodin) suggested, getting away with exploitation in such interactions requires that A have a superior bargaining position. Specifically, the exploiter has a *threat advantage*, which in Chapter 1 was defined as follows: A has a threat advantage over B iff it is easier for A to walk away (not transact) when his preferred terms are rejected, than it is for B to walk away when *his* preferred terms are rejected. A exploits B when A uses this threat advantage to keep more of the social surplus than he would have been able to keep in the absence of this kind of bargaining inequality.

Therefore (the account continues), to determine what would constitute *fair* – i.e. non-exploitative – terms of interaction, we simply ask how much of the surplus A would have been able to keep if stripped of his threat advantage; and this, says Wertheimer, is

the price A could have charged had the interaction occurred within a competitive market. Given that (as was assumed) A is not morally required to interact with B, A will do so only out of self-interest (or some similar non-moral reason), and the hypothetical competitive market (HCM) price represents the lowest price he can offer B while still attaining a benefit for himself. If A cannot grant B a larger share of the social surplus, then B cannot have been exploited.

One of the biggest problems was that one could recognize that market competition puts very real restrictions on the terms of A and B's interaction, while rejecting the idea that HCM prices are recognizably fair. Even if such prices are fair within *actually* competitive markets, they are not necessarily fair in less restricted interactions. In such circumstances, the HCM price might be unfair to *either* party. Wertheimer suggested that we stick to HCM prices because they realize transaction-specific fairness (TSF): a kind of fairness blind to those considerations important for larger questions of (institutional) justice. As I argued in Chapter 2, however, there seems to be no real support for TSF, and thus no reason for HCM pricing to carry over into interactions outside competitive markets. (Arguments in Chapters 2, 3, and 4 led me to conclude that competitive market pricing might not be fair even in competitive markets).

To the account as described, Valdman added that A's threat advantage must be over something B *needs* (something B "cannot reasonably refuse"). Using language introduced in Chapters 2 and 3, Valdman says wrongful exploitation is always *needs* exploitation, and never *mere-wants* exploitation. But as I argued in Chapter 3, this amendment is at odds with the spirit of the alleged fairness of HCM pricing, for to say that exploitation is wrong only when (or at least worst when) it targets those in need

suggests that the terms of interaction should be *responsive* to those needs. Yet HCM pricing ignores this completely.

5.2.2 Need, Dependence, & Exploitation

With this I can state a clear desideratum for a good theory of exploitation:

Needs-Responsiveness: At least in many cases, when the exploitable party is in need, the terms of interaction are deemed fair (non-exploitative) only when they are sufficiently responsive to this need.

Note that this does not require agreement with Valdman in saying that need is a necessary condition for just *any* form of wrongful exploitation. Rather, it suggests that need can be an important element in determining the (un)fairness of an interaction, which is compatible with the weaker claim that exploitation is *worse* when the exploited party is in need.

The Needs-responsiveness condition raises two questions:

- (1) What is the appropriate concept of being in need?
- (2) What constitutes sufficient responsiveness to need?

Valdman is not, of course, interested in (2), but he answers (1) by saying B needs what A has when B requires it “to live a decent life and not just... to avoid misery or death,” which is why B cannot “reasonably refuse” A’s offer.¹ Still, this is a rather thin notion of need, and certainly not enough to help settle the issue of what might be a *sufficient response* to such need. It is because an account which takes needs-responsiveness seriously must answer (2) that it must also be committed, to some extent, to an account of what exactly constitutes need.

¹ Valdman, "A Theory of Wrongful Exploitation," 10.

Both Sample and Snyder answer (1) by appeal to some notion of human flourishing, or what is needed to live a human life. Sample has slightly more to say on this, at least insofar as she explicitly draws on the rather robust capabilities account of flourishing given by Martha Nussbaum (see Chapter 3), yet Snyder has something very similar in mind. Differences in specifics may be important, but they agree that B is in need when he has less than that required to live a decent (distinctively human) life.²

Additionally, they would agree that what constitutes the sufficient responsiveness of (2) will depend on the level of B's *dependence* on A of getting what B needs.³ The more dependent B is on A, the more responsibility A receives for helping B reach this threshold of flourishing. Both theorists, for instance, point out that if B is A's full-time employee, then B is largely dependent on A for attaining many of the elements of a minimally flourishing life. After all, it is not as though B can find additional work elsewhere, especially in cases like Sweatshop, where this labor includes very long hours each week. So what A owes a full-time employee such as B may well differ from what he owes some part-time employee, who is (possibly) less dependent on A in this way. Moreover, what A would owe an employee in one country, in which important benefits are provided by the state, might be less than what is owed to an employee in a country without these social programs. As noted in Chapter 3, this last point would seem to imply that A can owe B a rather large amount, depending on which background features (like social programs) are or are not in place. And this, along with other considerations, leads to questions of what sorts of things might legitimately *limit* the extent to which A must

² Snyder, "Needs Exploitation," 395-96.

³ See the discussion of Sample's account in Chapter 3, as well as Snyder's "Needs Exploitation," 397.

respond to B's needs. Obviously, these are important considerations in deciding what constitutes a *sufficient response* to B's needs.

5.2.3 A's Special Obligation to B

Before turning to that issue, however, I should note that this same notion of dependency features, to some extent, in how both Sample and Snyder try to satisfy a more fundamental desideratum of a theory of exploitation in consensual, mutually beneficial interactions:

Explanation of A's Special Obligation: The theory explains why A, specifically (and not some non-A entity), can be required to provide B, specifically, with super-contractual benefits (i.e. benefits beyond those B would have otherwise agreed to), even though A is under no preexisting moral obligation to interact with B.

In short, if a theorist believes exploitation is possible in consensual, mutually beneficial interactions, then she must provide this explanation; otherwise whatever benefit B agrees to (the contractual benefit) would be enough. Thus, such a theorist must provide this explanation regardless of whether they agree to the Needs-Responsiveness condition above.

Providing such an explanation will go part of the way in answering what I introduced in Chapter 4 as the *Conceptual Problem* for a theory of exploitation: If we think that, following his interaction with A, B does not have enough, why think that this is at all a failure on the part of A rather than just a failure of justice at the institutional level? Why make "exploitation" in such circumstances a moral issue?

As I will discuss below, Sample and Snyder each suggest that B's dependency on A, given their interaction, may provide a focus for A's duty of beneficence – one that now requires A, specifically, to provide B, specifically, with some set amount of the social surplus, even if B would have consented to less. This is one way to try to account for A's special obligation, but it requires greater attention (and scrutiny) than it has received so far in this work. I will argue that this appeal to beneficence ultimately fails to allow the accounts of these theorists to meet the basic desiderata being proposed, and that an alternative must be proposed.

B's Complaint against A

Assuming it is possible to satisfy these two desiderata, they will combine to form a third:

Provision of a Legitimate Complaint against A (hereafter Complaint): The theory provides B with a legitimate complaint of having been wronged by A, on the grounds that A did not grant B a share of the social surplus sufficiently responsive to B's needs.

Chapter 4 was largely concerned with the nature of such a complaint, though the idea that a theory of exploitation must provide B with a legitimate complaint against A has been functioning in the background from the very beginning. As discussed in the last chapter, such a complaint is an essential feature of any theory of what Wertheimer called *micro-level* exploitation, in which B is supposedly wronged specifically by A. And in Chapter 3, it was seen that Valdman rejects Goodin's account due to its inability to fulfill this particular desideratum. The only complaint that account seemed to generate was something like, "A gained from my (e.g. B's) asymmetrical dependence," but since

gaining in this way is not sufficient for wronging B, Goodin fails to give B a legitimate complaint of having been wronged by A.

In the last chapter, I discussed this complaint in regards to the distinction between what I called the *T-relative* and *T-absolute* approaches to exploitation, where these were rival understandings of what it is someone guilty of exploitation in a consensual, mutually beneficial interaction *should have done otherwise*.⁴ A T-relative account says A can be guilty of exploitation only if the interaction could have been carried out upon terms that are both (1) to the greater benefit of B, yet (2) still to the benefit of both parties. In effect, a T-relative account embracing Needs-responsiveness says A is guilty of exploiting B only if A could have granted B a share of the social surplus responsive to B's needs within the context of a mutually beneficial interaction. But given certain constraints – including those of market competition – terms of mutually beneficial interaction granting B a share fully responsive to his needs may not be available. Such an account – like that of Sample or Snyder – would then say that terms of interaction are sufficiently responsive to B's needs when they grant him whatever amount towards addressing B's needs is possible within the mutually beneficial interaction. The idea was that the complaint generated by such an account – e.g. “A could have granted me a share more responsive to my needs while still benefitting from the interaction” – is legitimate in that it takes into account very real “non-ideal” limitations on what A can grant B in a mutually beneficial interaction.

The T-absolute rejects this limitation on the demands upon A. If, for instance, B is in need when she has less than enough to live a minimally flourishing life, then a T-

⁴ Notice the wording is not: “what someone could have done otherwise in a consensual, mutually beneficial interaction,” for this begs the question in favor of the acceptability of interacting at all.

absolute account taking Needs-responsiveness seriously will say that the sufficient response to B's need is always to grant her a share sufficient to meet these needs. Therefore, it will say A can be guilty of exploitation even when external constraints (including market competition) make it impossible for him to carry out the mutually beneficial interaction upon terms that are sufficiently responsive as now defined. And the concern discussed in Chapter 4 was that this will fail to provide B with a legitimate complaint, for barring the ability to give B a greater share, the only complaint left open to B is, "A should not have interacted with me." Yet surely B would rather attain some amount less than that required for flourishing than to obtain no benefit at all.

5.2.4 Practical Problems

In this chapter, I take up the task begun in the closing sections of Chapter 4: making sense of the complaint generated for B on the part of a T-absolute account of exploitation. As is now clear, such an account will owe much to those previously discussed, and perhaps to that of Sample most of all. But in the attempt to construct a theoretically sound account of exploitation, I must not overlook a number of incredibly pressing practical issues which could sink the whole thing. An important desideratum (which I will not name) for a theory of exploitation will be that it successfully avoids a number of such potential practical difficulties, while itself remaining an important practical tool.

One such potential difficulty was the issue of how many mutually beneficial interactions would be prevented by such a theory, thereby denying persons in need access to important benefits. As noted in Chapter 4, this is a problem for both T-relative and T-absolute accounts, though a needs-responsive T-absolute account will always (at least in

theory) be more restrictive than a needs-responsive T-relative account. For in the cases where A really cannot, due to external constraints, provide B with enough to flourish, the T-relative will move the onus off of A and onto the background social institutions imposing those constraints. Here, the T-relative will say A can interact non-exploitatively with B, though B is the victim of institutional injustice; while the T-absolute will say A must not interact with B, and that if A does interact, B may well be the victim of both A and the basic structure. But must a Needs-responsive T-absolute account be so restrictive? And if so, is this really *overly* restrictive?

Arising out of this worry is what in Chapter 4 I called the *Practical Problem*: the higher we raise the bar on how much the A's must grant the B's, the more reason the A's will have to seek benefit in interactions which (1) are not, by this theory's lights, exploitative, but (2) are also not to the benefit of the B's at all. For instance, rather than investing in an industry in which workers cannot, for whatever reason, be paid a living wage, the investors will turn to more capital-intensive industries. That is, the harder it is on A to avoid exploiting B, the more A will attempt to avoid exploitation by simply *not interacting* with B, and (potentially) the worse things become for the B's.

5.3 Exploitation and Special Obligation

5.3.1 Interaction and Non-worseness

I want to start with what for some is the elephant in the room: the very possibility of mutually beneficial, consensual interactions that are nonetheless wrongly exploitative. Such a possibility would be denied by two groups: (1) moral libertarians, as defined in Chapter 4, and (2) those who think any element of wrongfulness in B's situation should be purely a matter of institutional injustice, and not a matter of (interpersonal) morality.

But one need not be in either group to think there is something strange about saying these interactions are wrong, for she might find plausible what Wertheimer has called the *Non-worseness Claim* (NWC): “it *cannot* be morally worse for A to interact with B than not to interact with B if:

- (8) the overall interaction or package deal is better for B than non-interaction,
- (9) B consents to the interaction, and
- (10) such interaction has no negative effects on others.”⁵

Though Wertheimer has discussed this even in his earlier work,⁶ he has recently devoted more time to explaining the force of this claim and how difficult it may be to reject. And everyone mentioned in the present work has either assumed or argued that the NWC should be rejected, and for (for them) obviously good reason: by definition, all alleged cases of consensual, mutually beneficial exploitation leave B better off than non-interaction. So how could we ever say A wrongs B in such an interaction?

The rejection of NWC is one consequence of accepting what Wertheimer calls the *Interaction Principle* (IP), which “maintains, in effect, that even though A has no obligation to provide *any* benefits to B if A chooses not to interact with B, A nonetheless can acquire an obligation to provide benefits that go beyond that to which A and B *would otherwise have agreed* if A chooses to interact with B.”⁷ Consider the following example:

“Nike and Hike”

Nike sets up sweatshop factories in less developed countries (LDCs) and pays workers less than a living wage, but still more than the local average. Hike, a

⁵ Wertheimer, *Rethinking the Ethics of Clinical Research: Widening the Lens*, 259.

⁶ *Exploitation*, 289-93.

⁷ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 256. Original emphasis.

competitor wishing to remain competitive, could either (1) set up its own sweatshops in LDCs, or (2) invest in highly automated production facilities in the U.S. For whatever reason (e.g. Hike wants to avoid the public outcries of exploitation faced by Nike, or Hike believes option (1) wrongfully exploits workers and wants to avoid wrongdoing), Hike goes with (2).⁸

Nike is essentially doing more than Hike to enhance the well-being of workers in LDCs. Yet IP suggests that *because* Nike is benefitting from these workers, they take on obligations to provide super-contractual benefits to them (perhaps a living wage), while also suggesting that Hike is violating no such obligation (due to their lack of interaction). Since Nike is failing to provide these super-contractual benefits, while Hike need not provide them, Nike's actions are worse than Hike's. But how can acting in such a way as to benefit the workers to *some* extent be worse than acting so as to not benefit them at all? The intuitions are uncomfortable.

5.3.2 B's Greater Claims to Extra Benefits

Another consequence of IP, what Wertheimer calls the *Greater Obligation Claim* (GOC), may also appear problematic for some: "among the potential beneficiaries of A's actions or resources, A has greater obligations to provide super-contractual benefits to B than to others, even though B has *already* benefitted from the interaction with A whereas others have received no benefit from A."⁹ Thus

Suppose that Nike earns greater profits than it anticipated and is considering three options: (1) giving a bonus to workers; (2) contributing to a fund for those who applied for jobs with Nike but who were not hired; (3) investing its profits in new

⁸ Paraphrased, *Rethinking the Ethics of Clinical Research: Widening the Lens*, 258-59.

⁹ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 257. Original emphasis.

factories that will expand the number of persons it can employ. A commitment to GOC suggests that Nike has reason (of undetermined weight) to choose (1) because it has a greater obligation to the workers from whose efforts it has made its profits than to those that it did not or might hire, even though its current workers have already benefited from their employment and are demonstrably better off than those who applied but were not hired (2) or would be hired if Nike built additional manufacturing plants (3).¹⁰

The example helps raise two important questions: First, on *what basis* does B have a greater claim to these benefits which could otherwise go to others? If there is an answer to this, it would appeal to the fact of interaction, but what is it *about* the interaction that gives B this claim to greater benefits? Second, are we willing to accept the *opportunity costs* associated with acceptance of IP (and thus GOC)? In this case the opportunity costs of insisting upon (1) would be the benefit that could go to those not already benefiting from being employed by A.

Two things on this: First, these particular considerations of opportunity costs are interesting, given the initial subject matter. The original question, after all, was something like *When is A's interaction with B unfair?*, and now Wertheimer is suggesting that in formulating principles of fair interaction so as to answer that question, we keep in mind how such principles could affect the welfare of persons outside the interaction. But are such global concerns really relevant to the question at hand?

Second, one might think that even if such opportunity costs could be relevant to formulating principles of fair interaction, in practice they will not be. For instance, to claim that insisting Nike choose option (1) *prevents* the company from pursuing (2) or (3)

¹⁰ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 260.

might suggest that Nike *would actually choose* (2) or (3) if given the opportunity, and this may seem unlikely (option (2) especially). Moreover, this may all seem implausible because we believe (perhaps correctly) that Nike could easily grant its workers super-contractual benefits (e.g. a living wage) *and* follow course of action (2) or (3) (or both) *and* clear a profit. That is, the example may present a false dichotomy.

Two responses to this second reaction: First, even if Nike could grant its workers, say, a living wage while pursuing (2) and/or (3) and profiting, there is no reason to think that all businesses could do this. Second, and in support of the first, we should consider other contexts in which these concerns may be of equal or even greater relevance. Much of Wertheimer's discussion regarding IP (including NWC and GOC) is in his later work, which focuses on potential exploitation specifically within clinical research, and especially such research conducted by wealthier countries (or entities located within wealthier countries) in LDCs. In fact, Wertheimer believes that while appeals to IP can be found in other contexts (like employment relationships), "the case for that principle is arguably strongest" when made in regards to exactly this kind of clinical research.¹¹ For instance, do researchers really take on an obligation to (1') provide ancillary care or post-trial access to a drug, even if (a) subjects already benefit by participating in research and (b) they would consent to participate without these additional benefits? If so, the corresponding worry here is that it could prevent (2') granting greater benefits to the host community as a whole (and not just to participants) and (3') carrying out more trials which would benefit more participants. After all, providing the benefits in (1') would not be cheap, and this decreases the amount of resources available for conducting other research. And even if a significant amount of research in LDCs is conducted by the

¹¹ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 262.

Nikes of the pharmaceutical world, much is also funded by bodies, like the NIH, which surely have limited budgets.

