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STRUCTURAL EXPLOITATION*

By Matt Zwolinski

I. Introduction

One of the most common criticisms made by activists and scholars opposed to sweatshop labor is that it is wrongfully exploitative.[1] The economist's standard response to this charge is to point out that sweatshop labor provides tremendous benefits to workers—a fact demonstrated both by quantitative data on sweatshop wages and by the preferences of workers as revealed in their voluntary, indeed often eager, acceptance of sweatshop jobs.[2] Such a response does not exactly *defeat* the charge of exploitation—an exchange can be mutually beneficial and nevertheless wrongfully exploitative.[3] But it does seem to *deflate* the charge. Sweatshops, even if acting exploitatively, are at least doing something that provides substantial benefit to people in desperate need. By

* Thanks to Ellen Paul for her generous editorial suggestions, Anne Slagill for her research assistance in the preparation of this paper, and Kevin Carson, Robert MacDougall, Lori Watson, and Alan Wertheimer for helpful comments on earlier drafts.

[1] "Wrongful exploitation" will appear to some to be a redundant phrase. I explain why it is not in footnote 5. "Sweatshop" will appear to some to be a term that conveys moral opprobrium but little in the way of semantic content. Though sympathetic with the complaint, I attempt to define the term more precisely in Section IV. For a sampling of scholarly criticism of sweatshops, see Denis G. Arnold, "Exploitation and the Sweatshop Quandary," *Business Ethics Quarterly* 13, no. 2 (2003); Denis G. Arnold and Norman E. Bowie, "Sweatshops and Respect for Persons," *Business Ethics Quarterly* 13, no. 2 (2003); Robert Mayer, "Sweatshops, Exploitation, and Moral Responsibility," *Journal of Social Philosophy* 38, no. 4 (2007); Iris Marion Young, "Responsibility and Global Justice: A Social Connection Model," *Social Philosophy and Policy* 23, no. 1 (2006); C. D. Meyers, "Moral Duty, Individual Responsibility, and Sweatshop Exploitation," *Journal of Social Philosophy* 38, no. 4 (2007); Jeremy C. Snyder, "Needs Exploitation," *Ethical Theory and Moral Practice* 11, no. 4 (2008); and "Exploitation and Sweatshop Labor: Perspectives and Issues," *Business Ethics Quarterly* 20, no. 2 (2010).

[2] For evidence that sweatshop wages tends to exceed—sometimes greatly—wages in non-sweatshop jobs, see Ian Maitland, "The Great Non-Debate Over International Sweatshops," in Tom L. Beauchamp and Norman E. Bowie, ed., *Ethical Theory and Business* (Engelwood Cliffes: Pretence Hall, 1996; reprint, 2001); Paul Krugman, "In Praise of Cheap Labor," *Slate* (March 21 1997); Benjamin Powell and David Skarbek, "Sweatshops and Third World Living Standards: Are the Jobs Worth the Sweat?" *Journal of Labor Research* 27, no. 2 (2006).

[3] I shall have more to say about this point in Section II of this essay, but it is one that is compatible with and explicitly accepted by almost all contemporary theories of exploitation. See, for instance, Allen W. Wood, "Exploitation," *Social Philosophy and Policy* 12, no. 2 (1995): 148–49; Alan Wertheimer, *Exploitation* (Princeton: Princeton University Press, 1996), 14–16; Ruth Sample, *Exploitation: What it is and Why it's Wrong* (New York: Rowman and Littlefield, 2003), 4; Snyder, "Needs Exploitation," 390; Mikhail Valdman, "A Theory of Wrongful Exploitation," *Philosophers' Imprint* 9, no. 6 (2009): 1.

