Exploitation as a Path to Development: Sweatshop Labour, Micro-Unfairness, and the Non-Worseness Claim

By/Par **Michael Randall Barnes**
MA, Carleton University, Ottawa
mrb238@georgetown.edu

ABSTRACT

Sweatshop labour is sometimes defended from critics by arguments that stress the voluntariness of the worker's choice, and the fact that sweatshops provide a source of income where no other similar source exists. The idea is if it is exploitation—as their opponents charge—it is mutually beneficial and consensual exploitation. This defence appeals to the non-worseness claim (NWC), which says that if exploitation is better for the exploited party than neglect, it cannot be seriously wrong. The NWC renders otherwise exploitative—and therefore morally wrong—transactions permissible, making the exploitation of the global poor a justifiable path to development. In this paper, I argue that the use of NWC for the case of sweatshops is misleading. After reviewing and strengthening the exploitation claims made concerning sweatshops, most importantly by refuting certain allegations that a micro-unfairness account of exploitation cannot evaluate sweatshop labour as exploitative, I then argue that even if this practice may seem permissible due to benefits otherwise unavailable to the global poor, there remains a duty to address the background conditions that make this form of wrong-doing possible, which the NWC cannot accommodate. I argue that the NWC denies this by unreasonably limiting its scope and is therefore incomplete, and ultimately unconvincing.

Keywords: Exploitation, sweatshop,

RÉSUMÉ

Le travail « à la sueur » est parfois défendu contre les critiques par des arguments qui soulignent le caractère volontaire du choix du travailleur, et le fait que les ateliers clandestins constituent une source de revenus dans un contexte où aucune autre source similaire n'existe. L'enjeu est de savoir s'il s'agit d'exploitation, comme leurs adversaires le soulignent, ou s'il s'agit d'exploitation mutuellement bénéfique et consensuelle. Cette défense indique que si l'exploitation est meilleure pour la partie exploitée, il ne peut s'agir d'un mal sérieux. L'exploitation est donc moralement autorisée, ce qui fait de l'exploitation des pauvres un chemin justifiable au niveau mondial pour le développement. Dans cet article, je soutiens

que l'utilisation de ce type d'argument est trompeuse. Après avoir examiné le cas de l'exploitation dans les ateliers de misère, en réfutant certaines allégations selon lesquelles la micro-injustice ne peut servir à évaluer l'exploitation du travail dans ces ateliers, je défends l'idée que, même si cette pratique peut sembler admissible en raison de prestations autrement inaccessibles au pauvres, il reste un devoir de répondre aux conditions de fond qui rendent cette forme de mauvaise conduite possible. Je soutiens que le type d'argument conséquentialiste développé pour défendre l'exploitation est finalement peu convaincant.

Mots clés : Exploitation, sweatshop

JEL Classification : J82

INTRODUCTION

Perhaps the most common objection made against low-wage (sweatshop) labour[1] is that the owners and operators – often large multi-national enterprises (MNEs) and their subcontractors[2] – wrongly exploit their workers and the desperate situation they find themselves in. Low pay, long hours, and hazardous conditions can combine with impressive corporate profits to give intuitive appeal to the exploitation claim, which will be refined below. In defence of sweatshops, however, it is sometimes stressed that they are often the best option available to their employees, and that this is signalled by the workers voluntarily accepting the job's conditions over work in another setting, or unemployment. It is argued that to take any action that might remove this option from the potential workers, such as boycotts or stronger regulations, can plausibly be considered harming them rather than helping them, if it puts jobs at risk.

While there are far too many questions raised by sweatshops for me to cover in a single paper – with many being empirical – my focus here will be on the exploitation claim and its moral significance. There is, however, debate within the exploitation literature about the concept's applicability for the case of sweatshops. It is within this debate that my paper is situated.

In this paper, I argue for two main claims. First, in Part 2 I address a recurring criticism that *micro*-fairness approaches to exploitation cannot adequately account for background

[1] Low wages are but one of the more common conditions associated with "sweatshops," which is itself a difficult term to define fully. In this paper, however, I rely mostly on the common understanding of the term, which includes low wages, dangerous working conditions, and long hours with sometimes unpaid overtime. For more detail, see Ellen Israel Rosen, *Making Sweatshops: The Globalization of the U.S. Apparel Industry* (Berkeley: University of California Press, 2002), Ch. 2; Naomi Klein, *No Logo* (Toronto: Vintage Canada, 2009), especially Ch. 9; and Denis G. Arnold and Laura P. Hartman, "Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops," *Human Rights* Quarterly 28.3 (2006): 676-700.

[2] MNEs do not usually operate their own factories overseas, rather they contract out to local enterprises. For an account of what this means in terms of responsibility, see Iris Marion Young, "Responsibility and Global Labor Justice," *The Journal of Political Philosophy* 12.4 (2004): 365-388; and Norman E. Bowie with Patricia H. Werhane, *Management Ethics* (Malden, MA: Blackwell, 2005), Ch. 5.

injustices and are for this reason unable to evaluate sweatshops as exploitative. This is often taken as justification for embracing a *macro*-fairness account. I argue, however, that this criticism is based on a misunderstanding of the micro-fairness approach and its intent. In doing so, I also highlight a troublesome defect of the macro-fairness views that gives us reason to resist their adoption.

Having strengthened the case that sweatshops are in fact exploitative, in Part 3 I consider the moral force of exploitation claims, that is, what they say we should do about exploitation. In particular I examine this in the context of background injustice. I then show how the typical defence of sweatshops appeals to what is known as the non-worseness claim (NWC), which says that if exploitation is better for the exploited party than neglect, and neglect is itself a permissible option, then exploitation cannot be seriously wrong.[3] Sweatshop exploitation, then, would be considered a justifiable path to development for many countries. I argue, however, that the NWC implicitly endorses a minimalist view of responsibilities, one that I see as inadmissible in the case of sweatshops because of *its* problematic dismissal of background injustice. To endorse this view, as defenders of sweatshops do when they use the NWC, is to ignore rather than respond to the complaint of exploitation, or so I will argue.

First, however, in Part 1, I summarize the area of agreement concerning the concept of exploitation as it is now usually discussed. This will include a description of mutually beneficial and consensual exploitation – meaning that harm and coercion are not necessary elements of exploitation as I, and most other writers, see it.