5.3.3 Wertheimer on NWC and Strategic Morality

First, I want to consider Wertheimer's own argument against NWC in some contexts. It will be seen that this "strategic" approach is very similar to the one I considered and rejected in Chapter 4 as an attempt to formulate a plausible complaint on the part of a T-absolute theory of exploitation. The same reasons that led me to reject its use for that purpose will lead me to question its efficacy in the more general task of proving limits to NWC.

Wertheimer appeals to the following example in his most recent discussion of limits to NWC:

Abusive Marriage

A is considering marrying B. A is an abusive person, has abused B in the past and knows he is likely to abuse B in the future. B knows this as well, but believes that marrying A is her best alternative. B consents to marry A under these conditions.¹²

The following, says Wertheimer, are all true:

- (1) It is permissible for A not to propose to marry B.
- (2) The state of affairs represented by the package deal is morally preferable to the state of affairs in which there is no marriage because it is better for B and B consents.

¹² *Rethinking the Ethics of Clinical Research: Widening the Lens*, 304. For a less violent example, see *Exploitation*, 290-93.

(3) A state of affairs in which A marries B but does not act abusively is better than the state of affairs in which A marries B and acts abusively.

(4) It is wrong for A to act abusively even though B has consented to the package that contains the abuse.¹³

The example is very strange, in large part because Wertheimer is not suggesting a case in which a woman merely thinks she is better off in this relationship but really is not.

Moreover, her continued involvement in (and cementation of) the relationship is to be taken as truly consensual – meaning she is not staying in it to avoid even greater harms to herself or her children. Perhaps the abuse has left her so belittled as to question her own worth and what she might deserve outside of her present relationship, yet if this would lead us to question her consent, it too could not be a feature of the present example. Of course, we might think it matters if B is *right* to think this marriage is in fact her best option, and we might have a hard time thinking this could ever be. What possible good evidence could we or B have that this relationship will not one day cost her her life?

Reluctantly setting these worries aside, however, the idea is that we want to reject NWC and say it is wrong for A to marry B and act abusively, even though such a marriage is (as assumed) better off on the whole for B than no marriage. That is, A's acting (proposing to, marrying, and then abusing B) is morally worse than not acting, despite the fact that the action is better for B than non-action. But how can this be?

Wertheimer's answer is something like this: Saying that A acts wrongly by marrying B presumably gives A a reason to not marry B, and (importantly) gives us a reason "of some weight" to prevent marriages of this kind, including A and B's. So let us say we call such marriages wrong and prevent them from occurring. This does not mean

¹³ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 304.

B is therefore left worse off; rather, it means A will then be forced to change the terms of the proposed marriage. That is, we prevent the interaction from occurring on the original (abusive) terms because doing so makes the marriage occur on terms better for B. “Thus it is arguably better to regard certain types of interaction as wrong even when they yield a morally superior state of affairs in a particular case.”¹⁴ Call this the *Strategic Argument* for rejecting NWC.

There are two important elements of this case that must be pointed out, for they bear directly on whether, when, and to what extent this strategic approach might function to explain how some consensual and mutually beneficial interactions are wrongfully exploitative. The first connects to Chapter 4’s distinction between T-relative and T-absolute accounts of exploitation, and centers on the fact that Wertheimer is happy to say abusive marriage is wrongly exploitative because A could offer B better terms (i.e. *non-abusive* marriage). He considers a strange world in which (1) men are psychologically incapable of not abusing their mates, so that women face abuse in all heterosexual marriages, yet (2) for whatever reason, women still fare better within these abusive relationships than they would without. Here, as opposed to in the real world, preventing abusive, yet consensual and mutually beneficial marriages on the grounds that they are *unfair* and *wrongly exploitative*, says Wertheimer, would make no sense. No amount of prevention (it is assumed) could change men’s psychological proclivities, so in the end we would simply be denying women whatever benefits they would otherwise get from marriage, and therefore leaving them worse off. But this goes against what Wertheimer assumes to be the *point* of acting fairly: “Setting aside retributive justice, where fairness may require that we impose a deprivation,” he says, “we should treat people fairly

¹⁴ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 307.

because doing so is better for those persons than treating them unfairly and not because we are trying to promote some abstract ideal.”¹⁵

The second element of this case connects with an argument I made in Chapter 4 as to the limitations on using the strategic argument to explain what complaint B might have against A in a consensual, mutually beneficial interaction. Specifically, I was considering whether the Strategic Argument could provide such a complaint for a T-absolute account of exploitation in situations where A is unable to grant B a larger share of the social surplus. My conclusion was that such a project would not work, in part because in at least many contexts, preventing an interaction for strategic reasons may not actually work in B’s favor, and this point is very relevant here.

It should be noted that strategic intervention may work in Abusive Marriage because of the specifics of the context. Once A is told he cannot marry B on the abusive terms of the original marriage proposal, then assuming he does have some genuine feeling for B, he might well change the terms so as to make marriage possible. It is plausible to presuppose, for instance, that he will not just turn to another woman who he would be willing to marry on more acceptable (i.e. non-abusive) terms. If he did, then preventing the abusive marriage would (again, given assumptions noted above) leave B worse off.

While it seems unquestionable that moral (and legal) prohibitions against domestic violence lead to higher levels of welfare for those otherwise vulnerable to such abuse, we might want to be careful here. Wertheimer has assumed (just to get the example off the ground) it is possible that women could be (at some time, some place?) in the position of being better off in an abusive marriage than in no marriage. If we can

¹⁵ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 291.

go that far, I see no way to avoid the possibility that, in some cases, these same prohibitions can simply result in no marriage, at least for B, and that intervention could therefore actually leave some B's (though perhaps very few) worse off than in the absence of the prohibition. Maybe A does find someone else to marry under more acceptable terms, or maybe A just decides not to marry. (Again, at least if you've come this far, you're not allowed to say, "Well, B would be *better off* for this!" If so, then you must reject the example as a whole. Perhaps this is the best thing to do, but Wertheimer is surely in no position to do so.) And we cannot just assume that if the abusive marriage was prohibited and A decided to simply not marry her at all, B would find some non-abusive relationship that would grant her at least as much welfare as she would have received in her abusive marriage to A. Wertheimer is right to say in this case that A could just marry B on non-abusive terms, but preventing abusive marriage does not mean he will do so.

So Wertheimer *appears* to be too quick, for we cannot just conclude that our prohibition successfully turns every instance of what would have been an abusive marriage into a non-abusive marriage. It might simply prevent any marriage for some *particular* B. But then we are equally incapable of concluding that every prohibited abusive marriage would lead to greater benefits for B's. At most we can say that most of those in B's position, or even the vast majority of B's are made better off. But again, this tells us nothing of B in particular.

This becomes even more obvious in other contexts, such as employment. Say that yesterday, B was being interviewed by a company that already had four other employees and a total of \$200 to pay in wages each day. Each of the other employees made

\$40/day, and the remaining \$40/day would have gone to B had he been hired. Say that \$40/day, which is much more than B currently makes, is still less than a living wage, which is \$50/day. And today a minimum wage law goes into effect, requiring each employee receive at least \$50/day. The wages of the four original employees now max out the total amount available for wages, and B is not hired. Moreover, there is no reason to think that B will now get a job somewhere else making \$50/day – he might struggle to find employment anywhere. (The facts regarding a link between raising the minimum wage and underemployment are, of course, disputed, but it is certainly conceivable that B might find himself in this position.) Therefore, the strategic intervention (creating or raising the minimum wage, thus preventing B from making \$40/day) does not lead to an interaction having better terms *for B*.

In Chapter 4, I referred to this as an implicit shift in regards to who is supposed to benefit from intervention. It occurs when we attempt to invoke the strategic argument to explain why it is wrong to employ B for only \$40/day. It may be true that the *class of Bs* tends to be better off as a result of the minimum wage law, meaning *most* of them might receive a living wage where before they did not. But we cannot assume that just because most of those in B's situation fair better, B must fair better as well.

So is Wertheimer being too quick? It depends on exactly which question this Strategic Argument is supposed to address. In his earlier work, Wertheimer uses the Strategic Argument at the level of (2) *Justification of Interference* – explaining why we might be justified in interfering with a wrongfully exploitative yet consensual and mutually beneficial interaction, given that it works to the benefit of B. He uses it for this purpose again in his more recent work, in a not-optimistic attempt to refute what he now

calls the *Permitted Exploitation Principle* (PEP), which just says it is wrong to interfere with these kinds of interactions. And here he says that “The PEP does *not* claim that it is *morally permissible* for A to exploit B. Rather, PEP claims that it is wrong to prevent Pareto superior or win-win interactions on the grounds that the terms of such transactions are unfair.”¹⁶ Just like the PEP, the Strategic Argument here is aimed at the “*morality of regulating transactions*, and not the *morality of transactions* themselves.”

Thus, using the argument from strategic intervention at this level is kept separate from the level of (1) *Moral evaluation* – explaining why an action could be exploitative and therefore wrong, despite the fact that it would leave the allegedly exploited party (B) better off given the circumstances. And Wertheimer had already done the work for (1), explaining what it is A does wrong by appeal to the notion of A pressing his threat advantage – i.e. taking advantage of an asymmetrical dependence. For instance, due to some market failure, A is capable of successfully charging B some higher-than-market price for a good or service. The fair terms of interaction – i.e. the fair division of the social surplus – are those we would find in the absence of this particular bargaining inequality. A wrongfully exploits B when he uses this advantage to keep more than his fair share of the social surplus.

It is not perfectly clear how this could apply to a case like Abusive Marriage, but it would presumably go something like this: In the absence of the sort of threats or false consciousness that have been ruled out for the example to work, perhaps B rationally concludes that abusive marriage is better than no marriage because of certain unjust background conditions. For instance, perhaps women are discriminated against in the workplace, in which case women will generally be financially dependent on men.

¹⁶ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 219. Original emphasis.

Without this dependence, A's offer of an abusive marriage might well be unsuccessful; with greater financial independence, it becomes easier for B to hold out for better terms of interaction. In a sense, the fair terms of interaction would be those that would hold under more just conditions giving women greater independence, and A is using the present injustice to get more than he would otherwise be able to achieve.

This explanation of wrongful exploitation fulfills what I now call the *Complaint* desideratum (above) by allowing B to say, "A could have given me more, but refused." At the very least, A could have offered B a non-violent marriage. So even though A could have refused to marry B at all, he wrongs her by carrying out Abusive Marriage.

Of course, none of this addresses NWC: it does not explain why Abusive Marriage is *worse* than no marriage, even though B benefits more from the former than the latter. Again, NWC asks how A's interacting to B's benefit could ever be worse than non-interaction, which does not benefit B at all: if non-interaction is *not* wrong, why is interaction wrong? This is certainly the gauntlet Matthew Zwolinski has thrown down in front of various exploitation theorists, including Snyder.¹⁷ The idea is that a sufficient response to NWC will naturally include an explanation not only of how interaction in such cases could be *worse*, but also *how they could be wrong at all*.

This is where, in his most recent work, Wertheimer tries to bring the reasoning of the Strategic Argument to bear in the new way: by using it to address not only (2) the justification of interference with wrongfully exploitative consensual and mutually beneficial interactions (the argument that PEP is false), but also (1) explaining why these

¹⁷ Zwolinski, "Sweatshops, Choice, and Exploitation; "Price Gouging, Non-Worseness, and Distributive Justice," *Business Ethics Quarterly* 19, no. 2 (2009). Jeremy Snyder, "What's the Matter with Price Gouging?," *ibid*.

interactions are evaluated as wrongful to begin with.¹⁸ It is here that he attempts the rejection of NWC which IP requires, discussing the effects of strategic intervention in cases like Abusive Marriage and others. And it goes something like this: If prohibiting A and B's interaction on terms T would with "sufficient likelihood" produce a state of affairs better for B, then A's interacting with B upon T is morally wrong.¹⁹ The fact that such a strategic intervention would be successful in this way is now part and parcel of the reason the original interaction would have been wrong.

There are reasons to believe the Strategic Argument, however effective at denying PEP, is ultimately quite ineffective in making sense of the moral wrong of exploitative interactions. One potential worry which Wertheimer is aware of, though it does not deter him, is that this line of argument "erroneously collapses the distinction between the claim that an action *is* wrong and the claim that there are good reasons to *regard it as wrong*."²⁰ For instance, the Strategic Argument "does not explain the intuition that A's behavior in *Abusive Marriage* is wrong independent of expected results." Wertheimer shrugs this off, claiming that "there is no reason to think that intuitions have to be explained or justified on their own terms."

Two things to note: First, the original explanation of wrongful exploitation (the one appealing to threat advantages, HCMs, etc.) at least *attempts* to explain these intuitions, as well as intuitions regarding wrongful exploitation more generally, on their own terms. There are reasons, I have argued, to think it is less than completely successful, but it was an attempt nonetheless.

¹⁸ Wertheimer, *Rethinking the Ethics of Clinical Research: Widening the Lens*, 305-07.

¹⁹ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 306-07.

²⁰ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 307. Original emphasis.

Second, the strategic approach may need this original explanation in ways Wertheimer does not necessarily recognize. For instance, there may be many consensual, mutually beneficial interactions between A and B which, if prohibited, would lead to greater benefits for B. Consider, for instance

Money Woes:

A is considering marrying B. A does not make as much money as B knows they need to live a good life. A knows he is unlikely to make much more in the future. B knows this as well, but believes that marrying A is her best alternative. B consents to marry A under these conditions.

It might be that under the same unjust conditions suggested in Abusive Marriage above, a strategic argument could be made for prohibiting marriages in which A would not make enough money. After all, if women were completely dependent on men for their financial well-being, then such a prohibition might lead to greater net benefits for the vulnerable parties. But what if we consider such a prohibition in the absence of strong, asymmetrical dependence? It might still be the case that (1) despite the lack of dependence, many women would still prefer marriage to men than no marriage to men, and (2) the prohibition would lead to marriages in which women benefited relative to the no-prohibition baseline. But we may well not care about these additional gains: the prohibition was justified only in the case where women were disadvantaged by dependency. The Strategic Argument by itself, however, cannot make sense of the difference between these two cases. Wertheimer's original argument, on the other hand, *can* make sense of it: wrongful exploitation can only occur when one party holds a threat

advantage, and in the present example, we see this only under the conditions of injustice and dependence.

One might think that surely Wertheimer had this in mind when he proposed the usefulness of the Strategic Argument to moral evaluation. That is, surely (given his previous understanding of wrongful exploitation) he is applying this new argument only to those cases in which one party can take advantage of an asymmetrical dependence. Perhaps this *is* what he has in mind; to be honest, it's hard to say. Given the attention to NWC, it would make sense if Wertheimer were using the Strategic Argument here only as a way of saying why interacting might be worse than not interacting, without also using the argument to try to explain why interaction is wrong (unfair) simpliciter; and at times this seems to be what he is doing:

Although the strategic argument does not or certainly need not deny that an unfair mutually beneficial transaction is a better state of affairs than no transaction, it supports condemning such transactions *if* such condemnations typically motivate people to engage in fairer mutually beneficial transactions rather than not to transact at all.²¹

He implies here that we have some way of knowing a transaction is fair or unfair *apart* from the potential effects of intervention, and perhaps this knowledge comes from application of the earlier HCM account. And yet the “intervention” here is *moral condemnation* – i.e. the very act of evaluating A's action as wrong. This makes it sound as though it's possible for A to act *unfairly* while not also acting *wrongly*, or at least, not in a way that we should *recognize* as acting wrongly. But, of course, Wertheimer at least

²¹ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 306.

originally argued that what makes an interaction wrongfully exploitative is that it is unfair. How could these come apart?

At other times (sometimes on the same page), he clearly states that the effectiveness of intervention is an important element of the basic moral evaluation: “On the view just described, the moral evaluation of *actions* thus replicates the structure of the ‘strategic argument’ for prohibiting unfair but mutually beneficial transactions such as rescues at an unconscionable price or jobs at less than a minimum wage.”²² And since moral prohibition can work to grant some parties greater benefits, “it is arguably better to regard certain types of interaction as wrong even when they yield a morally superior state of affairs in a particular case.”²³ My own reading of these sections (and others) is that the Strategic Argument is here intended to justify moral prohibitions themselves in many cases, and is not limited in any obvious way to those in which one party holds a threat advantage.

In any case, such issues of interpretation are irrelevant given a more pressing problem, already hinted at above and in the previous chapter. Again, even if most of those in B’s position – and therefore what Wertheimer earlier called the *class* of B’s – can expect greater benefits as a result of prohibiting certain kinds of interaction (by calling them wrongfully exploitative), there is no reason to believe B in particular can expect an interaction with greater benefits. Instead, she may get no mutually beneficial interaction whatsoever.

I want to suggest that however the Strategic Argument is here being applied – either to explain why exploitative interactions are wrong, or to explain why such

²² Ibid. My emphasis.

²³ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 307.

interactions are worse than non-interaction – this argument fails due to a problem in perspective. Recall again Abusive Marriage, and consider the possibility in which prohibiting this marriage would not lead A to propose better terms of interaction, but rather to no marriage at all. Thus we might want to say both

- (1) The proposed interaction is exploitative (B would be wrongfully exploited), yet
- (2) Moral prohibition would not lead to terms of interaction to the greater benefit of B (though it would benefit the class of B's).

Now say the marriage happens. Again, in micro-level exploitation, to say A has exploited B is to say A (specifically) has wronged B (specifically). If B is in fact exploited, then she must have some *legitimate complaint* of having been wronged (or of currently being wronged) by A. But it is not at all clear what sort of complaint the Strategic Argument can scrounge up for B. When the argument is used in this way, it appears to morally evaluate A's actions relative to the efficacy of intervention, and if (2) is true, B has no obvious complaint. Thus the argument fails to explain the wrong of A's action from the appropriate perspective: B's.