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contrast, the vast majority of us—including companies that do not outsource their production overseas—do nothing to provide any comparable benefit. If this is exploitation, then how bad can exploitation be?[4]

To some critics of sweatshops, however, this analysis appears to vindicate the moral status of sweatshop labor only by ignoring the very factors that make it morally abhorrent. It is a mistake, such critics contend, to focus so narrowly on the nature of the exchange between a particular sweatshop and a particular worker, and to note that the exchange is beneficial to the worker relative to the position in which she stood prior to the exchange. For it is precisely in the conditions that lie in the *background* of the exchange that the real injustice of sweatshop labor is to be found. People choose to work in sweatshops only because their situation is desperate, and the desperation of their situation is often—or, depending on one's theory of justice, almost always—a result of serious injustice in the background political and economic institutions against which their decision is made. The choice to accept sweatshop labor might be a smart move for workers, but it is the game itself, and not the particular moves that players make within it, in which the true nature of workers' exploitation is to be found.

My goal in this essay is to assess the adequacy of this response. What role, if any, should consideration of background injustices play in the correct understanding of exploitation?[5] My answer, in brief, is that it should play fairly little. Structural injustice matters, of course, but it does not typically matter for determining whether a sweatshop is acting exploitatively, and it does not typically matter in a way that grounds any kind of special moral responsibility or fault on the part of sweatshops or the MNEs (multinational enterprises) with which they contract. My argument shall proceed as follows. In Section II I will present a brief account of the concept of exploitation. In Section III I will discuss the way in which the dominant contemporary analysis of exploitation has seen it as a feature of discrete transactions, and will survey three ways in which some theorists have argued that a greater focus on structural issues is needed. I will provide an overview of the moral and empirical issues concerning sweatshop labor in Section IV. And in Section V, I assess the arguments introduced in Section III in order to determine the ways in

[4] I have argued this point at somewhat greater length in Matt Zwolinski, "Sweatshops, Choice, and Exploitation," *Business Ethics Quarterly* 17, no. 4 (2007): 704–10.

[5] I will address this question in this essay with reference to the specific issue of sweatshop labor, but it is worth noting that the question is perfectly general and relevant to a number of other issues of practical concern such as those illustrated in recent debates over organ sales and prostitution, and not-so-recent debates over the legitimacy of interest. See James Stacy Taylor, *Stakes and Kidneys: Why Markets in Human Body Parts are Morally Imperative* (New York: Ashgate, 2005); Peter de Marneffe, *Liberalism and Prostitution* (New York: Oxford University Press, 2009). On the legitimacy of interest, see the debate between the classical liberal economist Frédéric Bastiat and the socialist-anarchist Pierre-Joseph Proudhon, available online at http://praxeology.net/FB-PJP-DOI.htm.

which structural injustice does, and does not, matter for our thinking about exploitation. I conclude in Section VI with a discussion of the implications of structural injustice for the debate over sweatshop labor.

II. What Exploitation Is

In the most general sense, to wrongfully exploit someone is to take advantage of him in a way that is unfair or degrading.[6] Characteristically, exploiters interact with their victims in such a way that they derive some benefit from their victim, either by advancing their self-interest narrowly construed or by advancing their non-self-interested goals or projects.[7] The victim, in turn, might be harmed in the sense that she suffers a setback to her interests relative to how she would have fared in the absence of any interaction. But this is not necessary. For, even if the victim benefits relative to this baseline, the interaction might still be degrading or unfair to her. Imagine someone in danger of drowning who is offered rescue by the only nearby boat only if she agrees to sign away 75 percent of her future earnings. Intuitively, the rescuer's offer will strike most of us as deeply unfair. But just as clearly, the offer is one that benefits *both* parties relative to the status quo ex ante. After all, the victim almost certainly values her continued life more highly than the income she trades for it. If she did not, she presumably would not have agreed to the offer.[8]

This last point suggests another feature of wrongful exploitation—namely, that exploitative transactions can be fully voluntary, at least in the sense of being free from outright coercion, force, or deception. To the extent that exploitative interactions are mutually beneficial, even if unfair, exploited parties will often have good reason to enter into them. Indeed, the more desperate a person's situation, the greater the reason she will