The result of this paper, then, is an analytical separation of micro-fairness accounts of exploitation, which in my view are the most defensible, from the minimalist view of responsibilities implicit in the NWC, which I argue, at least in the case of sweatshops, is morally suspect. In this way I hope to clear up the debate within the exploitation literature and locate the points of tension for further inquiry.

PART 1

In the most general sense, for one party, A, to wrongfully exploit another, B,[4] means that A has taken advantage of B in a way that is somehow unfair or degrading. [5] Nearly everyone

[3] The NWC is first discussed in Alan Wertheimer, *Exploitation*, (Princeton: Princeton University Press, 1996), 289-293. It is also discussed at length in Matt Zwolinski, "Sweatshops, Choice, and Exploitation," *Business Ethics Quarterly* 17, no. 4 (2007): 689-727; and for other responses that calls its force into question, see Jeremy C. Snyder, "Needs Exploitation," *Ethical Theory and Moral Practice* 11, no. 4 (2008): 389-405; and Adam D. Bailey, "The Nonworseness Claim and the Moral Permissibility of Better-Than-Permissible Acts," *Philosophia* 39, no. 2 (2011): 237-250.

[4] I will always refer to A as the exploiter and B as the exploited person throughout the paper.

[5] Exploitation is then a moralized concept; therefore I will drop the modifier 'wrongfully' throughout. For uses of exploitation in non-moral senses see Richard J. Arneson, "Exploitation," *Encyclopedia of Ethics*, Ed. Lawrence C. Becker (New York: Garland, 1992); and Joel Feinberg, *Harmless Wrongdoing*, (New York: Oxford University Press, 1988), ch 31. For unfairness based accounts of exploitation, the starting point is Wertheimer, *Exploitation*. For degradation accounts, which take root in Kantian ideas of respect for persons, see Allen W. Wood, "Exploitation," *Social Philosophy and*

who writes on exploitation can agree to this preliminary definition.[6] Where the many theories on offer diverge is in their emphasis on either unfairness or degradation as primary, and in how they flesh out the details more precisely. Before examining these differences, however, the broad area of agreement shared by the majority of these theories should be stressed.

First, it is usually agreed that exploiters must gain from their exploitation; that is, they must derive some benefit from their victims. This seems to be the straightforward result of understanding exploitation as a form of taking advantage; thus, if there is no advantage taken, it is difficult to see how there can be exploitation.[7] This feature, the benefit to A, is in part what distinguishes exploitation from oppression and other forms of wrongdoing. Alan Wertheimer suggests that "A oppresses B when A deprives B of freedoms or opportunities to which B is entitled. If A gains from the oppressive relationship, as when A enslaves B, then A may both oppress and exploit B. But there is no reason to think that A always gains from oppression, and when A does not gain, there is no reason to regard the oppression as exploitative."[8]

Following through with this idea, but turning our attention now to the victims of exploitation, it is clearly true that being exploited often means being harmed, understood in the sense that one's interests are set back. This is what happens when A enslaves B. Whereas A gains from B's enslavement, B is clearly harmed. But this is not necessary. For, even if a transaction is beneficial for both A and B, it is still possible for it to be somehow unfair or degrading, and thus exploitative according to our standing definition. In this way we can distinguish harmful exploitation from mutually beneficial exploitation. And while there can be little doubt that harmful exploitation such as slavery is morally wrong, the matter is a bit more complicated when B gains, and yet the transaction still seems somehow unfair or degrading.

Consider the following examples:

> *Snowstorm*: A is a tow truck driver who happens along B, a motorist stranded in a ditch during a snowstorm. Ordinarily, A charges $10 for a simple rescue like this one. But for whatever reason, A offers to only assist B for a fee of $200, take it or leave it. B, who we can imagine is

---

Policy 12.2 (1995): 136-158; and Ruth J. Sample, *Exploitation: What It Is and Why It's Wrong* (Lanham: Rowman and Littlefield Publishers, 2003).

[6] Not everyone agrees, of course. Most importantly Marx might disagree, as it is frequently claimed he relied on a technical definition of exploitation. For an analysis of this approach to Marx's account of exploitation see Nancy Holmstrom, "Exploitation," *Canadian Journal of Philosophy* 7.2 (1977): 353-369. For an analysis of Marx's use of exploitation from a moralized perspective see Arneson, "What's Wrong with Exploitation?" *Ethics* 91.2 (1981): 202-227.

[7] This, of course, does not mean that in cases where A fails to derive a benefit even though she tries, a similar moral wrong might not be applicable. Wertheimer refers to this as A acting exploitatively towards B. See Wertheimer, *Exploitation*, 17, 81, and 209.

[8] Wertheimer, *Exploitation*, 18.

> under no immediate threat, still does not wish to wait for another tow truck, decides to pay the $200.[9]
>
> *Overboard*: While walking along the deck of a cruise ship, A spots B, who has fallen overboard. A offers to throw B a life preserver only on condition that she sign away 75% of all her future earnings over to A. B, none too thrilled about the terms of this offer, still accepts as she nevertheless values her life over the income she trades for it. [10]

This last point is worthy of emphasis. While it may strike us as intuitively unfair that B pay such a large sum for A's services, it is just as easy to see that B has nonetheless gained from the transaction as compared to her pre-transaction status. Thus harm is not a necessary ingredient for exploitative transactions. This also leads us to the further idea that exploitation can be fully voluntary, at least in the sense of being free of outright coercion. Insofar as exploitation can be mutually beneficial, it is then sometimes rational for B to agree to A's terms, even though unfair. Some writers have denied this aspect of voluntariness and have argued that the key, necessary element of exploitation is B's rationality being compromised.[11] The overboard example may seem to fall into this category, as B's circumstances hardly put her in the best position to evaluate A's terms.

However, it still looks possible to say that given her vulnerable circumstances in both *Overboard* and the milder case of the *Snowstorm*, compared to the no-transaction option, it is in B's interest to acquiesce to A's demands, and it might even be irrational for her not to do so. I agree with Matt Zwolinski when he says, "[t]o the extent that it is unfair or degrading to take advantage of another persons' vulnerability, then, voluntariness and unfairness are not only logically compatible, they will often go hand in hand."[12] This is not to deny that difficult situations can put an agent in a precarious position in terms of what she might consent to. It is rather that questions of B's consent hardly end matters, and they solve less than they appear to do.