It is this same problem of perspective that prevents the Strategic Argument from successfully explaining why A's choosing to interact is *worse* than not interacting. I take it that the rejection of NWC is supposed to be so baffling because we claim A's interaction is worse *for B* than non-interaction, even though B is made better off though the interaction. That is, A's action is worse for reasons other than its potential impact on others, like the class of B's more generally. The third condition of NWC says it is applicable when the "interaction has no negative effects on others." For instance, the NWC proponent might not struggle to understand an objection to so-called "right to work

laws,” even though such laws have the potential of leading some persons to be employed (or employed in better jobs) than they could reasonably expect without such laws. The objection is that these laws damage collective bargaining, and this is a negative effect on others (those who are benefitting, and those who could benefit, from collective bargaining).

My claim is that Wertheimer’s strategic approach can neither explain the wrong of at least some instances of exploitation, nor explain why interacting exploitatively is worse than not interacting, because it fails to explain these things from the perspective of B, the purportedly exploited party. This is important because I take it to be a key intuition of the NWC proponent that these things must be explained from B’s perspective: again, if B is made better off through interaction, how could interaction be worse, or wrong at all? Let us now make the plausible assumption that the above is in fact Wertheimer’s attempt to *reject* this intuition. This appears to be at odds with his original formulation of micro-level exploitation, because in rejecting this intuition, we are now allowed to look beyond what only B can say as way of complaint. Yet, perhaps it is still micro-level exploitation because it is A, and not (say) the state or its institutions, which is thought to do the wronging.

The rejection of such an intuition would be at home in something like a *rule consequentialist* explanation of exploitation, which would take B’s perspective as no more important than that of anyone else. A’s interacting might be wrong not at all because of its impact upon B, which might in fact be (on this explanation) purely positive. If A’s interacting is wrong, it is because if everyone in A’s position interacted upon the proposed terms, this would fail to bring about best possible state of affairs.

By way of defense of the intuition in question, I am unsure of what can be said that does not find me embroiled within a debate at the level of basic moral theory. My approach will be more indirect. I will try to provide a plausible account of exploitation that honors the intuition, such that when A wrongly exploits B, A's action is wrong always at least in part because of what it does to B.

Above I asked if Wertheimer was too quick to put faith in the efficacy of the Strategic Argument, and I said that this depended on which question(s) it was meant to address. As noted, Wertheimer's original use of the Strategic Argument was as a potential justification for preventing certain consensual and mutually beneficial interactions already deemed exploitative (unfair) through the use of *policy* (not by means of *moral evaluation itself*, as above). That is, it was originally intended to refute something like the PEP. And for this purpose, the Strategic Argument seems quite plausible: after all, we do not tailor the content of laws on a case-by-case basis. Again, consider a case where

- (1) We believe A is proposing to B a consensual, mutually beneficial, yet exploitative interaction (e.g. employment at a sub-living wage), yet
- (2) Preventing this interaction would not lead to an interaction in which B gets a greater level of benefits.

We may want to allow interactions of these kinds to occur, even though it is exploitative. However, we have to worry that

- (3) By allowing interactions upon the proposed terms, we weaken the bargaining position of yet other B's, allowing A (and other A's) to demand greater shares of the social surplus.

So in crafting policy, we may have to choose between allowing interactions like that which A proposes to B, where this is beneficial to B but detrimental to most other B's, or acting in the interests of those other B's by preventing just the kind of interaction which would have helped B. It is plausible, I think, to prefer the latter. So the Strategic Argument is at least plausible as a suggested guide to making policy decisions, which is why it is indeed relevant to the discussion of the PEP. But this by itself does not support the application of strategic reasoning to the level of moral evaluation.

5.3.4 GOC and Broader Concerns

If the wrong (and worseness) of exploitation is to be explained always at least in part in terms of what it does to the exploited party, then strategic reasoning is not a fruitful way of trying to combat NWC in hopes of supporting IP. It is not the case that whenever B is exploited, we could have intervened so as to make A grant B a non-exploitative share of the social surplus (again, Wertheimer seems to recognize this much). But then appeal to such potential intervention cannot, in every case, explain how A's interacting with B is in some sense *worse for B*. If the mutually beneficial interaction really can wrong B in such a way that it is worse for B than non-interaction, it will have to be some other kind of wrong.

In fact, the attempt to refute NWC in isolation of GOC may be part of the problem. Recall GOC says that B has a greater claim to super-contractual benefits than others who could benefit from them, even though B has already benefited from the interaction and the others have not. Of course, the idea is that B would have this claim only if the terms of actual interaction were exploitative, in which case his share was too small. But at issue is the very idea that the actual terms of interaction (B's contractual

benefits) can be unfair, that it could ever be the case that B should ever receive more than whatever A and B agree to transact upon. So in making sense of GOC, a theory of exploitation will fulfill the requirement of *Explanation of A's Special Obligation* – it will tell us exactly why A can owe B more than whatever they might agree to, which is the presupposition of consensual and mutually beneficial exploitation. And when A fails to fulfill this obligation, B will then have a legitimate complaint against him (thus fulfilling that requirement as well). Therefore, in explaining GOC, we come to best understand how exploitation is wrong. Perhaps then we can have something more useful to say to NWC.

It is best to start by clarifying what exactly is at issue here, for Wertheimer's statement of the claim might not be ideal. For instance, if I make a promise to you, it is conceivable that under circumstances like impending doom (or something of that sort), it might be best – all things considered – to break that promise. For the same reason, we imagine a theory of exploitation saying A owes B the share of the social surplus equal to $x + y$, yet under certain circumstances, A should give B only x and use y to serve some other, extremely important (and perhaps urgent) cause. I do not think a theory of exploitation needs to explain under what all possible circumstances A could be in this position, any more than a theory of promising (and breaking promises) needs to explain under what all possible circumstances it is permissible for me to break my promise due to some urgent crisis.

Better: consider the case in which Nike (A) could give its employees (including B) amount $x + y$, although B has been willing to work for only x , and Nike would like to give y to C, who wanted a job but did not get one. Nike's humanitarianism is laudable in

this form only if y is Nike's to give away. Why do we think (when we do) that there is at least some (potentially defeasible) reason B is entitled to y , such that it would be wrong of A to give it to C? Why think there is reason to say A must give B y and dip down into whatever of his own share is left if he wants to be charitable to C? A theory of exploitation's commitment to GOC should (at least on the face of it) answer these questions, and phrasing GOC this way may better represent the limited scope of such a theory.

5.3.4.1 Reciprocity & its limits

In his discussion of research ethics, Wertheimer mentions the importance of *reciprocity* in theorizing with regards to ancillary care obligations (ACOs) – i.e. obligations researchers might have towards participants even though (1) fulfilling such obligations is not essential to conducting scientifically valid research in these cases, and (2) the fulfillment of these obligations constitutes super-contractual benefits for the participants (i.e. they would have agreed to participate even if such care had not been part of the agreement). He notes it is often assumed that “researchers have these obligations precisely because they *benefit* from the interaction.”²⁴

Reciprocity in regards to Nike's conduct towards B might call for the company to give B amount $x + y$, instead of giving B just x and giving y to C, because Nike benefits from B's work, whereas C was not even hired. However, as Wertheimer says, it is not clear what exactly – including what exact division of the social surplus – reciprocity calls for in a given situation.²⁵ Thus, even if reciprocity requires Nike to give *some* benefit to B rather than C, it does not in itself tell us to give y to B instead of C. After all, B is

²⁴ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 277.

²⁵ *Rethinking the Ethics of Clinical Research: Widening the Lens*, 277-78.

already getting some benefit, namely x , and why think that x is not enough to satisfy the requirements of reciprocity? The problem here seems to overlap with the one of interpretation in the Humanity Formula of Kant's Categorical Imperative: when exactly have I treated someone as an end in herself and not as a mere means? When exactly have I used someone as a means to accomplishing my own ends, while, say, insufficiently taking account of *her* ends? As discussed in Chapter 3, when is *some* benefit not *enough*?

Moreover, there is a sense in which appeal to this bare idea of reciprocity is perhaps unsatisfyingly conventional, presupposing rather than explaining why Nike should forget about C (since he did not get a job) and focus only on B and his fellow employees. Of course, the status quo is that employers owe nothing to those not hired, but here Nike wants to buck that convention by giving the not-hired money that could otherwise be added to wages. So the question is then what reason is there for such a convention, or, at least, why adhere to it here? Say that Nike could use amount y to cover the gap between the relatively low local wages C does make, and the relatively high wages he would receive in the factory. Why think such a scheme would wrong *B*, instead of thinking that *not* implementing this scheme when one can wrongs *C*?

Of course, at the end of the day, we do expect a theory of exploitation to pick out B as the wronged party. And reciprocity seems to reliably pick out B in every case, because unlike C, B has taken part in a mutually beneficial interaction with A. Given its reliability, it might be that a theory of exploitation just needs to provide reciprocity a fuller justification so as to explain GOC. What else could so reliably pick out B as the legitimate recipient of y ?

5.3.4.2 *The Beneficence Approach*

We see a potential alternative in Sample's account, and in fact it is quite popular. In her Kantian account of the nature of wrongful exploitation in consensual, mutually beneficial interactions, Sample says there may be *two* ways of understanding why such interactions are wrong. She is arguing "that some exploitative interactions are failures to improve the situation of our interactors sufficiently," and she realizes this sounds as though exploitation (at least in these cases) is a failure of beneficence: "a failure to advance the ends of others."²⁶ But, at least as far as Kant is concerned, morality doesn't require that we take *every* opportunity to act beneficently. Duties of beneficence are "imperfect," meaning we have significant latitude as to when and how we act beneficently. So why is it that *every* failure to grant our "interactors" a share of the social surplus responsive to their needs (at least when possible) is wrongful exploitation?

For instance, we can understand why (1) A simply *pocketing* amount *y*, rather than adding it to B's wages, *might* be a failure of beneficence. But would we think the same if instead (2) A gave the money to C? Without an independent justification for why B has some stronger claim to *y*, A's giving *y* to C seems like a beneficent action. Is B wronged in (1) because A kept the money, but not in (2) where A (presumably) acted beneficently toward C? This would be odd indeed, since either way, B does not get the money. Again, the issue is not whether A acted wrongly in (1) but not in (2), but whether one or both of these actions wrongs B.

The first way such an interaction is nonetheless wrong, says Sample, is to explain it as something other than a failure of beneficence. Rather, it is "a failure to recognize and treat another person as an end in herself," thereby straightforwardly failing the

²⁶ Sample, *Exploitation: What It Is and Why It's Wrong*, 70.

Categorical Imperative. A would fail in this way when (1) B is in need, and (2) A's interacting with B would provide her some benefit yet, on the whole, "ignore her basic needs."²⁷

The second way, however, works *within* the beneficence framework. I will call it, quite generally, the Beneficence Approach. Even if duties of beneficence are usually imperfect, Sample suggests that "it is possible that refusing a certain level of benefit to our transactors *always*, as a practical matter, violates our imperfect duty."

While imperfect duties allow us some discretion in determining whether to act beneficently in a given case, those situations in which we are confronted by vulnerable others in transactions for advantage could not be, by any reasonable person, *optional* opportunities for beneficent action.

In support, she quotes the Kantian theorist Onora O'Neill: "There are contexts and relationships to others in which to do nothing or to do the wrong thing would be sufficient evidence that the underlying maxim or principle is unjust or lacking in respect or rejects beneficence."²⁸ For Sample, the employment relationship is one in which A can be directly confronted by vulnerable persons, especially in the case of sweatshop labor. If here A could pay B enough to minimally flourish but chooses not to, then A has failed in terms of beneficence, regardless of whatever else he might do with the money he keeps. And this failure in beneficence is a failure of respect.

Snyder puts forward a very similar line of thought, saying that through relationships, the imperfect duty of beneficence can become focused to create *perfect*

²⁷ *Exploitation: What It Is and Why It's Wrong*, 71.

²⁸ Onora O'Neill, *Constructions of Reasons* (Cambridge: Cambridge University Press, 1989), 116-17.

duties (i.e. duties to particular people, and thus without all the latitude of imperfect duties):

The perfect form of the duty of beneficence relies, I am claiming, on connections to particular others through our roles and relationships, where a general disregard for the ends of humanity becomes a disregard for the needs of particular others. This disregard can take the form of a use of another as a mere means, where a particular person's needs are disregarded in preference to an overriding concern with the benefit to oneself that can be derived from one's interaction with her. In this way, the general duty to support the basic needs of others becomes more concrete through a process of specification, such that the once general duty is now owed, with specific content, to particular others.²⁹ (2008, 396)

Just like Sample, Snyder says that beneficence can require the employer to act in a specific way, specifically toward his employee: he must adjust the terms of their interaction so as to allow the employee "a decent minimum standard of living," at least when this is "reasonably possible."

5.3.4.2.1 Dependency & expectations

Discussion of what is "reasonably possible" will bring us to the alleged significance of B's dependence on A in their potentially exploitative relationships. In Chapter 4, I discussed one of the limitations Snyder recognizes on what it is reasonably possible for A to grant B – namely, the price-, and thus wage-lowering effects of market competition. Again, Snyder believes that A should always be allowed a share sufficient to ensure his own decent (though not excessive) standard of living, but market competition could shrink the total social surplus, leaving less for B. The other limitation,

²⁹ Snyder, "Needs Exploitation," 396.

prospective dependence, should be somewhat familiar from Chapter 3's discussion of Sample's account. Sample would likely agree when Snyder suggests that "This dependence will be determined in large part by the kind and duration of the relationship within its contextual setting," for both (as noted above) seem to suggest that full-time employees have a greater claim to benefits than part-time employees, the latter of which will likely (it is assumed) receive resources from still other employers.³⁰ And again, just how demanding this perfect duty of beneficence is on A will depend on which of, and to what extent, B's needs are met by the state.

But Snyder understands such contextualized dependency more – or, at least, more explicitly – in terms of what *reasonable expectations* B might have of A given their relationship. The natural question is then, *What makes such expectations reasonable?* Briefly, Snyder says that "the prospective dependence will be determined, in part, by role norms," but he only mentions this to point out that "those norms can be suspect," such as when they are sexist, etc.³¹ Because expectations can be illegitimate when based on suspect role norms, we must consider the "normatively adjusted prospective dependence of B on A" for some meeting some need(s). This is surely right, for one could think both (1) sweatshop workers should be paid more, and yet (2) the workers themselves do not necessarily believe they should be paid more, let alone do they *expect* to receive more. It is quite easy to throw out expectations based on say, sexist or racist role norms, but what non question-begging way is there to argue that after our "normative adjustments," sweatshop workers can legitimately expect to be paid a living wage? In employment more generally, we cannot just assume that the correct norm will be one that gives

³⁰ "Needs Exploitation," 397.

³¹ "Needs Exploitation," 398.

workers a reasonable expectation of being paid a living wage, for the correctness of this norm is what is at issue.

Perhaps the point here is really only supposed to be negative, which is why Snyder discusses dependency in this context as a potential limitation on what A can owe B. The idea is then, say, that if B is *not* A's full-time employee, then he cannot reasonably expect A to provide him with a living wage. Even on this reading, an explanation eludes. What A is to provide his full-time employees can, says Snyder, depend in part on what benefits are provided by the state, outside the employment relationship; but then why would what A owes his part-time employees not be equally contextual? What if such an employee struggles to find other work, due to discrimination or high unemployment? What if other employers are simply reluctant to pay him half of the living wage?

These questions are difficult given that A's duty to be responsive to B's needs is based on considerations of beneficence. Whether it is through part-time or full-time employment, A is now engaged with B, so why would the distinction matter from the standpoint of beneficence?

5.3.4.2.2 Beneficence vs. reciprocity

I began this section by discussing the appeal to beneficence as a potential alternative to bare reciprocity in the attempt to explain what is wrong in certain consensual, mutually beneficial interactions, and how GOC might be supported. Some philosophers clearly see a distinction between the appeal to beneficence and the appeal to reciprocity. Henry Richardson, at least in his most recent work, argues that researchers can have ACOs to research participants, due *not* to considerations of reciprocity, but

rather because the researcher's duty of beneficence can become focused on the participant given basic features of the researcher-participant relationship.³² Specifically, he believes that the participant's waiver of privacy rights is what provides the focus, such that when access to this private health information tips the researcher off to some risk, the researcher is now specifically obligated to provide the participant with some level of assistance –likely more than would have been morally required outside this special relationship. It is the same explanation he gives for *The Old Man and the Groceries* example seen in Chapter 2: what creates an obligation upon the helper is the fact that the old man let him into his home, thereby making private information (such as the presence of dangerous mold) accessible. Note that the helper is (allegedly) obligated to help the old man further even though the helper has not received, nor can expect to receive, any obvious benefit from his provision of assistance. So the fact that researchers gain by the use of participants in research plays *no role at all* in focusing the duty of beneficence. In other words, reciprocity – though present – plays no role in justifying the participant's claim to super-contractual benefits.

Moreover, in Barbara Herman's influential and thorough Kantian analysis of the grounds of and limits to beneficence, she argues that relationships and dependencies in our everyday lives continually shape what the duty of beneficence requires; yet not once does she suggest (at least in any explicit way) that reciprocity is ever itself doing the shaping. She writes that

Where I am involved with others, I have greater opportunity to have an impact on their happiness. We know a lot more about the conditions of happiness or well-being of those with whom we live or work, and those to whom we are closest are

³² Richardson, *Moral Entanglements: The Ancillary-Care Obligations of Medical Researchers*, 60-62.

often those we can most easily harm by our neglect. When I do not help a stranger with his project, I am not neglecting him. But when a coworker or friend is similarly needful, the threshold of neglect is much lower.³³

Requirements of beneficence are shaped instead by the closeness of relationships, where increasing closeness (a) makes it *easier* to act to the benefit of the other, and (b) makes the parties' beneficent actions more effective, given they will have *better information* as to how they could help one another. As with Richardson's account of ACOs, if there is reciprocity involved in such relationships, this is accidental to beneficence taking the shape it does.