[6] I define "wrongful" exploitation in this way because there is a sense of the term "exploitation" that does not connote any wrongdoing on the part of the exploiter, as when a shrewd entrepreneur exploits an opportunity, or when a football coach exploits his opponent's weakness. There is some debate in the literature regarding whether these are two distinct concepts confused by virtue of sharing the same word, or whether it is not the concept of exploitation but its wrongfulness that varies in different contexts. The former view is defended in Wertheimer, *Exploitation,* 6. The latter in Wood, "Exploitation," 137–41. For what it is worth, I find Wertheimer's view more persuasive, but think that little of practical or theoretical significance depends on the issue as a general matter, and certainly not in the debate that follows. Unless otherwise noted, all instances of the term "exploitation" in this article will refer to exploitation that is wrongful.

[7] See Wertheimer, *Exploitation:* 17–18.

[8] This claim is a bit glib. It is possible that the victim was so overwhelmed by panic that she would have agreed to *any* offer that would have gotten her out of her immediate danger, regardless of its long-term effects on her overall well-being. Or, she may be a trained lawyer, familiar with the doctrine of unconscionability, who realized that the rescuer's proposal would never be enforced in a court of law. Revealed preferences are in most cases a good indicator of an agent's interests, but nothing in my argument requires that they be perfect indicators.

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have to accept any offer that promises to improve it. To the extent that it is unfair or degrading to take advantage of another person's vulnerability, then, voluntariness and unfairness are not only logically compatible, they often go hand in hand.

So far, my discussion of exploitation has remained deliberately neutral among competing theories. To whatever extent those theories might differ in their finer details, they are all (as far as I am aware) compatible with the broad analysis I have given so far. The most contentious aspect of a theory of exploitation, however, is its specification of precisely which features of a voluntary and mutually beneficial transaction make it wrongfully exploitative. At the beginning of this section, I characterized exploitative transactions as involving taking advantage of another in an "unfair" or "degrading" way. This disjunctive signals two approaches that have been used recently by philosophers to understand the wrongfulness of exploitation—the former focuses on the fairness or unfairness of the transaction, while the latter bases its assessment on a broadly Kantian idea of respect for persons.[9] Both of these approaches, in turn, admit of specification in a broad variety of ways. Unfairness, for instance, can be understood in terms of one party's receiving a disproportionate share of the cooperative surplus, by comparing the gains and losses of each party to that which would emerge in a hypothetical competitive market, or by any number of other measures. Similarly, what constitutes degrading treatment, or a failure of respect, will depend on one's answers to a host of other moral questions, such as whether it is inherently disrespectful to purchase from another—even at a fair market price—services such as their sexual or reproductive labor.[10]

For the most part, I hope to avoid these controversies in this essay. I certainly will not be attempting to put forward any comprehensive theory of what makes exploitation wrong, nor will I assess the theories that others have put forth qua comprehensive theories. My aim in this essay is more limited. It is to explore the relationship between exploitation and background injustice. To the extent that it is possible, I aim to conduct this investigation in a way that is neutral between competing accounts of exploitation's wrongfulness. My hope is that it will be possible to shed light on this particular issue in a way that makes as few controversial assumptions as possible about the overall nature of a theory of exploitation, or the broader moral debates that underlie competing theories.

[9] The former approach is defended most notably in Wertheimer, *Exploitation.* Also in Valdman, "A Theory of Wrongful Exploitation." The latter approach has been most influentially defended in Wood, "Exploitation" and Sample, *Exploitation: What it is and Why it's Wrong.*

[10] See, for a discussion, Wertheimer, *Exploitation:* chap. 4; Sample, *Exploitation: What it is and Why it's Wrong,* 154–59.