Suppose B's car breaks down and she desperately needs a new battery. If A, the only mechanic in town, offers to sell B a battery at the same price that she would have paid had she gone in better circumstances, at the same price everyone else pays, and at the same price she would pay at any other mechanic, this hardly seems like an exploitative transaction and B's arguable compromised consent changes our moral assessment of the transaction very little. However, had A recognized B was in such a situation and decided to double the price, the charge of exploitation might then seem appropriate. Exploitation, it appears, depends more on a defect in the terms of the transaction than on possible defects in B's consent.

---

[9] This is adapted from a standard example found in the exploitation literature. See Wertheimer, *Exploitation*, 218; and Sample, *Exploitation*, 10.

[10] Adapted from Mikhail Valdman, "Exploitation and Injustice," *Social Theory and Practice* 34.4 (2008): 555; and Zwolinski, "Structural Exploitation," *Social Philosophy and Policy* 29.1 (forthcoming).

[11] John Lawrence Hill, "Exploitation," *Cornell Law Review* 79 (1994): 631-699.

[12] Zwolinski, "Structural Exploitation."

These defects in consent are certainly not irrelevant, however. Though I should note that their importance seems to depend in part on which approach to defining exploitation – unfairness or degradation – is taken. On an unfairness model, problems in B's consent are seen to play more of a role in determining how we ought to respond to exploitation, which can be defined independently, purely in terms of the outcome of the transaction.[13] On the approach that exploitation is primarily degrading, defects in consent will carry greater weight since the emphasis is more on the process that gives rise to exploitative terms.[14] This approach can be fleshed out in a number of ways, yet in most cases the intuitive idea is that certain transactions are inherently lacking in respect, such as the purchase of reproductive labour, or organs. This, in turn, is usually grounded in Kantian ideas of autonomy and respect.[15] This approach faces an initial difficulty, however, as one interpretation of Kant's maxim against using one as a mere means suggests one violates this duty only when on treats "him in a way to which he could not possibly consent."[16] Cases of coercion and fraud would fall under this heading, but as we have seen, there appear to be genuine cases of exploitation where B appears to give her full consent, and where it is rational for her to do so. This difficulty can of course be overcome, and the work Wood and Sample referenced above is a testament to just that.

Ultimately, however, I am more confident in an unfairness account providing a more plausible conception of exploitation. This is largely because of considerations that come from the micro- versus macro-fairness debate, which I will turn to below. For now, it can simply be noted that at least when it comes to the question of sweatshop labour, degradation-based approaches can themselves be considered as types of macro-fairness accounts of exploitation. And while these have the benefit of having little difficulty describing sweatshop labour as exploitative, I will argue that this comes at a high cost. Unfairness models, on the other hand, often fall into the category of micro-fairness accounts. These, in contrast, are sometimes said to be unable to explain sweatshops as exploitative because they exclude certain background information in their moral assessment of transactions. Usually this is considered a defect and a reason to abandon the approach—though some writers do embrace this conclusion.[17] In any case, I will go on to refute the claim that micro-fairness views cannot evaluate sweatshops as exploitative. I consider this important because it cuts off those who wish to deny that sweatshops are exploitative from using what I see as a common misunderstanding of the micro-fairness approach in their favour, and moreover, as the micro-fairness view is generally considered a more conservative approach, it adds further weight to the claim that sweatshops are a genuine case of exploitation, and thus, worthy of further moral analysis.

---

[13] See Wertheimer, *Exploitation*, Ch. 8.

[14] Indeed, Robert Goodin claims that exploitation "must necessarily refer to a *process* rather than some end-state." Robert E. Goodin, "Exploiting a situation and exploiting a person," in *Modern Theories of Exploitation*, ed. Andrew Reeve (London: Sage Publications,1987), 181.

[15] This is especially true of Allen Wood, "Exploitation"; and Sample, *Exploitation*. Sample also ties her theory to the more recent development of the capabilities approach of Amartya Sen and Martha Nussbaum.

[16] Christine Korsgaard, "The Reasons We Can Share," *Social Philosophy and Policy* 10 (1993): 40.

[17] Zwolinski seems to take this position, most notably in Zwolinsky "Sweatshops, Choice, and Exploitation," *Business Ethics Quarterly* 17, no. 4 (2007): 689-727.

PART 2

Before considering the micro- versus macro-fairness debate, it is worthwhile to add some details to the idea that the wrongfulness of exploitation lies primarily in an element of unfairness. In any given transaction, each party has a reservation price, "that is, the value that the person must receive if he or she is to agree to the transaction."[18] The range in between the two parties' reservation prices (if one exists) is the zone of agreement. Recall the snowstorm example. We can imagine that A's reservation price is the $10 she normally charges. Though she would prefer to get more for her efforts, she is unwilling to accept any less than that. B's reservation price will depend more on the situation, and it is probably unlikely that B could accurately predict her reservation price until her hand is forced. Let us say, in any case, that B's reservation price is $250. She would rather be stuck in the cold than pay such an outrageous fee. Their zone of agreement, then, falls between these two prices – between $10 and $250. A transaction that occurs within this zone of agreement can be thought to generate a social surplus, "which could be defined as the difference between the buyer's and seller's reservation prices."[19] It is the distribution of the social surplus that raises questions of fairness. In our example, A is able to push B closer to her reservation price because of her vulnerable situation, and for this reason gets a larger share of the social surplus. Though if B has accurately determined her own reservation price, then it is reasonable to suppose that she nonetheless still gains from the transaction. Mutually beneficial exploitation, then, occurs when both A and B gain relative to the no-transaction baseline but the distribution of the social surplus is somehow unfair to B. While this offers a little more precision to the unfairness account of exploitation, it is still entirely unclear what makes a given distribution unfair. A principle of fairness is therefore required, and the distinction between micro- and macro-approaches can now be examined.[20]