I believe that Sample and Snyder's appeals to beneficence are, or are at least intended to be, equally independent of considerations about what A might owe B for reasons of reciprocity. Though both frame their discussions of what beneficence requires (including in the quoted passages above) within the context of A's interacting with B *for gain*, this is just what happens when one discusses the relevance of beneficence to exploitation in *mutually beneficial* interactions. The fact that A is interacting for gain might only be part of a psychological explanation as to why he fails to respond to B's need, for the more responsive he is, the less he keeps for himself. The fact that they have engaged in an interaction is what requires A to be responsive to B's needs, but the fact of reciprocity is accidental.

5.3.4.2.3 Problems for beneficence

As I said before, reciprocity, whether ultimately justifiable or not, at least serves to reliably pick out B as the party most deserving (in most situations) of benefits beyond those he might agree to transact upon in his dealing with A. I will now argue that

³³ Barbara Herman, "The Scope of Moral Requirement," *Philosophy & Public Affairs* 30, no. 3 (2001): 247.

beneficence, at least as used by Sample and Snyder, will fail at this, and that these accounts ultimately cannot satisfactorily justify GOC. (Or, at least, Snyder's account, and the version of Sample's account relying on beneficence, will fail in this way.) In doing so, I will show that they also fail to successfully fulfill the requirements of Explanation of A's Special Obligation and Complaint.

Recall the scenario Wertheimer proposed as means of explaining GOC: Nike has made a higher-than-expected profit, and with this money Nike could (1) add to workers' wages, (2) contribute to a fund for those who did not get jobs in the factory, or (3) invest the money in new factories which would bring these relatively well-paying jobs to more people who very much need them. And say that Nike (A) pays current employee (B) wages of x , and y is the amount that could go to B if A pursues option (1). If Nike pursues (2), y will go instead to C, who was not hired. If option (3) is chosen, then presumably some other party, D, will be one of a number of workers then receiving wages equal to x (the original y is then spent in the process of building the new factory). But there is also option (4): Nike holds onto the extra profits, or gives them to shareholders.

A perfect duty of beneficence might explain why A should pursue (1) over (4). When B is in need, then pocketing unexpected windfalls could rightfully be seen as a failure to seriously consider B's own ends and the basic resources he needs to achieve them. But this duty cannot explain why (1) should be chosen over (2) or even (3). What could be wrong about A choosing (2) over (1)? Given how the specified duty of beneficence is supposed to function, I gather that one would say (1) is correct because A and B are engaged with one another via employment, whereas no such relationship exists

between A and C. From here it gets murky. Drawing on Herman, it might be that because A and B stand in this relation, we can say two things: (a) Practically speaking, it may be easier to further benefit B (who still needs the extra) than it is benefit C at all, and (b) A is in a better position to know what B's ends are and what A can do to help further those ends (and perhaps this reinforces (a)).

There are very good reasons to think (a) and (b) would actually be false. Even if we ignore the fact that Nike is a multi-national enterprise, all but completely removed from the facts of these workers' lives, there is still the following problem: The more one is in need, the easier it is to know what can be done to help them, and the more effective that help is, even in small amounts. If the difference between local average wages (which C might be receiving) and sweatshop wages (x) is as great as often said, then even if y is quite small, there must be very easy ways of donating y in ways that can help C (perhaps significantly). Moreover, Nike is (per the example, however unrealistic) actively considering the creation of a new fund specifically for the purpose of helping C and the others who were not hired. With such a fund, the practical and epistemic differences between (1) and (2) would seem to disappear.

One might think that if B was *already* hired, however, A cannot then create this fund when y could otherwise go to B. But from the standpoint of beneficence, why not? It is perhaps easy to see why pocketing the money, as in (4), might well be the "use of another as a mere means, where a particular person's needs are disregarded in preference to an overriding concern with the benefit to oneself that can be derived from one's interaction with her." In (2), however, A is not selfishly keeping y to further his own ends; he is using it to bring up individuals (like C) who are struggling even more than B

to meet their basic needs. This is not *ignoring* B's plight, but rather recognizing that B is now doing better than before, while C is still very badly off (and worse than B), and that y could therefore help C even more than B.

Again, without an appeal to (at least something like) reciprocity, one cannot say B has a greater claim to y because A has benefited from B's work. So we have to rely on the fact of there being a relationship between A and B that doesn't exist between A and C. It is not true that there exist important practical and epistemic differences between A's relation to B and his proposed relation to C in (2), or, anyway, that what differences there are matter. Even if such an account could explain why it might be wrong of A to pursue (2) when B has already been hired (and I do not see how), it could not explain this in the scenario where B is directly in front of C in the line of potential new hires, B is told he will be hired at wage x , and C is told that he will not be hired but is the first enrolled participant of a fund intended to help those who did not get a factory job. That is, when A's relations to B and to C are created simultaneously, then it is even clearer that beneficence cannot give *any* reason to say this fund is illegitimate because y should go to B. Herman herself suggests that while relationships do shape the content of the duty of beneficence, "Whether we take on greater relational burdens is up to us."³⁴ A has taken on an additional relational burden by creating the fund in (2), and this limits how much more he can give to B. Eschewing reciprocity, I see no way this appeal to beneficence ("perfect" or imperfect) could say A has acquired a duty towards B such that it would be *in any way* wrong to instead give the money to C.

For similar reasons, I see no way this beneficence approach can justify the claim that (1) should be chosen over (3), spending y on the creation of new factories, which

³⁴ Ibid.

would ultimately hire many others, including D, who are desperately in need. Perhaps one would say (3) is really no different from (4), since no company builds another factory unless doing so is better for the bottom line. Of course that would be to rely entirely on what intention A has in opening the new factory: is it (c) wholly to secure/further profitability, or is it (d) at least in part to help people who desperately need the work? If (d), then opening the factory would be much like starting the fund in (2). If (c), then – if we are assuming a T-relative approach, as I have argued Sample and Snyder each embraces – we must ask if opening the factory is necessary for remaining competitive. I assume that if it were, then we would not be treating y as something that would be given to B or donated to the fund in (2). Thus the point would be to make extra, and perhaps unnecessary, profits. In this case, A is not acting any differently than in (4), but again, this is all a matter of intention – whether (c) or (d), A spends y on a new factory instead of giving it to B. Thus the beneficence approach *might* be able to explain *in some cases* why A should choose (1) and not (3). If, however, we must say there is an important moral difference between (1) and (3), then we might want to be able to do so on some basis other than the fine boundary lines of A's intentions.

5.3.4.2.4 Failure of meeting basic theoretical requirements

This Beneficence Approach therefore fails to explain why (1) is to be chosen over either (2) or (3), and thus fails to explain GOC. Because of this, we can see why the approach equally fails two of the basic requirements I set out above for a theory of wrongful exploitation in consensual, mutually beneficial interaction. If a theory cannot show that A has a special obligation towards B such that there is at least some good reason why B specifically must be given super-contractual benefits (like y), then the

theory has failed to provide the Explanation of A's Special Obligation. The fact of interaction – the creation of a relationship which can help shape A's duty of beneficence – can change the moral landscape; but the reliance on beneficence means that other of A's relationships can just as easily prevent the duty to B from taking the form of *giving B super-contractual benefits*. And if such a theory cannot make sense of A's special obligation, then it cannot provide B with a legitimate complaint against A when, say, A gives the extra benefits to some other party.

Perhaps it will be thought that this does not really matter, and that GOC is not that important. After all, companies like Nike do not choose between (1) and either (2) or (3). They just pursue (4), and if a theory can explain why they should choose (1) over (4), this is good enough. However, if I am right, then sometimes it will be quite hard to tell the difference between (4) and (3) (since it is just a difference in intention). Moreover, there may be very good practical reasons for developing a theory of exploitation that could support GOC, assuming it is true. If a company wishes to respond to claims that it has exploited workers in developing countries, it may consider how best to use profits to avoid moral condemnation. It may consider putting profits towards the communities themselves, rather than paying workers more. If, however, we think some of these profits are not the company's to just give away – i.e. if we think the workers themselves have some claim to them – then we should be able to explain this.

5.4 A (Not-so) New Theory

5.4.1 The Basics

This beneficence-based approach was the second of two proposed by Sample, and I believe the first is much closer to the truth. It will be obvious that my proposal is

heavily indebted to hers, though it certainly includes some modifications. Sample's first suggested approach is better because it has an at least implicit appeal to reciprocity, which is found within the Humanity Formula of the Categorical Imperative. Though this formulation may suggest that simple interaction (of whatever kind) can give one duties to further the ends of others, it certainly says that if one has *benefited* from such interaction with another (used her as means), then one must further *her* ends, at least to some extent. The requirement to reciprocate is not something A loses because he has willy-nilly created relationships with others in which he's spent the resources that were to go to B. Some amount of resources is marked for B because A has gained by his use of B, and they are therefore not A's either to keep or to give away.

Reciprocity could explain not only why A would have a special obligation to B specifically – thereby giving B a legitimate complaint when A does not properly reciprocate – but may also better handle distinctions in how much A can owe different parties. A problem I mentioned above for Snyder's position was that it is not obvious how, from the standpoint of beneficence, A might owe more to a full-time employee (B1) than to a part-time employee (B2) who nonetheless struggles to find work elsewhere (perhaps due to injustice). The two are equally dependent on A, so Snyder would presumably have to say that B1's expectations of support are somehow more legitimate than B2's. Simply appealing to the social norms of part- versus full-time employment and the fact that they normally are compensated differently just begs the question. But there *is* a difference from the standpoint of reciprocity, for even though A gains from the use of both B1 and B2, he (presumably) gains more from B1, and thus may owe her greater benefits.

Of course, this is where the real problem of reciprocity, already noted above, comes into play. Just because it can tell us A will owe B1 more than B2, it does not tell us *how much* either is supposed to get. Importantly, reciprocity does not obviously tell us that either employee could be owed super-contractual benefits at all, for each is already receiving compensation, such that even the contractual terms are beneficial. So again, how much is enough? At what point in the pay scale (or compensation scale) is B treated as an end in herself, rather than a mere means? Must A pay B2 a sufficient amount to live off of, therefore owing B1 even more?

As mentioned in the previous chapter, I believe A can wrongly exploit B when A uses an asymmetrical dependency in his interaction with B to attain (or maintain) a decent life due at least in part to the social surplus created, while B is not granted enough to also attain (or maintain) a decent life. Therefore, if A flourishes while *refusing* to grant B enough of their social surplus to flourish, then A wrongly exploits B. But A also wrongly exploits B when he flourishes but *cannot* grant B enough to flourish.

In other words, I essentially apply the T-absolute approach to Sample's suggestion that exploitation in consensual, mutually beneficial interactions occurs when A uses B without sufficiently responding to B's needs, which is a serious kind of failure of respect – a failure to “take seriously the requirements of living a human life.”³⁵ The qualifier *human* is important, and is stressed by both Sample (whose reliance on Nussbaum's capabilities approach was seen in Chapter 3) and Snyder, who says that a human is not just an animal, but one “with the potential to endorse ends beyond those of

³⁵ Sample, *Exploitation: What It Is and Why It's Wrong*, 70.

immediate use to survival or those proposed by instinct.”³⁶ To respect someone is to treat them as “capable of forming and acting upon a conception of the good life.”

The idea is that one cannot even form such a conception, let alone pursue it, if she is frequently hungry and can do nothing about it, or if she has food today but cannot count on having enough tomorrow, or if reliable shelter and basic medical care are out of reach, or if life is too consumed by work to allow “leisure” time for family, friends, and rational reflection. Perhaps the full details of what Snyder suggests is a human life is not in every way what Nussbaum provides with her list of capabilities, but it is plausible to assume that they will agree to a large extent on the minimum requirements. Sample and Snyder suggest that it is wrong for A to use an asymmetrical dependency in his interaction with B to attain a decent human life for himself, while refusing to give B enough to pursue such a life. Again, I am agreeing with all of that, except that I claim A can act wrongly even if he simply cannot give B enough.

5.4.2 Why T-absolute

I recognize, as I did in the previous chapter, that the imposition of the T-absolute approach is not popular, and still, I have not provided anything like a powerful argument in its favor. For instance, one might object that whether a particular action realizes a failure of respect is surely contextual, and that it therefore depends on what options are actually available to A in that context. If providing B whatever it takes to live a minimally decent life is not something A could do in conjunction with maintaining a decent life, then how can his not providing it be a failure of respect? One cannot *fail* to do the impossible.

³⁶ Snyder, "Needs Exploitation," 395.

Again, the T-absolute is not about holding A responsible for the background conditions against which he must act. As with the T-relative approach, the T-absolute is about evaluating what A does against such a backdrop. But whereas the T-relative assumes that interacting is permissible (a *part* of that backdrop?), and then adjusts the fair division of benefits to whatever allows both parties to gain given the nature of the situation (e.g. strong market competition pushing wages down), the T-absolute rejects the assumption and says mutually beneficial interaction can be wrong because it is the wrong response to the situation. That is, the choice of interaction itself can be wrong, as when B is not or cannot be given enough so that he is respected as a human being.

There may be some confusion on this issue given my account's embrace of the T-absolute account and its reliance on "reciprocity," since *reciprocating* is often taken to mean *giving an amount equal to that which one gets*. It seems clear, however, that at least within several contexts outside of employment, the fair division of the social surplus is not necessarily equal. The patient of a life-saving surgery likely gets more benefit (her life) than the surgeon receives, even if her fee is high, but we do not therefore assume the latter was exploited by the former.

The same should be said here, for only in rare circumstances would my account require A to divide the social surplus evenly. Specifically, equal division is required just when it is the only way B can be given enough to live decent life. But then the equality of this division is accidental to its being fair. The account stipulates some absolute amount, below which B would not be properly respected as a human being. A is certainly required to treat B as an equal, where this means treating B as equally deserving of respect as a human being. A discharges this requirement by granting B enough of the

social surplus to live a decent human life, regardless of whether this is the same or less than what A keeps for himself.

In the end, a theory must be judged by its own lights, and by what I hope to have offered above as plausible basic requirements of a good theory of exploitation. HCM accounts fail since they do not reliably provide results recognizable as fair, in part because such accounts refuse to track all the correct features of the interaction. The Beneficence Approach suggested by Snyder and (at times) Sample fails because it cannot clearly explain A's special obligation to B, and thus B's legitimate complaint against A, both of which are essential desiderata for a good theory. Moreover, any account which emphasizes *need* – such as Sample's or Snyder's – cannot consistently embrace the T-relative approach, for on such an account, what is judged as *sufficient responsiveness to need* is implausibly left to the whims of actors outside A and B's interaction, and B's fair share held hostage to A's gain. My hope is that the account being proposed is more consistent in its aims and more successful at meeting the basic requirements of a good theory of exploitation.

I have not, however, made some level of *restriction* (measured in the number and/or kinds of interactions prohibited) a desideratum of a good theory of exploitation. I have recognized that the T-absolute account proposed will at least at times be more demanding – and thus more restrictive – than similar T-relative accounts, including those proposed by Sample and Snyder. In the last section of this paper, I discuss at length (in relation to the Practical Problem) the question of whether my account is overly restrictive. Right now, I want to respond to the more specific worry that the account

implausibly prohibits mutually beneficial interactions in which there are not enough resources to go around to even ensure *either* party a decent minimum.

This is not quite right, for I do not think interacting under these circumstances would necessarily entail A's failure to respect B unless A succeeded in maintaining a decent life, while B was denied this possibility. If there is simply no wage A could provide B such that either could live a decent life, then I do not have a strong opinion about the possibility of wrongful exploitation here, at least in regards to whatever consensual, mutually beneficial employment interaction A and B may have engaged in. Part of this is fueled by intuitions that we might wish to excuse A if he is below the threshold of a decent minimum and trying to rise up to it, perhaps by taking a significant share of the social surplus from his interaction with B. And this is why I add (as I did in Chapter 4) that if carrying out the kind of proposed interaction with B is the only way to avoid poverty, great suffering, etc., then perhaps either their interaction is not wrongly exploitative, or, if it is, A's participation is excusable. In any case, the account entails that at least within certain contexts, like employment, if at the end of the day A and B are experiencing a roughly equal quality of life, this is sufficient proof that A has not exploited B.

In short, I agree with Snyder in that determining what B should receive can at times depend on A's situation. These determinations on his account always presuppose A having taken enough to live a decent life. But, as I have argued, it is such a move (an embrace of the T-relative approach) that leaves the accounts of Sample and Snyder with the living wage only as a maximum A must provide B, while I want to ensure a robust minimum.

5.4.3 A Potential Amendment

Additionally, I am amenable to a certain amendment to the theory, briefly considered in the past chapter, so long as its meaning could be made clear. The amendment, reminiscent of (but not equal to) the T-relative approach, says that A does not exploit B, even when A takes enough to maintain a decent life while B is not given enough for such a life, *only if* alternative institutional arrangements under which B would receive enough are either impossible or very unlikely. If such alternative arrangements were possible or likely, then my theory would say it is deeply disrespectful of A to take advantage of the current, relatively unjust circumstances to maintain a good standard of living while this is denied to B.

Thus, the amendment in effect distinguishes between natural and institutional limitations on the social surplus and how it can be divided between A and B. Competitive markets are institutions. On the other hand, in the face of extreme scarcity, or where B suffers some severe disability, it may be absolutely impossible to give B enough to live a decent life under any institutional arrangement. As Frankfurt has warned, there are situations in which a more equitable distribution of resources is actually the worst kind.³⁷ The amendment says that given these conditions, A is permitted to conduct mutually beneficial, consensual interactions with B while granting him less than enough for a decent life. But is A any more responsible for institutional limitations than natural ones? And if not, what's the import of the distinction?