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III. From Transactional to Structural Exploitation

Much contemporary philosophic thought has focused on discrete transactions as the locus of exploitation. For instance, Alan Wertheimer's 1996 book, *Exploitation,* which has structured and inspired much of the ensuing literature on the topic, contains chapters on unconscionable contracts, the exploitation of student athletes, commercial surrogacy, unconstitutional conditions, and sexual exploitation in psychotherapy.[11] And each of these topics is analyzed almost exclusively by focusing on some offer that *A* makes to *B,* and asking whether the terms of the offer are sufficiently unfair, or the process by which the offer was made and accepted sufficiently defective, to render the interaction wrongfully exploitative. There is little exploration of the sense in which *relationships,* rather than discrete interactions, can be exploitative. And there is little discussion of the way in which exploitation might be a feature of broader, structural features of the economy or the social context in which the interactions he analyzes take place.

Things were not always this way. Prior to Wertheimer's paradigm-shifting book, almost all philosophical discussion of exploitation focused on a Marxist or quasi-Marxist understanding of that concept. And for Marx, exploitation was more a feature of capitalism as such than it was a feature of any particular interaction between a capitalist and a worker. By putting exclusive control of the means of production in private hands, capitalism forces workers to choose between working for the owners of capital and starving to death. Capitalists, in turn, are able to take advantage of the existence of a large reserve army of the unemployed to pay workers just as much as is necessary to keep them alive to work another day, but not as much as the value of what their labor produces. In a way, then, capitalists are guilty of exploitation defined as the extraction of surplus value from the workers. But in a more important way, it is capitalism, and not particular capitalists, that deserves our blame. For the ruthless competitiveness of a capitalist system forces the hand of capitalists just as much as it does that of workers. Capitalists have no real choice but to attempt to extract as much value from workers as possible, lest their businesses be undercut by a competitor with fewer moral scruples.

Tied as it was, however, to a deeply implausible labor theory of value, to the idea that exploitation must entail forced (and not voluntary) transfers, and to a host of other problematic commitments, the Marxist account of exploitation fell almost entirely out of favor among philosophers.[12] This is not to say that philosophers rejected Marx's claim that capitalism and wage labor were inherently exploitative. But his analysis of what

[11] Wertheimer, *Exploitation.*

[12] See, for a helpful overview of Marx's theory of exploitation and its challenges, Will Kymlicka, *Contemporary Political Philosophy: An Introduction,* 2d ed. (Oxford: Oxford University Press, 2002), 177–87.

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precisely that exploitation consisted in was found to be untenable, and so sympathetic philosophers set about reconstructing the Marxist critique of capitalism in a way that would stand up to more rigorous philosophic scrutiny.[13] By and large, this reconceptualization has been fruitful. Understanding exploitation in terms of unfair or degrading use rather than in terms of the forced extraction of surplus labor allows us to apply the idea of exploitation in contexts other than the economic relationships on which Marx focused, such as relationships between intimates.[14] And it has allowed philosophers to examine the possible injustice involved in capitalist relationships without attempting to fit their inquiry into the awkward Marxist analytic framework. Still, these advances did not come without a cost. For along with those elements of the Marxist analysis that almost certainly deserved to be discarded, much contemporary analysis of exploitation has also neglected Marx's insights into the role of social and economic structures in understanding that concept. And this, many have argued, has been a tremendous mistake.

There has thus arisen a growing consensus that consideration of the ways in which discrete transactions can be exploitative must be supplemented with an analysis of the way in which exploitation is related to structural injustice. Or, as one commentator has recently put it, that we require an account of exploitation that takes into consideration issues of fairness at the "macro" level as well as at the "micro" level.[15] Beyond the agreement *that* structural issues matter, however, there has been little agreement regarding *how* it matters. At least three distinct claims seem to have emerged in the literature.