While there is no traditional definition that marks the difference between the two approaches, Jeremy Snyder suggest that "we can divide fairness-based accounts of exploitation into two subgroups: 1) those that do not include concerns about structural justice in the standard of fairness (micro fairness); and 2) those that do incorporate concerns about structural justice when assessing fairness (macro fairness)."[21] The standard example of a micro-fairness account comes from Alan Wertheimer. The principle of fairness Wertheimer favours for most cases is based on the notion of a hypothetical market price – that is, "the price that an informed and unpressured seller would receive from an informed and

[18] Wertheimer, *Exploitation*, 20.
[19] Ibid., 21.
[20] Indeed, Arneson has noted that there are then "as many competing conceptions of exploitation as theories of what persons owe each other by way of fair treatment," "Exploitation," 350.
[21] Snyder, "Exploitation and Sweatshop Labor: Perspectives and Issues," *Business Ethics Quarterly* 20, no. 2 (2010): 4-5.

unpressured buyer."[22] Though certainly not the only option for a micro-fairness account, I will focus on this principle since it has generated substantial debate – especially concerning the role of background injustice—and is often invoked in the sweatshop exploitation literature as a principle that fails to label sweatshops as exploitative.

The fairness of the hypothetical market price (HMP) is founded in the idea that the competitive market 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."[23] We can see the appeal of the HMP if we apply it to our earlier examples. Had there been two tow truck drivers competing to assist B, it is likely that neither would be able to take advantage of B in the same way as when there was only one. The same can be said for *Overboard*. Once A loses her monopoly position on assisting B, she also loses her ability to push B to the exploitative price, and must instead offer fair(er) terms if she wishes to transact. This is because in a fully competitive market, it is argued, no one can chose to transact at anything but the market price.[24] Yet when we say that A takes unfair advantage of B, we must mean that A could have decided not to do so—as is usual, ought implies can. In this way the HMP reflects the *potential* for fairness in perfectly competitive markets. B might still be the victim of a misfortune or injustice, but if they transact at this price, then A herself has not exploited B, and the distribution of the social surplus is considered fair.

Of course, not everyone accepts this criterion of fairness nor the theory of exploitation it supports. Ruth Sample criticizes Wertheimer's theory for being too conservative and for understanding exploitation as simply a "failure to adhere to a convention."[25] According to Sample, exploitation for Wertheimer essentially means paying a non-standard price. Sample in turn argues that sometimes paying a standard price can still be exploitative if proper attention is given to background circumstances of the parties, which, she claims, the HMP fails to do.

Consider the following example from Sample that many hold to be an intuitive case of exploitation:

> A factory worker visits a Pacific Rim country and offers to set up a running-shoe factory that would pay each worker $2 per day. The current average daily wage in the village is $1, which is enough to prevent a worker and his family from starving. The workers will have no benefits other than salary and must work eighty hours per week. The workers accept. The running shoes sell for $95 per pair in the United States and Western Europe, and half of that price is corporate profit.[26]

[22] Wertheimer, *Exploitation*, 230. While Wertheimer does not suggest this principle applies to all cases, he does suggest that it "does provide a plausible conception of a fair transaction at least for a certain range of cases." Ibid.
[23] Ibid., 232.
[24] Ibid., 233.
[25] Sample, *Exploitation*, 23.
[26] Sample, *Exploitation*, 8.

Although Sample intended for this to simply be an example that highlights a certain defect in the HMP, it does not stray too far from actual conditions in many parts of the developing world. Working conditions are often dangerous, with poor ventilation, cramped spaces, and a severe lack of safety measures. Typical shifts can last over ten hours a day, six days a week, and overtime is commonly forced and unpaid. The majority of the workers are women, and sexual harassment is widespread. Efforts by employees to improve conditions through protest or unionizing are often met with intimidation, beatings, and firings. Health and other benefits are a dream. And while wages are low, typically well below the stated minimum wage, they are, as in the example, still higher than the local average wage.[27]

Before responding to Sample's argument in detail, some more general remarks can be made. Sample's own account of sweatshop exploitation is helpful in showing the link between macro-fairness accounts and theories of exploitation as degradation. Without going too deeply into the details, suffice to say that Sample considers the wrongness of exploitation to include cases where we "fail to respect a person by taking advantage of an injustice done to him [or her]."[28] And while this account ties the wrongness of exploitation to a failure to respect rather than to unfairness, and can thus properly be considered a case of exploitation as degradation, it is the action of taking advantage of the unfairness created by an injustice that constitutes a failure of respect.[29] Profiting from sweatshop labour in the face of extreme poverty qualifies as an instance of taking advantage of injustice for Sample, and sweatshops are then easily evaluated as exploitative on this macro-fairness account.

Unfortunately, however, it seems that this approach takes us too far. As not only would sweatshops be considered exploitative, but so would any business operating in the developing world. This is the case because of a distinction that seems largely ignored by macro-fairness accounts, but that micro-fairness accounts take very seriously. That is the difference between taking advantage of unfairness, and taking *unfair* advantage of unfairness.[30] A case of the former might be when a contractor rebuilds a home destroyed by arson, but still charges the owner a fair fee. Though the contractor gains from an injustice, it might be a stretch to say she is taking unfair advantage of the owner.[31] Of course if she were to suddenly raise the price to an excessive level, preying on the owner's vulnerable situation, she might then be guilty of taking unfair advantage of unfairness, and thus exploiting the owner. But this would be because of an unfairness that manifests in the terms of the transaction, and not simply in the background. By linking exploitation so strictly to the idea of gaining from injustice, macro-fairness accounts like Sample's make background injustice a *sufficient* cause for exploitation, yet this does not seem tenable, as benefiting from misfortune does not always seem inherently wrong.