The import is based on two assumptions. The first, which is a basic tenant of many theories of justice, is that we cannot change the natural conditions themselves, but we may be able to respond to these conditions in different ways, with different

³⁷ Frankfurt, "Equality as a Moral Ideal."

institutional arrangements. In other words, we cannot change the facts of, say, scarcity and differences in talent, but through the use of social institutions we can respond (or fail to respond) to these facts in a number of ways.

Second, and perhaps more controversial, there is a connection between *benefiting* from an institutional arrangement and *keeping it in place*. This is not a necessary connection, and that fact is important for Snyder, who says that an employer currently incapable of paying a living wage can help fulfill her duty to employees by advocating “for institutional reforms and greater employment regulation in order to alter the market realities that can make offering a living wage to her employees impractical.”³⁸ Such an employer breaks the alleged connection, in that she would be trying to change the system while benefiting from it. And this possibility may be overlooked by Sample in her discussion of exploitation as taking advantage of injustice. Not every instance of me taking advantage of institutional injustice is wrongful exploitation: it might be that injustice has made a certain workforce available to an employer that he would otherwise not have access to, but so long as he compensates them sufficiently, he does not wrong them.³⁹ Nonetheless, allowing employers to continue benefitting from the work of employees who are not paid a living wage but could be under alternative arrangements, sets up a system of perverse incentives. I agree that the employers could (and should) advocate for change, but the only obvious benefit from this institutional revision would accrue to the workers, leaving the employers bereft of incentive for this advocacy. This issue of incentive (and not some necessary, conceptual link) is what bridges the *taking*

³⁸ Snyder, “Needs Exploitation,” 401.

³⁹ Sample talks at times as though gaining from injustice done to another is a sufficient condition for exploitation, though I gave a more charitable reading in Chapter 3. On the more problematic reading, see Valdman, “Exploitation and Injustice.”

advantage of an institutional arrangement and the *perpetuation of it*. Nothing similar can be said about the sort of “natural” limitations I mentioned above.⁴⁰ For instance, extreme scarcity is probably something parties are already incentivized to address, though they may not be able to.

All that being said, I am somewhat hesitant to accept this amendment wholeheartedly due to the potentially obscure content of “possible or very likely” alternative arrangements. For example, what alternatives are *possible* will be determined not only by a massive amount of social-scientific data, but also by other, potentially competing goals we wish to pursue by means of institutional arrangement. Still, the amendment may have enough definite content to be plausible, which (at least in theory) would make my proposed account a little less restrictive.

5.4.4 Back to Non-worseness

Because my account is especially restrictive, NWC may be especially worrisome, for I am picking out an even larger class of consensual, mutually beneficial interactions in which A’s participation is deserving of moral censure. As I have said, to reject NWC on the grounds that preventing an interaction would provide greater benefits to B, is to give up the plausible intuition that wrongfully exploiting B is worse in some sense *for B*. Understanding the essential wrong of exploitation in such interactions as a failure of respect, on the other hand, explains in what sense interaction can be in one way worse for B, without trying to appeal to how much benefit B could gain as a result of condemning A. On my account, interaction is worse because once A uses B for gain, A is obligated to provide enough for B to sufficiently gain as well, and A’s failure to do so is a clear sign

⁴⁰ An exception would be tragedies of the commons in which extreme scarcity is the result of collective action problems, such that everyone is incentivized to act collectively to address the problem while being simultaneously incentivized to take as much as they can, thereby exacerbating the problem.

of disrespect. The act embodies A's choice to live a good life through the use of those who he does not compensate enough to also lead decent lives of their own. Whatever imperfect duties, or duties of justice, etc., A may owe B (or those in B's position) in the absence of mutually beneficial interaction, here A has not gained from B and thus cannot fail to respect B in the specific way of having used B without sufficient reciprocation.

Thus, the account explains on strictly non-consequentialist grounds how exploitation in consensual, mutually beneficial interaction can be worse, at least in one way: by interacting on these terms, A uses B such that B's life is treated as less valuable than it truly is. But the emphasis on respect might also explain why we should perhaps not interfere with some exploitation, for if B benefits from and consents to an exploitative interaction with A, our preventing it may be at least as disrespectful to B. If we could decide whether to allow or prevent such interactions on a case-by-case basis, then we might ask if the sort of strategic intervention discussed earlier would work to secure B the non-exploitative amount of benefit. If so, then perhaps we should intervene. As mentioned earlier, however, where we cannot decide case by case, we might ultimately have to decide how to respond based on the total effect of strategic intervention more generally, including the effect upon the class of B's. Here, consequentialist reasoning may be applicable, though not at the level of moral evaluation of A's actions.

5.5 Contexts

5.5.1 Employment

My account, like that of Sample and Snyder, is obviously very concerned with the context of employment, especially of sweatshop labor in developing countries. Apart from perhaps (but certainly now always) the responsibilities attending relationships with

family and close friends, full-time employment is for many people the most significant commitment one has in life. As such, it is a commitment that puts unique and extensive restrictions on how one lives her life. This emphasis on employment is in interesting contrast to the HCM accounts of Wertheimer and Valdman, which give clearest prescriptions of fair terms of interaction in one-off economic transactions, like buying a house or a tow. Explaining exploitation in labor, I believe, is perhaps the most central goal of a theory of exploitation – even one which is concerned with exploitation as a “micro-level” moral wrong, and not as a strictly class phenomenon or “macro-level” injustice (though these could certainly overlap).

My suggestion has been that it is wrong for A to live a good life due to the work of B, when B does not receive enough compensation to also enjoy a decent life. A’s action here is wrong in that it is a failure of respect, benefitting from B without sufficiently reciprocating. There are, I am sure, a number of concerns, among them that I have shrouded an incomplete theory of exploitation in the notoriously imprecise language of the Humanity Formula. The truth of it, I think, is that right out of the box, the Humanity Formula gives some rather precise prescriptions for the terms of employment interactions in ways that may not have always been appreciated. Again, the idea is that everyone has certain basic needs. Given the nature of employment, B’s contribution helps A meet his needs (or even satisfy preferences beyond meeting these needs), and in return A contributes to B meeting her own needs (or, again, something beyond these needs). Importantly, any work done by B for A will be time B cannot spend in other attempts to meet her needs, say, by working elsewhere.

The upshot is best seen in comparison with the results of the Beneficence Approach, examined above. That approach said employers owe their employees at least a living wage on the basis of relationships of reasonable dependence, which work to “focus” the duty of beneficence. I argued that the Beneficence Approach struggles, in that it cannot make sense of why full- and part-time employees should be paid differently: An employer (A) might be equally close to full-time employee B1 and part-time employee B2, and these workers may be equally dependent on A – B1 because she does not have time to work for anyone else, and B2 because he cannot find (perhaps due to reasons of injustice) work elsewhere.

The reciprocity approach I am suggesting does not struggle with this, because it can recognize a distinction in why and to what extent the two are dependent on A. B1 is dependent in the sense that she gives A so much of her time, if A fails to fulfill her basic needs, she will have no time to fulfill them elsewhere through additional employment. This is not to say that it is somehow impossible for B1 to pursue additional work, or even that she will not want to. But this additional work might well make it impossible to meet other basic needs, like those associated with friendship, family, education, political involvement, etc., many of which may be necessarily distinct from the needs attainable in an employment interaction. So she should be compensated by A such that any additional work is truly optional. Meanwhile, it is not because of how much time B2 (the part-time employee) gives A that B2 is prevented from meeting needs through additional forms of employment. In either case, the reciprocity approach has it that what A owes an employee B is a matter of the demands A makes upon B. And on the basis of this

difference in demand, the reciprocity approach can explain why A does not wrongly exploit B2 by paying him less than he pays B1.

None of this so far tells us what A *does* owe B2 at a minimum. I am of course concentrating only on the minimum owed to each employee. What an employee might actually expect to receive could well be based on the demand for her skills in the market, such that A must pay her much more than a living wage to keep her in his employ. And I am certainly open to saying that A can owe her more than a living wage as a matter of reciprocity, when she helps A attain significant earnings. But in this chapter, I will be happy if I can make sense of only the minimums.

And I think I can say roughly what the minimum for each worker should be: The full-time employee, B1, should receive at least enough to live a decent life, since she cannot (or cannot necessarily) live a good life while working for A and working elsewhere. The total compensation of the part-time employee, B2, could then be taken as a rough percentage of B1's compensation, likely based on comparative hours. Perhaps there are certain goods A must provide to B2 as a matter of basic respect if B2 cannot attain these goods elsewhere – for example, health care seems like a plausible candidate. If so, then even if B2 finds additional work, each employer must provide B2 with the option of healthcare, again assuming that it is not provided by the state or by some other means. This is why I say B2's minimum compensation is a *rough* percentage of B1's, since it may in fact be more, due to such mandatory goods. Regardless, I do not think A owes him more on the basis of reciprocity, such that failure to pay more would be wrongful *exploitation*. He may, however, owe B2 more on the basis of (say) beneficence, but this would fall outside the bounds of my theory.

Of course, what A owes his employees in terms of empowering them to live decent lives must also take into account the conditions under which the work is performed. If for some reason the work must be carried out under dangerous circumstances, then workers should receive additional compensation for these risks. Whether or not this requires greater pay, it would include substantial disability pay in the case of serious workplace injury.

There remain, I am sure, a number of worries, a few of which I will try to address here. First, does this account encourage employers to hire a greater proportion of part-time employees, since such employees require less compensation? I believe not, for the account suggests that equal work requires equal pay, regardless of how the amount of work is divided among employees. So there is no advantage to hiring two part-time employees each working 20 hours/week, over hiring instead one full-time employee working 40. But isn't A still encouraged to try to squeeze more out of someone working, say, 35 hours a week, rather than having to pay them for 40 (which I will just assume to be a plausible measure of full-time work)? In a sense yes, but we should look at this difference of a few hours through the lens of what this time allows B to do in terms of additional employment for the purpose of achieving enough to live a decent life. When this difference is very small, these are essentially garbage hours, for it is unrealistic to think B could really put them to use. Therefore I see three permissible actions on the part of A: (1) not hiring part-time workers on such hours, (2) hiring them on such hours but paying them the same (or roughly the same) as full-time workers, or (3) hiring employees for such hours knowing that they either can make good use of their non-work hours or, given their particular circumstances, do not (according to the employees themselves)

require additional work to live a decent life. (However, we might prevent interactions like the latter (in which employees say they are satisfied with 35-hours instead of 40) for strategic purposes, i.e. to prevent a sort of race to the bottom.)

There may also be concerns about the burdens such a theory places on employers. First, as mentioned in Chapter 3, it may be asking a lot that employers secure for each employee enough for a good life, since (1) in very poor societies, the state will provide little to nothing of what B needs for such a life, increasing the burden on A, and (2) some of what B needs cannot obviously be provided by an employer. I said that one way for a theory to respond to all of this is the take the T-relative route and say that A need only grant B what he can in conjunction with his also making a modest profit. Obviously, that line is not available to me. The better response, at least concerning (2), is to invoke a sort of division of labor in meeting B's needs, as mentioned in Chapter 3. A cannot provide B those aspects of a decent human life which can only be attained through relationships of friends, family, and other intimates, so A is not responsible for providing for those needs. However, A *is* responsible for providing B the true option of leisure time in which B could develop these kinds of relationships. Of course, it is up to B to decide whether to take advantage of such opportunities, and A is certainly not responsible for whether B succeeds. But B must not be penalized for choosing not to work overtime, even if others are willing to.

This division of labor cannot help with (1), yet I am not terribly moved by a need to get A off the hook for such issues. If, for instance, local housing was built without indoor bathrooms – because, say, no regulations required it – then workers should be paid enough to have bathrooms installed in their homes. I see no non-arbitrary way of saying

what is or is not asking too much of A, though I will consider one such approach to this below.

A theory of exploitation as applied to employment should *begin* with A's obligation to ensure that employee B's basic needs (those needs over which A has some say) are sufficiently satisfied. However, it need not end there. Again, in all of this, I have been concerned with determining the minimum that can be owed to each employee, and I will be happy if the account can do this. That is, I may have provided only a sufficient condition for wrongful exploitation in employment interactions. And it is surely a legitimate question as to whether A can exploit B (without coercion, deceit, etc.) even if B's basic needs are fulfilled and she lives a decent life. I will say only that I am open to this possibility, though I tend to think there is a difference here in the level of seriousness of the claim of exploitation (the same kind of difference which in Chapter 3 I said Valdman could not account for).

5.5.2 One-off Interactions & Market Transactions

Because the proposed account is formulated with labor as its priority, it might be hard to apply it in what Sample called "individual," or one-off interactions – including the kinds of market transactions the HCM accounts seem tailored to. It is interesting to ask how a seller is supposed to adjust prices so as not to fail to respect each customer. As I mentioned in Chapter 3, this seemed to be a problem plaguing Sample's account, for all it could do is say A must "in some way take [B's] needs into account," and this fails to clearly distinguish between what is a paltry, exploitative response and what is sufficient. If the proposed transaction is mutually beneficial, then by definition some benefit goes towards B. It was just such similar considerations which, as mentioned at the end of

Chapter 2, made the appeal to TSF almost appealing, for a TSF account would simply ignore these so-called background conditions.

Simplicity is a virtue, but so is accuracy. Many U.S. colleges calculate tuition according to family income. Some drug companies have programs effectively offering discounts to the very poor. Scaled pricing seems fairer than a flat rate *because* it takes into account just the background conditions HCM accounts ignore. Of course, pricing this way successfully may require a significant amount of information, and not every seller of a good or service can take the time to check your tax return to see what pricing bracket you should fall into. We might wish to say that in most market transactions, A cannot be expected to have enough information to adjust prices to level of need.

To understand pricing according to the proposed theory, we might first ask why A is charging the price he is. Even if it is because he can get away with it, due to (say) his holding a monopoly, we might wish to follow Goodin, Valdman, and Sample in hesitating to call this (wrongful) exploitation. They all emphasized that exploitation requires that the exploited party need what A has: leveraging a threat advantage in the absence of need is not, they say, immoral. In Chapter 3, I allowed for the possibility of saying that leveraging a threat advantage might always be immoral, though especially bad when the party is in need.

But now say A knows that at least some of his customers need his product or service, but it is very impractical, if not impossible, to learn the particular status of different customers and adjust prices accordingly, so his pricing is uniform. Yet even in this fairly non-competitive market, he sets this price close to the costs of production or

provision. Therefore A is not taking large profits; he is taking enough to stay in business, which is basically what the HCM account (at least on one interpretation) requires.

Given that my theory was formulated with labor relationships in mind:

- (1) Can it explain why price scales, at least when possible, are (or can be) better than uniform pricing?
- (2) Can it explain why A charging the uniform price of next-to-cost is better than charging, say, twice as much (even though he could)?
- (3) Must it say A is in fact wrongly exploiting some of his customers, since he is using their patronage to live a decent life while they remain in need?

I think the account will offer answers of Yes, Yes, and No, just as it should. Part of the worry may be the attempt to overlay too many details from the case of employment.

Starting with (3), what A owes his *customers* is not what he owes his full-time *employee* (if he has one). This is not just a difference in “role norms,” nor is it because of the closeness of the relationship as is required on the Beneficence Approach. The difference is that the employee is more integral than any particular customer to A’s ability to live a decent life. Respect requires that A act on the recognition that his employee can also live a decent life only if A adjusts the social surplus to allow for this. Thus, though A has gained from his interaction with customer B, this does not require that A either adjust terms of interaction so that B can suddenly lead a decent life, or get out of the market.

In this case, and in answer to (2), respecting B would call for the less drastic measure of charging B no more than the *true* costs of providing the good or service, where this includes taking into account his employee’s living wage. In not taking more than is needed to provide for a decent life for himself and those who most make this life

possible, A recognizes that B has needs of her own and is trying to pursue her own conception of the good life. Respect requires that A not put unnecessary demands on the resources B has to pursue this conception.

And this helps provide a positive response to (1), where A now has information about how well-off financially his customers are, therefore allowing him to scale prices. This might be thought quite perilous for my theory, for if two customers each buy one of A's products, they seem to equally contribute to A's ability to lead a decent life. But then how could we say A should charge one of them more because she is well off while the other is poor? However, to the answer for (2) we add that the worse off one is – at least financially – the more dear the resources one has. A greater burden (higher price) for those who can more easily bear it (the well-off) is therefore not a sign of disrespect, but a sign of the relative worth of resources in the two individuals' pursuits of decent lives.

Thus in many, but not all, one-off market interactions, the proposed account may actually agree with the HCM accounts of Wertheimer and Valdman, at least when these are read as requiring A to charge no more than his costs of production. Things become complicated when those costs grow to include employee compensation, for my account seems to differ (by agreeing, somewhat, with Sample and Snyder) in demanding that such costs include those of providing employees with enough to live decent lives. Moreover, when the relevant costs of production are understood as those of A's competitors, real or hypothetical, where their talents and abilities can differ from those of A, the proposed theory will diverge considerably. This reading of the HCM account will say A exploits B when A charges a price higher than that of his hypothetical competitors in order to cover A's additional costs of production resulting from disability. My theory suggests that such

a price merely reflects A's need to attain or maintain a decent life and therefore does not disrespect B. But again, here B is the customer, not the employee, and what A must do as a matter of respect for each will vary in proportion to matters of reciprocity.