The first is that the identification of structural injustice is necessary in order to determine which particular interactions are to count as instances of exploitation. This view has been defended most recently by Ruth Sample, who claims as an advantage of her view its recognition that "exploitation is not simply a feature of a particular transaction but derives its badness from preexisting social institutions that underwrite and encourage the transaction."[16] Background injustices, especially those of a structural or institutional sort, establish inequalities between persons that can facilitate the exploitation of some by others. When we gain advantage by interacting with a victim of such injustice, she holds, "and that advantage

[13] See, for instance, G. A. Cohen, "The Labor Theory of Value and the Concept of Exploitation," *Philosophy and Public Affairs* 8, no. 4 (1979): chap. 4; Richard Arneson, "What's Wrong with Exploitation?," *Ethics* 91, no. 2 (1981); John E. Roemer, "Should Marxists Be Interested in Exploitation?" *Philosophy and Public Affairs* 14, no. 1 (1985); Jeffrey Reiman, "Exploitation, Force, and the Moral Assessment of Capitalism: Thoughts on Roemer and Cohen," *Philosophy and Public Affairs* 16, no. 1 (1987); John E. Roemer, "What is Exploitation? Reply to Jeffrey Reiman," *Philosophy and Public Affairs* 18, no. 1 (1989). Again, for a helpful overview see Kymlicka, *Contemporary Political Philosophy: An Introduction:* 177–87.

[14] See, for instance, Sample, *Exploitation: What it is and Why it's Wrong*, chap. 4.

[15] Snyder, "Exploitation and Sweatshop Labor: Perspectives and Issues," 191.

[16] Sample, *Exploitation: What it is and Why it's Wrong*, 97–98.

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is due in part to an injustice he has suffered, we have failed to give him appropriate respect."[17] On Sample's account, failures of respect of this sort are a form of exploitation. Taking advantage of structural injustice is thus, for Sample, a sufficient condition of exploitation, and hence an identification of macro level or structural injustice is necessary to correctly identify at least certain kinds of micro level or transactional exploitation.

The second claim is that the identification of structural injustice is necessary, not so much in order to classify particular interactions as exploitative or not, but in order to think correctly about blameworthiness and responsibility for actions and situations of injustice. Iris Marion Young's recent essay on global justice, though not specifically focused on the concept of exploitation, makes essentially this point. In attempting to locate responsibility for global injustice, she argues, we too often rely exclusively on a liability model of responsibility that determines faulty conduct as that which deviates from a baseline of a normal, morally acceptable, background situation. A gunman's proposal of "your money or your life," for instance, is judged coercive against what we deem to be the morally acceptable background situation in which I am entitled to both my money *and* my life. But in cases of global injustice, we cannot make this assumption. "When we judge that structural injustice exists, we mean that at least some of the normal and accepted background conditions of action are not morally acceptable. Most of us contribute to a greater or lesser degree to the production and reproduction of structural injustice precisely because we follow the accepted and expected rules and conventions of the communities and institutions in which we act."[18] Young's account of the relevance of background injustices thus differs from Sample's. Unlike Sample, Young does not believe that reflection on structural injustice should lead us to identify as coercive or exploitative actions that, in the absence of that injustice, would have been regarded as morally innocent. Young does not recommend that we reject the liability model as a way of assigning responsibility to individuals. Instead, she argues that the liability model of responsibility must be supplemented by a *different kind* of responsibility—one that is political, rather than individualistic, in nature, and that draws our attention to ways in which collective action can be mobilized to correct injustice in the future, rather than to whom should be blamed for actions that have occurred in the past.[19]

Finally, some have argued that a focus on structural injustice is necessary in order to identify political and economic institutions themselves as exploitative, and not merely as a means to identifying micro level transactions as exploitative. While it is not focused specifically on the concept

[17] Ibid., 74.
[18] Young, "Responsibility and Global Justice: A Social Connection Model," 120.
[19] Ibid., 119–25.

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of exploitation, Onora O'Neill's discussion of coercion and consent makes essentially this point. According to O'Neill, a focus on discrete transactions can lead us to lose sight of the real source of moral concern in situations of systematic injustice. Take, for instance, a capitalist's offer of low-wage labor to a worker. Such an offer appears, on its face, to be paradigmatically noncoercive, and the maxim on which the employer acts in making it seems perfectly universalizable and innocent. But, she notes, if we turn from the principles on which the employer herself acts and instead focus on "the principles which guide the institution of employment in a capitalist system," we may find that "the underlying principle of capitalist employment, whatever that may be, may perhaps use some as means or fail to treat them as persons, even where individuals' intentions fail in neither way."[20] On this line of reasoning, the critics of capitalism might be right in finding exploitation in the capitalist system, but it is the system as a whole, and not the discrete actions of individuals within it, that is wrongfully exploitative.