Snyder suggests that a "micro-fairness [account] attempts to limit the scope of the standard of fairness, typically by excluding concerns about the effects of structural justice on the

[27] Examples abound, yet for an account of the major problems see Denis G. Arnold and Norman E. Bowie, "Sweatshops and Respect for Persons," *Business Ethics Quarterly* 13.2 (2003): 221-242.
[28] Sample, *Exploitation*, 57.
[29] Snyder, "Exploitation and Sweatshop Labor," 9.
[30] Wertheimer, *Exploitation*, 298.
[31] Zwolinski, "Structural Exploitation," 24-25.

distribution of benefits resulting from an interaction."[32] While it may be possible to construct a principle of fairness that limits itself in this way—though I do not see how that could be considered fair—it is hardly a requirement of the micro-fairness approach. The rationale for adopting a micro approach, such as the HMP, is not to purposively ignore any *effects* of structural or background causes as Snyder claims; rather, it aims to have a clearer focus on effects by bracketing their cause to an extent. Recall *Overboard*, in trying to determine if A is exploiting the drowning B, it seems to matter very little whether B fell in the water due to bad luck, fecklessness, or injustice.[33] Unless A pushed B in, of course, the unfairness of A's exploitation then depends more on the desperation of B's circumstances than its history.[34] This follows straightforwardly from recognizing that just because an agreement arises out of an unfair or unjust background, this does not necessarily mean the terms will also be unfair. This does not deny, however, that structural injustice or background unfairness might lead an agent to accept unfair terms and be exploited, as they most certainly do.[35]

In more detail now, Sample's concern with the HMP lies in the fact that there is undoubtedly a competitive market for labour in developing countries, but since there are many more workers than capitalists, the price for labour is low. She says that "competitive markets are set by supply and demand, and if a person has a monopoly on a resource—such as employment – this may drive demand and thus prices up."[36] She then claims that "since the competitive market price is the nonexploitative price, it follows that the workers are not being exploited."

The problem with this argument, however, is clear. Sample conflates the mere existence of a market with the conditions of a hypothetical market. This misunderstanding in the way that the HMP is meant to abstract away from actual markets is crucial. While Wertheimer is not entirely precise in what might define the HMP, he does compare it to the price set by a fairly conducted market "in the absence of fraud, monopoly, or coercion."[37] This implies that the mere presence of market does not guarantee the standard price is a fair one.[38] Though the

[32] Snyder, "Exploitation and Sweatshop Labor," 5.
[33] Valdman, "Exploitation and Injustice," 556.
[34] If A did push B in, then she is guilty of more than just exploitation.
[35] It should be noted that much of the support for the claim that micro-fairness accounts would not include considerations of background injustice comes from a remark Wertheimer makes concerning the applicability of the hypothetical market price as a principle of fair transactions. He says that, "even though some fare less well than others by the appropriate principles of social justice, it is unreasonable to expect the better-off party to repair those background conditions by adjusting the terms of a particular transaction," *Exploitation*, 234. However, on one interpretation of this statement, the unreasonableness of A correcting for B's unjust position applies more to the determination of the appropriate moral responsibilities arising from the transaction, and less to the question of whether it is unfair or not. An important lesson from Wertheimer's book is the need to separate questions of the moral fact of exploitation from questions of its moral force. Later in the book he goes on to say, "[e]ven if A does not act wrongly if A fails to voluntarily repair background injustices to B, it may be quite wrong for A to engage in an unfair *transaction* with B," Ibid., 289.
[36] Ibid.
[37] Wertheimer, *Exploitation*, 231.
[38] Elsewhere, Wertheimer says of the hypothetical market price standard: "On this view, there is no independent standard of a 'just price' for goods such as a shovel or a kidney, nor need we accept whatever the actual market yields, given the market's sundry imperfections. Rather, we evaluate the

market for labour in the developing world is competitive in a certain sense, with potential labourers competing for employment, in another it drifts close, as Sample acknowledges, to a monopoly. And as we have seen, the monopoly position is crucial for many cases of exploitation.

However, it is not strictly true that the labour market in developing countries is a monopoly. Moreover, the HMP cannot simply be the perfectly competitive market price in a strict sense either, as this would mean any and all profits are exploitative. The HMP is then vague with respect to exactly what features of actual markets it abstracts away from. Yet, in any case, it is important to recognize that exploitation on the HMP view is not simply a matter of paying a nonstandard price, as Sample characterizes it. Even in the presence of an accepted market price, exploitation can still occur when the terms are sufficiently unlike the terms of a hypothetical market, whatever that may be.[39]

Thus, while it is true that critics of sweatshop labour tend to not to make their case based solely on intuitions regarding the unfairness of cheap labour, but rather on the unfairness of certain contingent facts about global poverty and international trade as it is currently practiced – such as commodity dumping, forced liberalization, unfavourable labour laws, basic needs deprivation, etc.[40] – the claim is perhaps best understood as criticizing the influence these factors can have on the terms sweatshop workers might agree to. Background and structural unfairness can clearly create the conditions for exploitation. And even though a micro-fairness account is concerned with the terms, and not necessarily the circumstances, of the transaction, it should not be surprising when structural unfairness leads to unfair terms. In this way we can consider unjust background conditions as not sufficient for exploitation, but as playing an evidentiary role. Consequently, it is quite plausible that even on a micro-fairness account such as an HMP, desperate sweatshop workers are pushed towards their reservation prices and are therefore exploited.[41] There is then no need to

---

parties' gains by what they would have received under relatively perfect market conditions, just as we may try to determine the 'fair market value' of a home by what the home would sell for under relatively perfect market conditions in that locale." "Exploitation," in *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, ed. Edward N. Zalta, (Stanford: The Metaphysics Research Lab, Centre for the Study of Language and Information, Stanford University, 2008).

[39] For an important contribution to the analysis of micro-fairness accounts of exploitation, and one that leads to the conclusion that considerations of competition alone are not enough to inform us to the fairness of a transaction, see David Miller, "Exploitation in the Market," in *Modern Theories of Exploitation*, ed. Andrew Reeve (London: Sage Publications,1987), 156.

[40] These features and the effects they have on the global poor are frequently discussed in the global justice literature. For a variety of accounts on the subject see Peter Singer, *One World: the Ethics of Globalization* (New Haven: Yale University Press, 2002), esp. ch 3; Thomas Pogge, *World Poverty and Human Rights* (Malden: Polity Press, 2002); Onora O'Neill, *Faces of Hunger: an Essay on Poverty, Justice and Development* (London: Allen & Unwin Publishers, 1986); Darrel Moellendorf, "The World Trade Organization and Egalitarian Justice," *Global Institutions and Responsibilities: Achieving Global Justice*, Ed. Christian Barry and Thomas Pogge (Malden: Blackwell, 2005), 141-158.