5.5.3 Research

I admit that this reciprocity approach may be quite murky when applied to ethical questions in clinical research. In the Surfaxin case, some theorists seemed to suggest that while the poor populations would be receiving benefits (e.g. ventilators) from Discovery Laboratories (D-Labs) in exchange for their participation, they would not be receiving *enough* benefit, in part because the test drug (even if successful) would not have been made locally available post trial. But why would access to that drug be enough, and why would receiving much-needed ventilators alone *not* be enough? The murkiness here is the direct result of how different this context is from that of employment. As already stressed, B's employment to A puts restrictions on which projects B can undertake to meet his basic needs. It is these restrictions which define exactly (or, at least, less roughly) what A owes B as a matter of reciprocity. In the proposed Surfaxin trial, however, D-Labs was not obviously making it impossible for these populations to receive such drugs from other sources, the way working for an employer full-time makes it impossible to attain certain basic goods elsewhere. So it is far from clear how the reciprocity approach I have in mind could call Surfaxin's proposed terms of interaction wrongly exploitative.

Note, however, that this analysis dovetails quite nicely with Pogge's criticism of D-Labs presented in Chapter 1: if D-Labs had carried out this trial, they *would* have wrongly exploited these populations, precisely because D-Labs (as a politically powerful

pharmaceutical company) was partly responsible for policies (e.g. TRIPS) which put surfactants and other important drugs out of reach of these and other poor populations.

On the grounds of something like Richardson or Snyder's "focused" or "perfected" beneficence, there may indeed be clear (or clearer) obligations to provide, say, ancillary care or post-trial access to drugs and interventions. Perhaps we wish to call the failure to fulfill such an obligation a kind of exploitation. If so, it is not a kind of exploitation we will make sense of on the account I have been defending.

5.6 The Conceptual & Practical Problems

5.6.1 The Conceptual Problem

I turn now to the Conceptual and Practical Problems and to how the proposed theory would answer them. Of the two, I believe the Conceptual Problem (CP) is the easier to address. CP asks why exploitation should, at least in many cases, be seen as a moral issue at all, rather than a matter of injustice to be rectified by institutional changes. For instance, the problem with purportedly exploitative employment relationships is that the contractual benefits for B are judged insufficient, which is why we have reason to interfere in the interaction. But if social institutions were arranged to ensure by means of progressive taxation that B would be left with enough at the end of the day –by combining compensation from A with benefits from the state – then this would actually be a better state of affairs. It would be better because we could allow a greater number of consensual, mutually beneficial employment relationships, yet everyone would wind up with enough.

Though CP seems to suggest a drastically different approach to the issue of exploitation, there is in fact no real conflict between CP and my proposed account. This

is because I follow Sample and Snyder in suggesting that A's obligation to B is fulfilled when A has adjusted the terms of interaction so as to ensure that B can live a decent life. That is, the account does not specify some specific set of resources (e.g. amount of money, types of insurance, etc.) as the content of A's special obligation to B, which A would owe B even when the state is willing to step in and provide some of the resources B needs for a decent life. Rather, the account obligates A to make up the difference between what B needs, and what B gets from the state.

In this sense, exploitation in at least some contexts is purely a matter of non-ideal theory. Exploitative employment relationships might actually disappear if the institutional proposals of CP were put into place, but in the absence of such reform, A must step up his game. However, even with these institutional arrangements, there would remain contexts in which exploitation more generally is possible: a state-guaranteed basic minimum cannot protect you from finding yourself snake-bitten in the woods, facing down the threat advantage of someone with the antidote.

5.6.2 The Practical Problem

The Practical Problem is not so easy, and it essentially works by highlighting the apparently troubling results of rejecting NWC. Say that A is a prospective shareholder considering investment in some clothing company employing sweatshop laborers, including B. If IP is true, and NWC false, then A's investment, though to the benefit of both himself and B, is worse than not interacting. Therefore, A becomes incentivized to invest his money elsewhere, and perhaps especially in capital-intensive industries where exploitation is not a worry. The upshots are that:

- (1) Condemning A's proposed interaction with B leaves B worse off than in the absence of condemnation. (Moreover, B will not be alone.)
- (2) On a more theoretically troubling level, one can avoid exploitation by simply not interacting.

Considerations like (1) appear to be what drove Wertheimer to apply the reasoning of the Strategic Argument at the level of justifying moral condemnation itself. As mentioned above, this argument has it that condemnation is justified if it leads to interactions of greater benefit for those who were thought to be exploited. In the case above, however, it is presumed that this is not the result: B does not receive greater benefits, and quite possibly neither does the "class" of B's. What would happen if everyone suddenly recognized that sweatshop workers are exploited because they are not paid living wages? If they are moved by considerations of my theory, then perhaps major divestment in the clothing industry, leaving many workers in B's position without the limited benefits they could otherwise manage to secure for themselves. It seems we have intervened to protect the B's only to make them worse off.

Of course the point of the proposed account of exploitation is not to restrict B's freedom to interact; rather it is to restrict A's. (In the next chapter, I argue that, at least in many cases, it would be implausible to tell B that he does something wrong by taking part in such an exploitative interaction.) Despite the account's goal, however, the potential objection in question holds that a very serious consequence of the account is to prevent some individuals in need from transacting to meet (some of) those needs. In this respect, the account goes too far; it is overly restrictive.

This objection raises interesting questions, some of which have been asked elsewhere. First, how much restriction makes an account *overly* restrictive? Perhaps this is just a matter of how susceptible the account is to PP, and how serious of a problem PP really is. Consider the issue from the perspective of Wertheimer's HCM account, and consider two readings of this account. On Reading 1, investor A might only be allowed to demand the minimal benefit compared to the non-interaction baseline. Here, PP is an issue for Wertheimer, because A would choose to invest elsewhere (e.g. capital-intensive industry), where he could get a better return without risk of committing exploitation. On Reading 2, however, the baseline for determining A's permissible benefit is informed by these opportunity costs. That is, he can non-exploitatively invest in the clothing industry at the same return he could expect in any other industry. On this second, less restrictive reading, PP is not a problem, though the account could still impose some restrictions: for instance, it may demand that A not take a benefit *greater* than that provided by other investment opportunities.⁴¹

Snyder's account is more restrictive than Reading 2 of the HCM account, and more susceptible to PP. If A is getting into the clothing industry, then unless and until B gets enough of the social surplus to meet the threshold for living a decent life, A may take no more than enough for such a life (or, at least, he must shy away from luxury). And this is so even if A could expect more (including luxury) by investing in a different industry without risk of exploitation, which is where PP becomes a worry.

My account goes further and suggests that A should just stay out of the clothing industry altogether unless B will be paid a living wage. In theory, my account is more

⁴¹ Assuming PP really is a problem, the fact that the HCM account avoids it on Reading 2 may be better reason to accept this account than whatever could be said about transaction-specific fairness. However, this reading faces the problem of potential unfairness to A as discussed in Chapter 2.

restrictive than Snyder's, though in reality we can imagine that his is extremely, if not equally restrictive. It is assumed that shareholders are under no obligation to invest in the clothing industry over some other industry, meaning that when the latter is much more profitable, A does no wrong by choosing it over the former. Though Snyder's account would not *prohibit* A from investing, in many cases it could have the same effect, since it would prohibit A from attaining a certain amount of gain should he choose to invest – an amount he may be perfectly (morally) entitled to if he invests elsewhere.

I am considering the objection that my account is too restrictive because of worries associated with PP. Should we then prefer Reading 2 of the HCM account because it avoids PP entirely? Or does Snyder's account avoid PP to some sufficient degree (at least theoretically), such that it is not overly restrictive?

Again, the concern seems to be that we protect investment in certain labor-intensive industries, like clothing, to enable workers in need to achieve what gains are possible, even if this is less than a living wage. We can accomplish this on Reading 2, for instance, by allowing investors just as much of a return as they could expect anywhere else, including capital-intensive industries, and potentially other labor-intensive industries where, for whatever reason, workers typically make enough for a decent life.

My own thought, however, is that investment in labor-intensive industry of any kind is fundamentally different from that in capital-intensive industry, exactly because of the possibility (or increased probability) of exploitation in the former. It only makes sense to suggest that we must be more careful in the former, that the former makes different demands on us, because of the greater involvement of human lives. Reading 2

erases this distinction. We avoid PP and protect investment in labor-intensive industry only by treating workers as though they were machines.

And this leads into the next question: What exactly would be motivating the objection? It is not, I assume, just a matter of my account morally prohibiting individuals from participating in as many consensual, mutually beneficial interactions as would be allowed under other accounts (like Reading 2 above). Rather, it has something to do with a particular subset of interactions, namely those in which one party (B) is very much in need but cannot transact because the other party (A) is morally required not to participate under certain conditions. My account might even appear to pull in opposite directions, for it says exploitation is about failing to address the needs of those with whom one interacts, yet at the same time it prevents many interactions that would go at least some distance to addressing these needs.

That a concern for B's welfare appears to be driving the objection from PP is interesting indeed. Prior to the interaction, is B *owed* what he needs to live a decent life? It has been assumed from the very beginning that A is certainly not specifically obligated, at least prior to the interaction, to provide this to B. But assume there is some general background duty to help those in need, though (for PP to remain a problem) this duty is not such that A is morally required to choose a less valuable investment in the clothing industry over a better investment elsewhere. Perhaps instead this is a duty of the better-off quite generally to bring up the well-being of the worse-off, quite generally. If there is such a duty, then allowing some of the consensual, mutually beneficial interactions my theory prohibits seems to work to this end, while *disallowing* them – because they fail to provide workers with “enough” – can seem counterproductive. And as Robert Veatch

has said on the issue of an international organ market, “If we are a society that deliberately and systematically turns its back on the poor, we must confess our indifference to the poor and lift the prohibition on the one means they have to address their problems elsewhere.”⁴²

There are several significant problems with this argument, not least that it provides perverse incentives to ignore the poor now so that we can later throw up our hands and take advantage of their plight. Even apart from this, such a general duty to the needy, by itself, could not let us conclude that a theory of exploitation shouldn’t discourage any consensual, mutually beneficial interaction that helps persons in need. There might be many ways of improving the welfare of these individuals, and if this is really a goal with which we are concerned, we should consider how *best* to achieve it, at least in conjunction with attempts to achieve our other goals.⁴³ This is an empirical question not to be decided by pointing to the status quo. Not only might allowing employment interactions at sub-living wages not be best; it could even run counterproductive to the effort. Perhaps with greater consideration we would find that the status quo *is* best, but right now it is only appears to be the *easiest* for us to implement, and *best* only from the perspective of the interests of multinational enterprises (MNEs).⁴⁴

If there is a worry my account will be counterproductive to the cause of aiding those in need, I ask that we take a step back and consider the larger body of moral

⁴² Quoted in G.K.D. Crozier and Dominique Martin, “How to Address the Ethics of Reproductive Travel to Developing Countries: A Comparison of National Self-Sufficiency and Regulated Market Approaches,” *Developing World Bioethics* 12, no. 1 (2012): 52.

⁴³ Crozier and Martin say much the same about accepting the status quo international surrogacy market: “Policy makers should aspire to their best efforts, rather than adopt the easiest short term solutions to these complex domestic and international issues” (*ibid* p.53). Given that I am considering an objection to how we formulate certain moral rules, we might just replace “policy makers” with “moral theorists.”

⁴⁴ And perhaps consumers. See Chapter 6.

commitments. I do not deny that, as things currently stand, if investors suddenly became convinced of the truth of my account of exploitation, this may very well lead to divestment in (say) the international clothing industry, thereby making many of its workers worse off, or even considerably worse off, than they currently are. But we are talking about what the moral rules should be, and there is no reason to think the only change here would be the adoption of my account of exploitation. Given the concern with the welfare of those in need which I believe would be motivating the objection in question, we could adopt my account while also rejecting the assumption of no prior obligation on the part of A: i.e. we could say that investors *are* (or can be) morally required to make less worthwhile investments when doing so is to the benefit of very needy individuals (for instance, the degree to which the investor is so obligated might be proportional to her level of well-being or wealth above some threshold). We might therefore avoid exploitation, as I have defined it, while also avoiding PP, since it is no longer morally permissible to invest elsewhere for greater returns.

Something similar might be accomplished without necessarily rejecting the assumption of no prior obligation. In addition to adopting my account of exploitation, we could also call for something like the reverse of Reading 2 of Wertheimer's account. Instead of allowing investors in the clothing industry to reap whatever profit they could expect in any other industry, we could demand that they take no more in those other industries than what they could expect in a clothing industry that ensured workers a living wage. Here, the choice to invest elsewhere remains open, but the incentive to do so is gone, since the return is not greater. Again, exploitation would be avoided, but so too would the worries associated with PP.

More generally, I should make explicit that I do not believe fairness in interpersonal interactions is the only, or even most important, moral consideration. Again, I do allow that full-scale adoption of my account of exploitation could have the very negative consequences being discussed (divestment, and unemployment of many in need), especially if (for whatever reasons, and there could be many) it is not adopted alongside some of the other principles suggested above (rejecting the no-prior-obligation assumption, or adopting the reverse of Reading 2). We might then have to decide between the goal of non-exploitation (i.e. of ensuring that workers are not being disrespected in an important way), and that of improving to some degree the condition of individuals very much in need. And we might very well think the latter concern is more important than the former.

But this would not somehow prove that the *truly* best theory of exploitation is accountable to the goal of improving the welfare of those badly off, and that my account should be rejected because it can fail in this role. Rather, it shows that we have different and – at least under these conditions – incompatible moral goals. And at the end of the day, I can be frustrated that we were only able to move towards one goal by sacrificing the other.

Yet there is another practical worry, closely related to PP as discussed above, concerning what was earlier called the opportunity costs of adopting an account of exploitation. Assuming some upper limit to the share of the social surplus available to workers, another upshot of adopting my account could be that demanding higher wages (as well as better working conditions) would force MNEs to hire fewer workers. Of course, this could occur simultaneously with divestment and its attendant drop in

employment (thereby compounding problems), but this second problem could arise even if investments remained where they are.

I find this second problem less worrisome than the first, and against it I offer only an argument by way of alternate history. Suppose, what is not too implausible, that MNEs would have outsourced labor to developing countries even if they had been required to pay workers there a living wage, since such a wage in these societies would be less than that in, say, the U.S. Also suppose (what is not the case) that MNEs did outsource jobs in conformity with a requirement to pay their workers a living wage and provide safe working conditions. In this world, would theorists clamor against such requirements, simply because by relaxing these standards – allowing MNEs to pay less and to worry less about worker safety – we could bring jobs to more people who need them? Or rather, would the same theorists who would worry about the opportunity costs of my theory of exploitation call foul in this other world?⁴⁵ The answer, I think, is no, and I do not see this changing even if it was stipulated that all workers currently receiving a living wage would keep it, while all new hires would receive something less. The potentially drastic and damaging impacts of accepting the ethic of respect for workers inherent in my account may be exactly the result of having never accepted this ethic to begin with. Perhaps we should start.

This is not to say we cannot imagine cases in which we might relax or even abolish these sorts of restrictions, were they in place, as in the absence of enough resources to go around for everyone to have some extremely basic minimum (e.g. bare

⁴⁵ I cannot deny that *some* theorists would say such requirements get things wrong, just as some say a minimum wage can get things wrong, perhaps in part because it leads to fewer available jobs. But more relevant for the present point is the question of whether those who might oppose my account due to worries of “opportunity costs” in the real world would mount a similar charge against a pre-existing acceptance of this account in the fictional world.

subsistence). But we would not be moved to relax or abolish these restrictions simply because they cut off one avenue by which some individuals could get some of the things they need.

All of this section has so far concentrated on part (1) of PP, and the similar problem just discussed, without really touching on the more theoretical worry in part (2): Should exploitation be something we can avoid simply by choosing to not interact?

On this topic, Sample has written,

Even if we see the obligation to refrain from exploitation as a perfect, exceptionless duty (rather than a duty of beneficence), this leaves the question of our duties of beneficence untouched. A person who systematically avoids such interactions – who is determined to get the best deal or not interact at all – can hardly be said to take such a duty seriously.⁴⁶

I tend to agree: outsourcing jobs to where labor is cheaper in order to increase profits could send the message that additional profit is more valuable than the lives of workers. Yet I do not know how this could usefully apply in the present circumstances, at least so long as we assume A is under no obligation to invest in one company or another. Such investment is surely not the only way A can take seriously the demands of beneficence.

Moreover, Sample fails to thoroughly examine the possibility that A is refusing to interact *for moral reasons*, which is why she has so little to say about PP generally. She does recognize that “my interactor might actually be made worse off because of my attempts to avoid wrongdoing in the form of exploitation,” but to this she adds, “Yet if I am not required to engage in actions that benefit particular persons, I certainly cannot be required to engage in mutually beneficial exploitation.” Whatever this *does* address, it

⁴⁶ Sample, *Exploitation: What It Is and Why It's Wrong*, 72.

does *not* address the potential worry that even when A's intentions are good, it can leave B worse off. When A refuses to interact for moral reasons, the impact on B is the same as when A refuses to interact due to insufficient gain.

I have no knockdown argument to prove the irrelevance of the theoretical worry. At most, I can point to another situation in which it appears that choosing not to interact frees me from an obligation I might otherwise have incurred. I step onto the bus and see a man who obviously very much wants someone to talk to (sadly such people often fail to travel in pairs). If I sit next to him, I might become obligated to exchange a few words: sitting next to him but meeting his greeting or friendly question with silence could, at least under certain ideal circumstances, betray a sense of unearned disdain if not outright disrespect.⁴⁷ But at the same time, I have no obligation to sit next to him and chat; I do not wrong him by sitting somewhere else and reading a book. I can therefore avoid wronging him simply by not interacting, and I see nothing particularly troubling about this example. Perhaps it will be said that in the case of exploitation in employment, however, not interacting has more dire effects. Yet, as for how these considerations should matter, I refer to the preceding discussion in this section.