IV. The Sweatshop Debate

Before proceeding to evaluate these three claims, a brief detour is warranted in order to review the debate over the moral status of international sweatshops. This debate, which has received a tremendous amount of attention both from philosophers interested in the subject of exploitation and from social scientists interested in the empirical issues surrounding sweatshop wages and working conditions, can provide a useful case study through which the theoretical claims above can be better understood and assessed. This section will provide a brief background on the sweatshop debate, discuss some of the relevant empirical issues, and present the state of the moral debate regarding sweatshops and exploitation.

A. Background

There is no generally agreed-upon definition of the term "sweatshop," but its connotation is clearly pejorative. The U.S. General Accounting Office defines a sweatshop as "an employer that violates more than one federal or state law governing minimum wage and overtime, child labor, industrial homework, occupational safety and health, workers compensation, or industry regulation."[21] For the legal purpose of identifying and regulating industries within the United States, such a definition might be good enough. For the purpose of general moral analysis,

[20] Onora O'Neill, "Between Consenting Adults," in *Constructions of Reason* (New York: Cambridge University Press, 1989), 273–4.

[21] Human Resources Division U.S. General Accounting Office, "Sweatshops in the U.S.: Opinions on Their Extent and Possible Enforcement Options," (Washington, D.C., 1988).

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however, it is clearly too narrow. Presumably, the kinds of activities in which sweatshops engage are wrong, if they are wrong at all, because they are unfair or disrespectful of persons, and not merely because they are prohibited by law. To avoid this problem, then, we might define a sweatshop as a place of employment in which worker compensation or safety is compromised, child labor is employed, and/or local labor regulations are routinely disregarded in a way that is prima facie morally objectionable. This definition captures the role that the term "sweatshop" plays as a signal of moral disapprobation, while leaving open as a conceptual matter the possibility that sweatshop practices might, on closer examination, be morally justifiable.

Sweatshops, so defined, exist throughout the world, including within the United States. For the most part, however, the moral debate over sweatshops has focused exclusively on sweatshops in the developing world. These sweatshops are typically independent firms that produce goods on a contractual basis for export to MNEs. The outsourcing of production to such sweatshops began in the 1970s when the technological and legal changes associated with globalization began to accelerate, and has been especially common in the apparel industry where the demand for low-skilled labor is high and the ability to avoid the risks associated with developing and stocking products is financially advantageous.[22]

B. Empirical issues

Three kinds of empirical issues regularly come up in debates regarding the moral status of sweatshops. The first involves sweatshop wages; the second has to do with working conditions and safety in sweatshop labor; and the third has to do with the extent of labor law violations by sweatshops.

Perhaps the most widely-repeated claim about sweatshops, at least among nonacademic critics, is that the wages they pay are objectionably low. Ironically, this is also the claim that is the least supported by empirical evidence, of which there exists an abundance. A 1996 study, for instance, found that wages paid by MNEs in the developing world were generally significantly higher than wages paid by domestic firms in the same countries.[23] Because most sweatshops are not owned by MNEs, however, but are instead independent firms that work with MNEs on a contractual basis, it was initially thought that this study might not have much rele-

[22] A brief, helpful overview of the history of sweatshops and recent developments can be found in Denis Arnold and Laura Hartman, "Moral Imagination and the Future of Sweatshops," *Business and Society Review* 108, no. 4 (2003).

[23] Brian Aitken, Ann Harrison, and Robert Lipsey, "Wages and Foreign Ownership: A Comparative Study of Mexico, Venezuela, and the United States," *Journal of International Economics* 40 (1996).