[41] I do not mean to suggest that I could describe what the hypothetical market price for labour in the developing world might be in this short piece. Rather I merely suggest that a strong case has been presented for the plausibility of the actual terms falling short of this standard, whatever it happens to be, without claiming that an unjust background necessarily implies exploitation.

abandon the micro-fairness account in favour of a troublesome macro-approach. And moreover those who deny sweatshops are exploitative will need to provide a novel and convincing argument for why the effects of background factors on the terms of the transaction should be ignored, though I do not see how they could.[42]

PART 3

Exploitation in our sense is a moralized concept. Exploitative transactions are morally wrong because they are unfair or degrading. Yet, regardless of which model of exploitation we endorse, correctly calling a practice exploitative hardly puts an end to all moral matters. In the above, I argued that micro-fairness accounts of exploitation are capable of evaluating transactions occurring against a backdrop of unfairness as themselves unfair, even while maintaining their focus on transactions in and of themselves. However, as I will soon explain, this alone does not determine how we ought to respond to exploitative transactions. In this section I will argue that the assessment of the *permissibility* of exploitative transactions requires a more direct reference to background factors that the mere determination of exploitation alone does not. Moreover, I will argue that a frequent and common defence of sweatshops fails to meet this requirement in a sufficient way. First, however, it is useful to analyse the moral force of exploitation claims in more detail.

We have already seen some cases of exploitation that intuitively ought not to be prohibited. In *Overboard*, it is unlikely that prohibiting the transaction between A and B would be the appropriate or desired solution. While it may be unfair that B pay so much for A's assistance, it does not appear as though forbidding A from exploiting B necessarily helps matters. Similarly for the *Snowstorm* example. That exploitation ought to be sometimes permitted should be no big surprise, as our focus throughout has been on mutually beneficial and consensual exploitation. Both respect for B as a decision maker, and an interest in B's welfare can lead us to this answer. What may be surprising, however, is how unjust background conditions may seem to strengthen this idea.

Considering that B finds herself in already unjust circumstances, there are substantial risks involved in ignoring the benefits to B in our moral assessment. If there is the risk that A will not offer fair terms to a desperate B, then to deny B the chance to improve her situation by being voluntarily exploited is akin to kicking someone while they are down.

[42] One option, favoured by libertarians, is to limit exploitation to transactions that are either involuntary or rights violating. Zwolinski occasionally favours such an account. However, even this may not be as conclusive as initially supposed. According to article 23 of the Universal Declaration of Human Rights, "(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests." (http://www.un.org/en/documents/udhr). Thus, even on a rights-based account, there is still a plausible case to be made that sweatshops are exploitative.

It is a result of these considerations that sweatshop exploitation is often put forward as a justifiable path to development. *New York Times* columnist Nicholas Kristof makes this point clear when he says "the central challenge in the poorest countries is not that sweatshops exploit too many people, but that they don't exploit enough."[43] This defence of sweatshop labour embodies what is called the non-worseness claim (NWC), which states that if it is morally acceptable for A not to transact with B, then A's mutually beneficial and consensual exploitation of B cannot be seriously wrong, and should be permitted. In one form or another, the NWC lies at the core of most defences of sweatshop labour, and it is easy to see why. Clearly no business is truly obligated to open factories in the developing world, and, when combined with the plausible idea that a bad job is better than no job, this suggests that sweatshop labour is indeed justified according to the NWC.

Matt Zwolinski explicitly endorses the NWC in his analysis of exploitation and sweatshops.[44] He argues that the NWC generates a claim of non-interference, barring any efforts that aim to render sweatshop labour a non-permissible option. This is meant to include consumer boycott groups, non-government organizations, governments themselves, and any others who claim that their aim is the welfare of sweatshop workers. The argument is that when businesses lose the incentive to operate in a developing country and employ the workers they do, they will be forced to fire employees or even leave completely, which eliminates even the small pay the workers now receive. To criticize MNEs, and argue that wages or working conditions should be improved, thus puts workers in harm's way, as the threat of neglect is legitimate and permissible. It is therefore odd, that businesses that choose to outsource and provide a benefit to their employees are vilified, whereas businesses that produce domestically and offer no aid to the global poor seem to escape all moral condemnation.

On this basis, Zwolinski claims that it is incoherent to criticize MNEs who exploit their employees yet still provide them with some benefit, while at the same time refraining from criticizing other MNEs who do not outsource and thus provide no benefit. Zwolinski asks, "[h]ow, then, can it be permissible to *neglect* workers in the developing world, but impermissible to *exploit* them, when exploitation is better for both parties (including workers who are in desperate need of betterment)?"[45]

There is no doubt some truth to the NWC, and many examples of exploitation fit into its reasoning well enough. Consider the price-gouging shop owner, who doubles the price of shovels when an unexpected snowstorm hits town. While we may still call this transaction unfair and exploitative, we may stop short of calling it a serious moral wrong that requires intervention, precisely for the reasons the NWC brings forward, that is, neither party's being obligated to transact, plus the benefits each receives if they do.

Yet it strikes many as odd that the identification of sweatshops as exploitative and therefore morally wrong would lead to no significant practical consequences but rather their unconditional permissibility, as Zwolinski see it. This is likely because of some of the relevant dissimilarities between sweatshops and the above price-gouging example. While they both share the common feature of mutually beneficial exploitation, in the case of

[43] Nicholas D. Kristof, "Where Sweatshops Are a Dream," *The New York Times*, 14 Jan 2009.
[44] In Zwolinski, "Sweatshops," 708-711; and Zwolinski, "Structural Exploitation."
[45] Zwolinski, "Structural Exploitation."

sweatshops we are drawn to further features that seem to carry moral weight, such as the severity of the potential employee's desperation and inability to reject the offer – in a much greater degree than in the shovel example. The cause of this desperation, moreover, is different from an unexpected snowstorm in a significant way, as it stems from injustice.[46]

In the previous section I argued that a micro-fairness account of exploitation need not ignore the effects of injustice as is sometimes claimed. What I believe *does* ignore background injustice in a troublesome way, however, is the minimalist view implicit in the NWC.[47] This minimalist view attempts to abstain from difficult questions of justice by limiting its attention to the terms of the transaction. Yet, in doing so, it implicitly accepts the status quo as the appropriate normative baseline. This is apparent in the NWC's narrow focus on the gains of the parties, and voluntariness – these being the only parameters it is concerned with. So long as each party sees some – truly any – gain, and the transaction is sufficiently consensual, then all moral questions are answered on this minimalist view.[48] What is excluded, however, is arguably crucial information including the relative positions of the parties and their histories. That this information is necessary for a full and satisfactory account of the morality and possible permissibility of exploitative sweatshop transactions becomes evident when we consider the relevance of what is excluded by the minimalist view.