5.7 Conclusion

I do not doubt that some will remain hesitant to accept my account on the basis of the practical concerns of PP. Still, I believe I have formulated (i.e. cobbled together) the closest thing available to a full, and fully plausible, theory of exploitation in consensual, mutually beneficial interactions. It meets the stated desiderata and is more consistent with its own aims – especially that of ensuring that B is given an amount sufficient to

⁴⁷ The “certain ideal conditions” part is important: If I were a woman and feeling at all threatened by the man, then I my refusal to engage with him in conversation would not carry the same meaning.

meet his basic needs, in part by holding A responsible for *all* his decisions. It is, admittedly, most obviously suited to understanding exploitation in employment, but I hope to have shown its relevance elsewhere as well.

In the next chapter I consider two further issues facing a theory of micro-level exploitation. First, so far I have been considering moral censure only of the exploiting party, but are there circumstances in which the exploited party could be at fault? If exploitation is, as Sample says, a type of degradation, then does B degrade himself by consenting to an exploitative interaction?

Second, and perhaps related to the issues of CP and PP discussed here, at what point are we willing to say that A is not responsible for the wrong done to B in their interaction? That is, at what point should we be willing to take responsibility for this wrong off of A altogether and place it instead on the surrounding social institutions?

CHAPTER 6: BEYOND MICRO-LEVEL EXPLOITATION

6.1 Introduction

In this final chapter, I want to examine two questions: First, since I have been examining only consensual interactions (especially employment), does B do something wrong by choosing to participate in exploitation? Second, when should we identify a potential case of exploitation not as micro-level exploitation, for which (at least) A is blameworthy, but as structural exploitation – unfairness to B caused by the surrounding social institutions, for which A is not at fault? It is perhaps clear from arguments in the past two chapters that my account's answer to this second question will differ from that of any other account I have examined, and I will use my answer here as an opportunity to summarize some of the main conclusions of this work.

6.2 Does the Exploited Party also Act Wrongly?

6.2.1 Employers & Employees

Given that exploitation is unfair – and, if I am right, degrading – one might ask whether B's voluntary participation in it is also deserving of moral censure. Wertheimer sees three (not necessarily mutually exclusive) arguments one might make in favor of such censure, and I will consider them out of order. First, insofar as the interaction is unjust (unfair) to B, "B has an obligation not to be complicit in this injustice."¹ Wertheimer gives no evaluation of this argument, but there are good reasons to reject it, at least in some cases of exploitation. Even for citizen-victims of an unjust society, playing by the rules often provides much needed benefits unavailable to rule-breakers. Perhaps if such victims were aware (or were responsible for being aware) of a truly available method of breaking the rules so as to force social change (e.g. effective civil

¹ Wertheimer, *Exploitation*, 294.

disobedience), then we *might* think their continued participation in the current regime is wrongful. In the absence of reasonable hope for such change, however, victims are doing all they can to attain what is within reach. They cannot be held responsible for having to make the choices they must, and censure is inappropriate.

This fuels the distinction between what I have called *mere-wants* exploitation and *needs* exploitation: As Valdman says, “Being wrongly exploited is something that happens to you when you have your back to the wall, so to speak, or when you have little control over your actions and choices.”² If someone’s position is not so desperate, then “she may be a victim of exploitation but she is also complicit in her victimhood.” Compare his Antidote example to a similar one in which B pays A \$20,000 not for a life-saving antidote, but for some aspirin to cure “a mild headache.” Essentially, Valdman limits the (definitely) wrongful kind of exploitation to where B really needs (cannot reasonably refuse) what A is offering and therefore cannot be blamed for transacting to acquire it. B’s role in mere-wants exploitation is “letting oneself be used,” and for B may earn moral censure.³

This seems relevant to evaluating another suggestion Wertheimer considers for why B may be censured for participating in an exploitative interaction: that B degrades herself by allowing herself to be exploited. This seems particularly relevant to Sample’s Exploitation as Degradation, and to my account to the extent that I have appropriated from Sample. But I agree with Wertheimer that this is not a very plausible charge to levy against B, at least not in many cases of exploitation. “[I]t is not clear why B shows *more*

² Valdman, “A Theory of Wrongful Exploitation,” 10.

³ Valdman does admit it can be hard to tell the difference between (blamelessly) being wrongly exploited and (with blame) letting oneself be used: for instance, when “mere want” is really a very intense desire, such that the object is not something that fulfills any kind of basic need except that it is a very strong preference.

respect for herself by depriving herself of (potentially) important goods than by gaining less than she ought.”⁴ At least here, Wertheimer clearly has some “important good” in mind – one which presumably, in Valdman’s words, B could not reasonably refuse.

Wertheimer’s remarks certainly seem apt in regards to exploitation in employment: regardless of whether B is being exploited, she works (at least in part) to attain important goods, and the attitude B has towards herself is the same. It just happens that in one case, she is not receiving as much as she should, where this is not the fault of B.

But now return to the unjust scenario from before and assume a victim of injustice does know that choosing not to cooperate in society would lead to a more just state of affairs. Why would we mind if she continued cooperating? Perhaps in part because her refusal to force change could entail that not only will she continue to suffer injustice, but others will as well. This takes us to the most plausible suggestion Wertheimer considers for censoring victims of exploitation, which is based on “what B owes to others similarly situated.”⁵ In sum, *Don’t be a scab*. If others in your position are holding out to force A (or the class of A’s) to offer non-exploitative terms of interaction (e.g. a living wage), then it would be wrong of B to accept A’s exploitative offer. Even here, it is not being suggested that B acts wrongly merely because B agrees to be exploited, but rather because of the negative impact B’s actions have on the ability of others to get a fair share. This might involve real sacrifice, for B may very much need what A is offering, and it would be easy to take it while others refuse. Moreover, B may have no guarantee that if her confederates’ effort proves successful, there will be a (non-exploitative) job left for

⁴ Wertheimer, *Exploitation*, 295. Original emphasis.

⁵ *Exploitation*, 294.

her specifically at the end of the ordeal. A's present exploitative offer, on the other hand, is a sure thing.

This analysis is, I believe, correct, though Valdman is hesitant to accept it without modification. A "financially secure" worker may be censured for defecting, he says, since she may reasonably refuse to accept the exploitative wage, but "a worker whose family is on the verge of starvation should not be blamed if he succumbs to management pressure."⁶ I am unsure how someone could be financially secure yet not make even a living wage, though perhaps we can imagine certain institutional features being in place in some cases (like unemployment insurance or a guaranteed basic minimum income) such that the worker can demand better wages while not being very badly off. (But then, on Valdman's account, such a financial secure worker would presumably not be wrongfully exploited by A.) Wertheimer's only obvious qualification on B's duty to not be a scab is as follows: B's duty to sacrifice for the collective good is stronger when others are more willing to also sacrifice, and weaker when others are less willing to sacrifice.⁷

One should not overlook the significance of these two theorists' willingness to make B obligated, at least in some cases, to sacrifice for the good of other workers. For by also promoting the competitive-market approach to exploitation, they are essentially suggesting that

- (1) each worker can be obligated to work collectively with others, thereby sacrificing definite, immediate gains, because she owes it to them not to thwart efforts at achieving a fair share.

⁶ Valdman, "A Theory of Wrongful Exploitation," 11.

⁷ Wertheimer, *Exploitation*, 294-95.

but also that

- (2) A is under no similar obligation to work collectively with other employers to help promote this same goal.

So employers are permitted to actively compete with one another, thereby lowering prices – at the cost of higher wages – while those in the work force are obligated to not compete, or at least not too much. True, A is not allowed on the HCM account to take more than his fair share, but nowhere is he obligated to engage in collective action to ensure fair wages for workers.⁸

Of course, these theorists would say exploitative wages are impossible in a highly competitive market: “fair” prices, including fair wage prices, are (presumably) just the result of market competition, so there is no need for employers to act collectively to raise wages – say, by agreeing to keep prices higher. In fact, higher prices would seem (on this account) to ensure the exploitation of consumers.

All of this is to unjustifiably presume competitive-market norms as morally valid. Competition among employers is taken as given, and this sets the fair (non-exploitative) wage price. Once it is in place, workers are not permitted to break ranks (i.e. compete) to work for *less* than this amount. An alternative approach would be to start with some idea of an independent fair wage price, and then demand that employers work collectively, likely in part by agreeing to fix prices, in order to ensure workers are not exploited.

As for why we would assume the former approach, I can only guess it is the result of either a fixation on exploitation within producer-consumer (two-party) market exchanges (where employment is only a second thought), or some strong prior (not even

⁸ See the discussion in Chapter 1 of Arneson’s critique of Wertheimer’s HCM account.

explicit, let alone justified) commitment to the role of free competitive markets to securing justice more widely.⁹

The account I have proposed and the accounts of Sample and Snyder all embrace, or are at least consistent with, something at least much more like the latter of the two approaches. Thus on these accounts (and similar to Arneson's suggestion seen in Chapter 2), perhaps employers can be morally obligated to transform competitive markets into markets where the fair wage is possible. In this way, the potential burdens of acting collectively for the betterment of labor might be more equally distributed.

Two concerns might be raised about this second approach. First, in their attempts to bring up wages so as to avoid exploitation, employer-producers may well end up charging consumers higher prices for basic goods, which is unfair or at least undesirable. Second, the sort of cooperation among employers this approach suggests might seem incredibly unrealistic.

As to the first point, I do not deny that charging consumers high prices for basic goods can be morally unsavory. But so can paying workers less than a living wage. Failing to charge consumers a price reflecting the true costs of a good is to rob Peter to pay Paul. Yet one might ask, why should we assume the one being robbed is the worker and not the consumer? After all, the producer is obligated to refrain from exploiting

⁹ Wertheimer may betray such a presumption in his discussion of why his HCM account might be adopted by Rawlsian contractors in the original position:

They will... understand that however close their actual society comes to approximating [the chosen principles of justice], they will need principles to which they can appeal in micro-level transactions. If the basic structure includes a competitive market for many goods, as it probably will, the market will take care of the transaction price in those contexts. But the parties will also understand that situations will arise in which there is no competitive market and will want to have principles to regulate their transactions in those contexts as well. Given the desire to settle on such a principles, parties in the original position may well settle on a hypothetical market price or something like that." Wertheimer, *Exploitation*, 234.

either of these parties, and this appears to be an instance in which not exploiting one could only be achieved by exploiting the other.

I suggested in the previous chapter that there is a sense in which A might very well owe his employee more as a matter of reciprocity, since the employee is (at least likely) more integral than any particular customer to A's ability to lead a decent life. At least when this is the case, it makes sense to say A must approach pricing first from the angle of trying to ensure that his worker also has enough for a decent life.

That is certainly not to say the customer, who then pays a higher price for basic goods, is treated fairly all around. We might well call unjust a society in which workers can be given a living wage only by pricing necessities out of reach. A case can be made, however, that A is not guilty of treating the customer unfairly; that he does the right thing by prioritizing the worker. Whatever lingering unfairness remains, a theory of exploitation cannot be expected to solve all of society's ills.

As to the second point, one might think cooperation unrealistic simply because employers would often be unwilling to engage in it. However, this is not a good reason to say they never must so engage, even when cooperation is possible and, with some effort, likely. One could even borrow Wertheimer's earlier qualification, applied here as saying that when employers seem open to engaging in collective action to raise wages, A is strongly obligated to cooperate, and when they are less willing, A is less strongly obligated.

6.2.2 Consumers

Whether we can reasonably expect the A's, and whether the A's can reasonably expect one another, to cooperate in the goal of ensuring better wages, will be influenced

by their perceptions of consumers' willingness to hold back from supporting the first defector. If Walmart's clothing sales do not suffer from its choice to not participate in the Accord on Fire and Building Safety in Bangladesh – a voluntary agreement among clothing companies to ensure only the most basic elements of garment-worker safety – then the outlook for effective cooperation may appear grim.¹⁰ But if those companies who do agree, like H&M and American Eagle, do not suffer from the additional costs of ensuring compliance, then Walmart is not an example one can point to as an excuse to defect.

And we might feel consumers are (or are sometimes) also responsible for creating an environment conducive to this sort of cooperation among employers, where this means shunning the Walmarts and embracing the H&Ms. But as with employers, so too might we worry about holding responsible (and blameworthy) consumers potentially hamstrung by incomes inadequate for ethical consumption.

6.3 (In)justice & Exploitation

6.3.1 Micro & Macro

These matters of responsibility are obviously quite complicated, and they naturally lead to questions about duties of non-exploitation in the face of injustice. If failures of the basic structure encourage employers to provide workers compensation insufficient for a decent life while social institutions fail to take up the slack, and if through no fault of their own, consumers must choose between meeting basic ends and paying prices that allow workers enough, then how do we sort out responsibility for exploitation? And at what point do we abandon the issue of micro-level exploitation and move on to *structural* exploitation – i.e. a form of macro-level injustice? In this section, I

¹⁰ <http://bangladeshaccord.org/>

will discuss how we might answer this question, while also giving a final overview of some of my major conclusions.

I have from the beginning approached exploitation as a matter of interpersonal morality, evaluating theories of micro-level exploitation and finally attempting my own. As I mentioned in relation to the Conceptual Problem in Chapter 5, one might instead try to handle exploitation purely at the level of social institutions, all but completely cut off from personal ethical concern. Consider the following two claims:

- (1) Justice in the basic structure requires that for anyone working full-time, she is ensured the minimum needed to live a decent life, where this is compatible with meeting other important goals of justice.
- (2) Under normal conditions (elaborated upon below), employer A exploits employer B when A fails to provide B enough to live a decent life (call this amount *D*).

Say that you agree with (1). It may well be that justice does not require A specifically to provide B with *D*. Instead, A could be permitted to offer B any mutually beneficial terms of employment, and the state (through redistributive measures) could provide B the difference between *D* and what A gives as compensation (where this is less than *D*). Such an arrangement might be the most efficient way of ensuring that all workers receive *D*. If you also agree with (2), then you would say that in a just society, with full compliance, micro-level exploitation is banished from employment practices.

Of course, you might reject either of the two statements; though I have argued for (2), and for this section – and only this section – I will simply assume the truth of (1). However, nothing in the previous sections or chapters of this work depends on the truth

of (1); rather, I make this assumption only as a way to begin to make sense of structural exploitation.

What happens when society is (according to (1)) unjust, or meets only partial compliance? I believe that functioning in the background of every account of exploitation I have examined, including my own, is the notion that even if A does not exploit B, B might nonetheless be a victim of some kind of injustice. Part of this is no doubt (at least on my part, but almost certainly that of others as well) a desire to speak meaningfully about exploitation without also having to defend some specific theory of justice. Given the nature of my account of exploitation in employment, I do tend to believe something like (1), but I have no desire (in this work, anyway) to try to defend some larger theory of justice and why it would include that claim.

But another part is that injustice is incredibly complex, and interacting non-exploitatively with B is not about rectifying injustice she has suffered. One can be a victim of injustice in perhaps a number of ways, and there is no reason to think A can, let alone should, redress each of these in his interaction with B. And with each account considered in this work (again, including my own), there is first a claim of the form *A must do X in his consensual, mutually beneficial interaction with B*, and then *If we are still unhappy with B's position, this is a failing not of A, but of the basic structure*. That is, at some point (and this point varies with the account), each theory of exploitation shifts the burden of addressing B's situation from A to the basic structure.

On the one end, we can imagine a position holding that what A owes B is just whatever they agree to in a consensual, mutually beneficial interaction, assuming neither party has injured the other in the past. If we are unhappy with B's position after this

interaction, it is not because A has exploited her, but rather because of some background injustice (e.g. having previously been wronged by some third party, failure of the basic structure to provide for the basic needs of its citizens, etc.).

This is too permissive, say the HCM accounts of Wertheimer and Valdman, at least when B's back is against the wall. In this case, A must offer B what she could expect were she in a competitive market, where she would have the ability to shop around for the best price. In real life, B might be led to transact with A due to great injustice in the basic structure, but so long as A charges B no more than the HCM price, any dissatisfaction with B's condition after their transaction will impugn the background social structure and not A. In other words, we shift the burden for B's position from A to the basic structure once A has completed his transaction with B at the HCM price.

But why think it shifts at this point, and not at some point potentially more demanding for A? In his insistence upon transaction-specific fairness (TSF), Wertheimer holds that micro-level fairness is something completely distinct from, and should ignore those considerations relevant to, macro-level justice. But as I argued in Chapter 2, there is no obvious justification for TSF: the fact that A is not responsible for larger issues of injustice effecting B is not proof that such matters are completely irrelevant to what constitutes fair terms of their interaction. Moreover, I argued that the HCM account coupled with TSF can prescribe terms unfair even for the party holding the threat advantage – while the HCM account prevents A from charging more than the costs of production (which is where prices would fall in a truly competitive market), TSF makes the relevant costs of production those of A's (real or hypothetical) competitors. If A is

disadvantaged by disability or less talent, then he cannot even charge enough to cover his costs. The HCM account is therefore best divorced from TSF.

Problems remain even without TSF, however, for it is questionable what guidance the account can provide in the context of employment. The account is best suited for two-party market transactions, where it is relatively clear A must not abuse his bargaining advantage by charging his customer more than the costs of production or provision. But in trying to protect the customer, what does this leave for A's employees? It is far from clear what the account can offer here, other than to collapse into a wholesale embrace of the status quo, where wages can stagnate to keep investors content, and where such contentment depends on how willing competing firms are to depress wages for the sake of offering more attractive dividends.¹¹

Sample and Snyder are right to demand that, at least within certain contexts, including employment, A be responsible for providing B with some clear amount – enough to live at least a minimally decent human life. This is not about rectifying injustice done to B, though B might very well be such a victim. Rather, it is an issue of respect, and showing B proper respect might require more if she has less to begin with.