While I cannot offer a full defence here, I believe a strong argument can be and has been made that the conditions the global poor find themselves in are at least partly the result of continued unjust acts of the developed world.[49] The strongest reason to support this claim rests on the fact that the structure of the global economy has tremendous and often detrimental effects on the global poor, and since the developed world is largely able to shape this shared institution and practice however it pleases, there is a causal relationship between the unjust circumstances sweatshop workers find themselves in and the MNEs and

[46] There are other potential problems with the NWC beyond the one I bring out in this paper. The most obvious being that it ignores the possibility of additional duties we might incur when we choose to transact with another individual or group. This difficulty, sometimes termed the Interaction Principle, is first addressed in Wertheimer, *Exploitation*, 289-293; it is also the subject of a critique in Snyder, "Needs Exploitation." The criticism that the NWC proves too much is developed in Bailey, "The Nonworseness Claim." My focus in this paper has been the relationship between exploitation claims and background injustice, and have for this reason focused my critique on aspects of the NWC that are relevant in this regard .

[47] I adopt this term from Alex John London, "Justice and the Human Development Approach to International Research," *Hastings Center Report* 35, no. 1 (2005): 24-37. Though he was primarily interested in exploitation in international medical research, I believe his arguments are equally applicable to the sweatshop debate.

[48] The issue of how to define what counts as "sufficiently consensual" is one that is crucially important to the sweatshop debate, and the exploitation literature more generally. And while I believe many difficult questions might ultimately turn on this issue, they are unfortunately beyond the scope of this paper. For this reason my critique of the NWC rests not in its conception of consent, but rather in its exclusion of further morally significant features of the practice of sweatshop labour. For an extended analysis of the role consent can play in sweatshop exploitation, see Zwolinski, "Sweatshops."

[49] See Pogge, *World Poverty and Human Rights*; and Pogge, "Eradicating Systemic Poverty: a brief for a global resource dividend," *Journal of Human Development* 2, no. 1 (2001): 59-77.

developed world citizens who benefit from their labour. While it is true that this generates a rather wide responsibility shared across many different individuals, I do not believe this provides a compelling reason to exclude MNEs from *any* responsibility, as Zwolinski argues.[50] Rather, I believe a conception of responsibilities along Iris Marion Young's notion of political responsibility, which outlines a more forward looking set of responsibilities for individuals who are more complicit in their unjust structural relationships than strictly to blame for them, is more appropriate. [51] Viewing the relevant responsibilities in this way helps us move beyond the difficult and complicated task of assigning blame for current global injustices, and instead frames the tasks as one of working towards solutions. Young's aim is to extend the notion of responsibility, and therefore those who are to blame will not escape blame – or their resultant duties. Yet in addition, less culpable but still complicit moral agents are also not ignored. In this way I believe we can move beyond – but not dismiss – the task of determining which governments and which MNEs face the most blame for a particular injustice, and instead demonstrate the need that everyone involved in an unjust structural relationship recognize and take up their political responsibilities.[52]

While it is a matter of debate exactly how these considerations should inform novel duties and responsibilities, I can think of no compelling reason why these injustices should purposely be ignored in any full account of the moral permissibility of sweatshop labour. The minimalist view, along with its expression in the use of the NWC as a decisive methodological tool, thus appear insufficient for dealing with concerns of exploitation in developing countries as it leaves no conceptual room for this issues to even arise.[53]

---

[50] See Zwolinski, "Structural Exploitation."

[51] For a more detailed account of this conception of responsibilities applied to sweatshop labour, see Young, "Responsibility and Global Labor Justice."

[52] It is worth repeating that this notion of responsibility is complimentary to the more common, blame-oriented version. And thus, the task of determining blame and describing duties is not to be ignored. As such I believe political responsibility is not the only notion of responsibility vital to the question of sweatshop exploitation. However, I do believe it provides a compelling reason why we can extend the scope of our critique from not only a condemnation of the sweatshops operated by MNEs originating from countries where blame for current conditions is more easily laid, but also to those originating from countries like China, who likely have little blame for conditions in African mining countries, yet still have a political responsibility to discharge as they are nonetheless a part of an unjust political structure that they benefit from. How the responsibilities of these two groups will differ is an important and complicated question that needs a much more thorough analysis than I can currently provide.

[53] Note that while I call the NWC a "methodological tool" here, there is the question as to whether the minimalist view should properly be considered a methodological choice or a moral stance. If it is adopted as a moral stance, then the claim would be that the NWC provides all we need to settle the moral questions of sweatshop labour. If it is adopted as a methodological choice, however, one possible response to the critique I lay out in this paper would be that the further issues of global justice that I point to are not excluded from the moral debate over sweatshops, but rather they are bracketed for later, while the particular domain of the individual transaction is addressed. While this conception of the minimalist view as a methodological choice seems more sensible, I do not believe it answers my critique. This is because of the specific fact that the moral wrong that is being addressed is exploitation. And as I argued earlier in this paper, exploitation entails an examination of a transaction's background. This is the case because any principle of fairness requires a reference to background context, even if a defect in the background factors is neither necessary nor sufficient for

I should note that the preceding reveals a distinction that I believe is of particular theoretical importance for the analysis of exploitation. This is the fact that there are then two senses in which background injustices can be abstracted away from when assessing potentially exploitative transactions: (1) the micro-fairness account of exploitation which simply holds that background injustice is neither necessary nor sufficient for exploitation to occur, as it is the terms of a transaction themselves which must be unfair for exploitation to occur. And (2) a minimalist view that attempts to abstain from broader questions of justice when determining the permissibility of an action, but instead simply accepts the status quo as itself just, and in doing so excludes morally relevant information. This latter method of abstracting from background injustice, because it is especially concerned with the permissibility of actions that occur against a backdrop of injustice yet chooses to ignore facts about this injustice, appears significantly suspect for its stated task, either as a moral or a methodological position, or so I argued above.