They are right, that is, up to a point, for their accounts fall short in two important ways. First, they each suggest (Snyder exclusively) that the duty of non-exploitation is (or could be) built upon the duty of beneficence. Somehow, the fact of interaction specifies employer A's duty of beneficence so as to require him to address employee B's basic needs by paying her a living wage. As I argued in the previous chapter, this beneficence approach can fail to fulfill the most basic desideratum for a theory of exploitation in consensual, mutually beneficial interactions: explaining why A,

¹¹ And, at least as significant, more extreme wages for executives.

specifically, can owe B, specifically, super-contractual benefits. Beneficence, even once “specified,” too easily lets other of A’s obligations (including other duties of specified beneficence) cancel out or water down his special obligation to B.

Second, and more importantly for the current discussion, they both too quickly shift the burden for B’s position from A to the basic structure. Despite calls for a living wage, they each suggest that A’s responsibility ends when A addresses B’s needs to the extent he can within the context of a mutually beneficial interaction. That is, they shift the burden too quickly because they embrace what I called in Chapter 4 the T-relative approach, something also shared by the HCM accounts of Wertheimer and Valdman. I argued there that within certain contexts, this approach can bring to bear the wrong sorts of considerations. In a competitive market, for instance, A and B’s social surplus can shrink given the (potentially immoral) actions of individuals outside the interaction. But within this shrinking surplus, only B’s share shrinks with it, while A’s remains the same. If we care to ensure that B receives enough to live a decent life, then we cannot hold her share hostage to what A and his competitors do in their attempts to undercut one another.

6.3.2 Structural Exploitation

At one point, Sample remarks that her account helps us recognize exploitation so institutionalized we rarely see it. An “exploitative system,” she writes, “positively sanctions institutionally recognized transactions that allow persons to exploit [others].”¹² Similarly, I will define *structural exploitation* as that which, by some incentive structure, is deeply embedded within social practices. On this definition, Sample would say “slavery and marital coverture” constitute structural exploitation.¹³ Take the latter:

¹² Sample, *Exploitation: What It Is and Why It's Wrong*, 61, 76.

¹³ *Exploitation: What It Is and Why It's Wrong*, 76.

women's property rights were stripped away at marriage and given to their husbands, leaving the women completely dependent and therefore exploitable. Since men benefitted from this, they had very good incentive to continue the practice, perpetuating it for centuries, and thereby altering men and women's expectations and preferences, including about marriage and sexual equality.¹⁴

A problem for Sample occurs when she suggests competitive markets are exploitative systems. By embracing the T-relative approach, her account is no more capable of explaining exploitation in competitive markets than is the HCM account. That is, if "exploitative system" (and "structural exploitation") were defined in terms of a T-relative account of *micro-level* exploitation, then competitive markets would not qualify (except in such cases as wage theft, forced labor, and other phenomena disqualified from the realm of consensual, mutually beneficial interaction).

One solution would be to provide a more general definition of exploitation in employment, like this: a full-time employee, B, is exploited (E) when she receives less than a living wage (or something like that). We could then say micro-level exploitation (ME) occurs when A pays B less than a living wage, and that an institution realizes structural exploitation (SE) when, due to strong incentives built into the institution, employers routinely pay full-time employees less than a living wage. Sample would have to add to this ME*, which occurs when A *wrongly* pays B less than a living wage. The addition of "wrongly" allows that not every instance of paying B less than a living wage is wrongful (micro-level) exploitation. On these definitions, an instance of E could all at

¹⁴ See, of course, John Stuart Mill, "The Subjection of Women," in *On Liberty and Other Essays*, ed. John Gray (Oxford: Oxford University Press, [1869] 1991).

once be ME, ME*, and SE. For example, in non-competitive markets, employers can still be strongly incentivized to, and routinely do, pay workers less than a living wage.

However, let us now say that some instances of SE are also instances of *purely* structural exploitation (PSE), which is essentially SE without ME*, meaning employers are not morally responsible for failures to pay their workers a living wage. The larger system makes this so difficult, employers cannot be blamed for failure to comply. Accounts of ME* embracing the T-relative approach appear to be in the position (whether they like it or not) of saying any potential instance of E within competitive markets is in fact a potential instance of PSE, and so not ME* at all.

So the question of when we may shift the burden of B's position from A to the basic structure may now be restated as follows: where do we draw the line between ME* and PSE?

Insofar as I reject the T-relative approach, I refuse to draw this line at whatever point A would no longer have self-interested reason to interact with B. The T-absolute approach I offer insists that *if* A chooses to interact with B, A is responsible for ensuring that B receive enough to live a decent life, regardless of whether what is left (if anything) of the social surplus is enough to constitute a benefit for A.

Again, the point is neither to make A obligated to interact with B at a loss, nor to make A responsible for any SE which may be functioning in the background (as would likely occur within the context of a competitive market). As I have said, A's duty to not exploit his workers is not intended to be a duty to redress injustices they may have suffered. It may be that by interacting fairly with his workers, he effectively makes up for some injustice in the basic structure; alternatively, it might be that social institutions

are arranged such that A is intended to treat his workers in this way, in which case he is doing his part in securing justice. But this is accidental to the real goal of non-exploitation, which is to respect his workers as human beings needing certain resources and freedoms to live a decent life. It would not be shocking if principles of justice and the duty of non-exploitation converged on the necessity of providing these things to workers (non-convergence would be more surprising), but I remain largely agnostic on what exactly justice in the basic structure would require, let alone who, in a just society, might be responsible for providing these things (employers, the wealthy via taxation, etc.).

Rather, A is held responsible only for his choice whether to interact with B, made against a background of what might in fact be injustice. I have argued that by choosing to live a decent life in part by his use of B, when there is not enough for B to also live such a life, A deeply disrespects B. This is why I say the accounts of Snyder and Sample too quickly release the burden from A. But does this mean I am committed to the nonexistence of PSE?

I do think PSE is real; I just think other accounts too quickly drop charges of ME* and claim the presence of PSE, as in at least many competitive markets. This is another instance where we should note Valdman's willingness to place blame on potential victims of exploitation. We find them blameless only if their "backs are against the wall." This is understandable, but where is A's back, that he is blameless despite participation in a system degrading workers? Snyder perhaps comes closest to understanding the import of this question, for he explicitly says A must not keep so much of the social surplus as to

reach the level of luxury, at least so long as his workers have less than enough to live a decent life.

Even this, I have argued, is too much wiggle room. Snyder's answer is theoretically troubled because it lets the wrong kinds of consideration impact the issue of fairness, and because in some situations it will essentially give up on what was initially its central goal, which was to ensure B receives a living wage. As mentioned in the last chapter, Snyder tries to make up for this by insisting that where a living wage is not possible, employers can be required to advocate for institutional reforms to make better wages available. In doing so, they cash out what remains of their duty to not exploit workers, though the workers (at least for the time being) still receive less than a living wage.

I am sympathetic to this line of thought, though I am hesitant to fully embrace it, largely due to serious practical concerns. First, how much (and what kind) of advocacy is sufficient to discharge the duty of non-exploitation? A is, on Snyder's account, allowed to keep enough of the social surplus to live a decent life, but presumably this would also set limits on how much of his free time he can be required to dedicate to advocating for the social reforms necessary to institute a living wage. It might very well be that we all have a duty of justice requiring us to push for reforms bringing up those badly off. If so, then the duty of non-exploitation would seem to call for action beyond that required by this other basic duty of justice. The problem I refer to here is not how demanding this may be on A (though some may have this worry).¹⁵ Rather it is a problem of giving

¹⁵ If one is greatly moved by worries associated with the Practical Problem (PP, discussed mostly in Chapter 5), then the additional demands for advocacy Snyder places on employers makes his account even more problematic. Investors and employers in the clothing industry are not only required to take profits smaller than those available in other industries, but now they must also spend more time advocating for

definite content to the duty of non-exploitation, so that it is mostly clear to anyone evaluating A's actions (including A himself) whether he is taking sufficient steps to avoid exploiting his workers.

Second, and as discussed in Chapter 5, it leaves A without any real incentive to try to change the system for the worker's sake, for on this model those who benefit most from SE (those permitted to keep enough for a decent life) may continue benefitting. Why would they demand change, when any additional benefits won by revising institutions will go to the workers?

Moreover, I have been more concerned than any other theorist with the question of why it should be permissible for A to interact if he cannot guarantee B enough for a decent life. If A's back is "against the wall" – where this means only that he cannot transact with B in this specific way (employment) to the benefit of both while also giving B a greater share – then we should ask if he has room to the left or right. In Wertheimer's (neglected) words, even within a competitive market, "We can... evaluate an individual's decision to become a seller or employer."¹⁶ Now it may be that in many cases, A's decision is just as forced by his circumstances as is B's – if A does not hire B (or if he hires B at a living wage) then significant harm comes to A.¹⁷ Perhaps A's choice to not be an employer leaves him with no other options to lead a decent life, in which case I am willing to say A's participating is permissible: This is PSE, and A cannot be held blameworthy. And if such circumstances are common, then so is PSE more

social reform than if they had just stayed out of this particular industry. (This shortens the distance between his account and my own in terms of how susceptible each is to PP.) As explained in the previous chapter, however, I am not greatly moved by PP, so I do not see Snyder's account as problematic in this respect.

¹⁶ Wertheimer, *Exploitation*, 217.

¹⁷ This would not take away A's bargaining advantage, for there may be many B's vying for the employment A offers. I note this because I want the case to be as close to one of wrongful exploitation as possible to highlight why I think this is PSE and not ME*.

generally, and ME* is on my account that much less common. (Even here, however, we might ask whether A is morally responsible for being in this position.)

Of course, by making the lateral move when possible – as my account requires – A simply does not interact with B, meaning B does not get the benefit she would have received and may have very much needed. For this reason, many may find the account overly restrictive. But while it may make impermissible many potential interactions, it also prevents one form of wrongdoing: the degradation of B by A. And as I mentioned in Chapter 5, we might attempt to temper this restrictiveness by allowing A to interact with B without providing a living wage, so long as no alternative institutional arrangements in which B *could* receive such a wage are possible or likely. Again, I hesitate to endorse this fully given the ambiguity of “possible” and “likely,” but perhaps I should be more optimistic. Alternatively, if the concern is (at it would appear to be) with the welfare of individuals who would otherwise be able to interact to meet some of their needs, then we might accept my account of exploitation along with certain other moral reforms (e.g. rejection of the assumption that A has no moral obligation to interact; limits to morally permissible profits in other industries), such that these individuals are able to transact yet are (at least largely) protected from exploitation.

In any event, I do not deny that my proposed account is the most restrictive of those I have examined, at least considered apart from other moral reforms. Perhaps it will be said that we should therefore embrace something like Snyder’s account, which is theoretically¹⁸ less restrictive, though if I am right, we would at the very least (in regards to employment, anyway) want to ditch its appeal to beneficence and insist instead on the reciprocity inherent in Sample’s appeal to the Humanity Formula of the Categorical

¹⁸ See fn. 15.

Imperative. In the end, however, accepting such an account would still be a mistake. Its aims are defeated by its readiness to compromise in light of “non-ideal” conditions, and it confuses the goal of allowing B to transact for much needed benefits with that of not holding A responsible for those non-ideal conditions. It overlooks the fact that A *is* responsible, at least in some circumstances, for how he responds to these conditions, and whether he does so in a way that respects those with whom he interacts. If we want an account of exploitation that consistently aims at providing workers with a living wage and holds A responsible (or not) for the right kinds of reasons, then my account is the best on offer.

Therefore, if we want a plausible theory of micro-level exploitation, even if only in employment, we must decide that morality can be very demanding, and that an account of exploitation as a matter of interpersonal morality will be no exception. If, however, we cannot accept the restrictions this account places on potential interactions because we are too concerned with the benefits needy individuals might be denied (assuming they would be denied), if we are unwilling to put in place other moral reforms tempering the restrictive consequences of the account, and if we are uncomfortable with thinking that non-exploitation is one moral goal that may simply conflict with other competing goals, then rather than fitting our concern for those in need uncomfortably alongside the goal of explaining exploitation as a moral wrong, we should take the more realistic position of dropping micro-level exploitation and concerning ourselves simply with purely structural exploitation – i.e. exploitation as injustice in the basic structure.

BIBLIOGRAPHY

- Arneson, Richard. "Exploitation by Alan Wertheimer." *Mind* 439, no. 110 (2001): 888-91.
- . "What's Wrong with Exploitation." *Ethics* 91, no. 2 (January 1981 1981): 202-27.
- Ballantyne, Angela J. "How to Do Research Fairly in an Unjust World." *American Journal of Bioethics* 10, no. 6 (2010): 26-35.
- Crozier, G.K.D., and Dominique Martin. "How to Address the Ethics of Reproductive Travel to Developing Countries: A Comparison of National Self-Sufficiency and Regulated Market Approaches." *Developing World Bioethics* 12, no. 1 (2012): 45-54.
- Duhigg, Charles; Barboza, David. "In China, Human Costs Are Built into an Ipad." *The New York Times*, Jan. 25 2012.
- Feinberg, Joel. *Harmless Wrongdoing*. The Moral Limits of the Criminal Law. Four vols. Vol. Four, New York: Oxford University Press, 1990.
- Frankfurt, Harry. "Equality as a Moral Ideal." *Ethics* 98, no. 1 (1987): 21-43.
- Goodin, Robert E. "Exploiting a Situation and Exploiting a Person." In *Modern Theories of Exploitation*, edited by Andrew Reeve, 166-200. Beverly Hills: SAGE Publications, 1987.
- . "Reasons for Welfare: Economic, Sociological, and Political - but Ultimately Moral." In *Responsibility, Rights & Welfare*, edited by J. Donald Moon, 19-54. Boulder: Westview, 1988.
- Goodwyn, Wade. "Construction Booming in Texas, but Many Workers Pay Dearly." NPR, <http://www.npr.org/2013/04/10/176677299/construction-booming-in-texas-but-many-workers-pay-dearly>.
- Hawkins, Jennifer S. "Research Ethics, Developing Countries, and Exploitation: A Primer." In *Exploitation and Developing Countries: The Ethics of Clinical Research*, edited by Jennifer S. Hawkins and Ezekiel J. Emanuel, 21-54. Princeton: Princeton University Press, 2008.
- Herman, Barbara. "The Scope of Moral Requirement." *Philosophy & Public Affairs* 30, no. 3 (Summer, 2001 2001): 227-56.
- Kant, Immanuel. "Groundwork of the Metaphysics of Morals." Translated by Mary J. Gregor. In *Practical Philosophy*, edited by Mary J. Gregor, 37-108. Cambridge: Cambridge University Press, 1996.

- Krugman, Paul. "In Praise of Cheap Labor." *Slate*, March 21, 1997.
 ———. "We Are Not the World." *The New York Times*, February 13, 1997.
- Mill, John Stuart. "The Subjection of Women." In *On Liberty and Other Essays*, edited by John Gray, 469-582. Oxford: Oxford University Press, [1869] 1991.
- Nussbaum, Martha. "Human Functioning and Social Justice: In Defense of Aristotelian Essentialism." *Political Theory* 20, no. 2 (1992): 202-46.
 ———. *Women and Human Development: The Capabilities Approach*. Cambridge: Cambridge University Press, 2001.
- O'Neill, Onora. *Constructions of Reasons*. Cambridge: Cambridge University Press, 1989.
- Pogge, Thomas. "Testing Our Drugs on the Poor Abroad." In *Exploitation and Developing Countries: The Ethics of Clinical Research*, edited by Jennifer S. Hawkins and Ezekiel J. Emanuel, 105-41. Princeton: Princeton University Press, 2008.
- Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1971.
- Richardson, Henry S. *Moral Entanglements: The Ancillary-Care Obligations of Medical Researchers*. Cambridge: Oxford University Press, 2012.
- Sample, Ruth. *Exploitation: What It Is and Why It's Wrong*. New York: Rowman & Littlefield, 2003.
- Sen, Amartya. *Inequality Reexamined*. Cambridge: Harvard University Press, 1992.
- Shafer-Landau, Russ. *The Fundamentals of Ethics*. Oxford University Press, 2009.
- Snyder, Jeremy. "Needs Exploitation." *Ethical Theory & Moral Practice* 11 (2008): 389-405.
 ———. "What's the Matter with Price Gouging?" *Business Ethics Quarterly* 19, no. 2 (2009): 275-93.
- Valdman, Mikhail. "Exploitation and Injustice." *Social Theory and Practice* 34, no. 4 (2008): 551-72.
 ———. "A Theory of Wrongful Exploitation." *Philosopher's Imprint* 9, no. 6 (2009).
- Wertheimer, Alan. *Exploitation*. Princeton: Princeton University Press, 1996.
 ———. "Exploitation in Clinical Research." In *Exploitation and Developing Countries: The Ethics of Clinical Research*, edited by Jennifer S. Hawkins and Ezekiel J. Emanuel, 63-104. Princeton: Princeton University Press, 2008.
 ———. *Rethinking the Ethics of Clinical Research: Widening the Lens*. Oxford: Oxford University Press, 2011.

———. "Two Questions About Surrogacy and Exploitation." *Philosophy & Public Affairs* 21, no. 3 (1992): 211-39.

Wood, Allen W. "Exploitation." *Social Philosophy & Policy* 12, no. 2 (1995): 136-58.

Zwolinski, Matt. "Price Gouging, Non-Worseness, and Distributive Justice." *Business Ethics Quarterly* 19, no. 2 (2009): 295-303.

———. "Structural Exploitation." *Social Philosophy & Policy* 29, no. 1 (2012): 154-79.

———. "Sweatshops, Choice, and Exploitation." *Business Ethics Quarterly* 17, no. 4 (2007): 689-727.