In appreciating this distinction along with the questions that it raises, the exploitation literature as well as the sweatshop debate can move forward by addressing these questions more directly, while avoiding the misunderstandings and problematic arguments that I have highlighted in this paper. In particular, I hope to have shed some light on a common distortion of the micro-fairness account of exploitation, as well as provided a framework from which a more powerful critique of the use of the NWC as a decisive argument in the case of sweatshops can be made.

In closing, however, I would like to reaffirm my remark that there is certainly some truth to the NWC. And even in full recognition of injustice and the responsibilities that arise, its warning should not be ignored. For this reason very few sweatshop critics, including myself, recommend simply closing sweatshops by fiat. Rather we must be strategic and perhaps even permit some exploitative arrangements if better terms are not quickly forthcoming. I believe this follows naturally from the idea that complaints of exploitation are not to be seen as a simple call to prohibit the act regardless of the consequences. Rather, they are best seen as a call to investigate and address the background circumstances that make the exploitation possible. In the case of sweatshops, this leads to the conclusion that the unjust situation of developing countries and its origins give rise to responsibilities to correct the injustices and improve the background conditions of the workers who make our goods. How to cash out these responsibilities is a difficult question, yet that again is no reason why it should be ignored.

REFERENCES

Arneson, Richard. “What’s Wrong with Exploitation?” *Ethics* 91, no. 2 (1981): 202-227.

---. “Exploitation.” In *Encyclopedia of Ethics*, edited by Lawrence C. Becker, 350-352. New York: Garland, 1992.

---

exploitation itself. Thus, as a methodological position, the minimalist view makes a conceptual choice that I would argue is inappropriate for the examination of exploitation. I thank the editors of this journal for pointing this important distinction out to me.

Arnold, Denis G., and Norman E. Bowie. "Sweatshops and Respect for Persons." *Business Ethics Quarterly* 13, no. 2 (2003): 221-242.

Arnold, Denis G., and Laura P. Hartman. "Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops," *Human Rights Quarterly* 28, no. 3 (2006): 676-700.

Bailey, Adam D. "The Nonworseness Claim and the Moral Permissibility of Better-Than-Permissible Acts." *Philosophia* 39, no. 2 (2011): 237-250.

Bowie, Norman E. with Patricia H. Werhane. *Management Ethics*. Malden: Blackwell, 2005.

Feinberg, Joel. *The Moral Limits of the Criminal Law*. *Volume 4, Harmless Wrongdoing*. New York: Oxford University Press, 1988.

Goodin, Robert E. "Exploiting a situation and exploiting a person." In *Modern Theories of Exploitation*, edited by Andrew Reeve, 166-200. London: Sage Publications, 1987.

Hill, John Lawrence. "Exploitation." *Cornell Law Review* 79 (1994): 631-699.

Holmstrom, Nancy. "Exploitation." *Canadian Journal of Philosophy* 7, no. 2 (1977): 353 - 369.

Klein, Naomi. *No Logo*. 10th Anniversary Edition. Toronto: Vintage Canada, 2009.

Korsgaard, Christine. "The Reasons We Can Share," *Social Philosophy and Policy* 10, no. 1 (1993): 24-51.

Kristof, Nicholas D. "Where Sweatshops Are a Dream." *The New York Times*. Jan 14, 2009. Accessed Jan 14, 2011. http://www.nytimes.com/2009/01/15/opinion/15kristof.html.

London, Alex John. "Justice and the Human Development Approach to International Research."

Hastings Center Report 35, no. 1 (2005): 24-37.

Miller, David. "Exploitation in the Market." In *Modern Theories of Exploitation*, edited by Andrew Reeve, 149-165. London: Sage Publications, 1987.

Moellendorf, Darrel. "The World Trade Organization and Egalitarian Justice" In *Global Institutions and Responsibilities: Achieving Global Justice*, edited by Christian Barry and

Thomas Pogge, 141-158. Malden: Blackwell, 2005.

O'Neill, Onora. *Faces of Hunger: an Essay on Poverty, Justice and Development*. London: Allen & Unwin, 1986.

Pogge, Thomas. "Eradicating Systemic Poverty: a brief for a global resources dividend." *Journal of Human Development* 2, no. 1 (2001): 59-77.

---. *World Poverty and Human Rights*. Malden: Polity Press, 2002.

Rosen, Ellen Israel. *Making Sweatshops: The Globalization of the U.S. Apparel Industry*. Berkeley: University of California Press, 2002.

Sample, Ruth J. *Exploitation: What It Is and Why It's Wrong*. Lanham: Rowman and Littlefield, 2003.

Singer, Peter. *One World : the ethics of globalization.* New Haven: Yale University Press, 2002.

Snyder, Jeremy C. "Needs Exploitation." *Ethical Theory and Moral Practice* 11, no. 4(2008): 389-405.

---. "Exploitation and Sweatshop Labor: Perspectives and Issues." *Business Ethics Quarterly* 20, no. 2 (2010): 187-213.

United Nations General Assembly. *The Universal Declaration of Human Rights.* December 10, 1948. http://www.un.org/en/documents/udhr/index.shtml.

Valdman, Mikhail. "Exploitation and Injustice." *Social Theory and Practice: An International and Interdisciplinary Journal of Social Philosophy* 34, no. 4 (2008): 551-572.

Wertheimer, Alan. *Exploitation*. Princeton: Princeton University Press, 1996.

---. "Exploitation." In *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, edited by Edward N. Zalta. Stanford: The Metaphysics Research Lab, Centre for the Study of Language and Information, Stanford University. 2008.

Wood, Allen W. "Exploitation." *Social Philosophy and Policy* 12, no. 2 (1995): 136-158.

Young, Iris Marion. "Responsibility and Global Labor Justice." *The Journal of Political Philosophy* 12, no. 4 (2004): 365-388.

Zwolinski, Matt. "Sweatshops, Choice, and Exploitation." *Business Ethics Quarterly* 17, no.4 (2007): 689-727.

---. "Structural Exploitation." *Social Philosophy and Policy* 29, no. 1 (forthcoming).