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vance for the debate over sweatshops. However, a 2006 study by Benjamin Powell and David Skarbek found that sweatshop wages are higher than wages elsewhere in the economy regardless of whether they are paid directly by MNEs or by domestic subcontractors—three to seven times as high, for example, in the Dominican Republic, Haiti, Honduras, and Nicaragua.[24] This is compatible, of course, with the (obviously true) claim that sweatshop wages are significantly lower than wages paid for comparable work in the United States. And it is also compatible with the claim that sweatshop wages might still be insufficient to allow workers to achieve a certain standard of living. This means that sweatshops might still be failing to meet Denis Arnold's often-repeated standard that they "ensure that employees do not live in conditions of overall poverty by providing adequate wages for a 48 hour work week to satisfy both basic food needs and basic non-food needs."[25] But it does demonstrate that sweatshop wages, even if they are not high enough to lift workers entirely out of poverty, are generally significantly higher than wages available to workers elsewhere in their economy.

Worker safety is another main complaint of anti-sweatshop activists. And while comprehensive data on this topic is more difficult to collect, the literature is replete with shocking anecdotes.[26] Workers are pressured by employers to remain on the job in spite of serious and pressing injury, are exposed to dangerous chemicals and airborne pollutants, and often work on poorly maintained machinery with inadequate training or safety measures.[27] In some ways, concern over safe working conditions is distinct from concern over wages. The steps needed to correct issues of workplace safety will be different—perhaps easier, perhaps more difficult—than those needed to increase wages. And morally, one might hold that unsafe working conditions violate workers' rights in a way that low wages do not. In many ways, however, the issues are inexorably linked. Both increases in wages and improvements in working conditions, for

[24] Powell and Skarbek, "Sweatshops and Third World Living Standards: Are the Jobs Worth the Sweat?" The "sweatshops" examined in this study were those that were identified as sweatshops by anti-sweatshop activists quoted in the popular press. See p. 267.

[25] Arnold and Bowie, "Sweatshops and Respect for Persons," 234. See also Arnold and Hartman, "Moral Imagination and the Future of Sweatshops," 453, n. 1; and "Beyond Sweatshops: Positive Deviancy and Global Labour Practices," *Business Ethics: A European Review* 14, no. 3 (2005): 207; and "Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops," *Human Rights Quarterly* 28, no. 3 (2006): 677, n. 1; Denis Arnold, "Working Conditions: Safety and Sweatshops," in George Brenkert and Tom Beauchamp, ed., *The Oxford Handbook of Business Ethics* (New York: Oxford University Press, 2010), 645.

[26] Though, to be fair, the anecdotes regarding the likely alternatives to sweatshop labor for workers in the developing world are no less shocking. See, for instance, Nicholas' Kristof's account of children scavenging in the garbage dumps of Phnom Penh in Nicholas D. Kristof, "Where Sweatshops are a Dream," *New York Times* (January 14, 2009).

[27] See, for discussion, the essays in Pamela Varley, *The Sweatshop Quandary: Corporate Responsibility on the Global Frontier* (Washington, DC: Investor Responsibility Research Center, 1998). A discussion of some of the more shocking accounts can be found in Arnold and Bowie, "Sweatshops and Respect for Persons," 228–33.

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instance, cost employers money and resources.[28] From the perspective of the employer, both kinds of cost can be considered as part of workers' overall package of compensation. And while profit-maximizing employers are indifferent to the mix of goods that goes into an employee's compensation package, they are extremely sensitive to the overall cost of that package. Increases in worker safety, therefore, will very often come at the expense of other forms of compensation.[29] Moreover, there is some reason to believe that workers themselves would be unwilling to make this tradeoff. A 2010 survey of Guatemalan sweatshop workers found that few of them are willing to sacrifice any wages in order to receive more health and safety benefits.[30] Employees were asked about ten improvements in working conditions and if they would be willing to accept lower wages to improve any of these conditions. On eight of the questions more than 90 percent of the workers answered "No." Paid vacation was the most popular improvement but even here more than 81 percent of the workers answered that they would not sacrifice any amount of wages for it. Nearly 65 percent of workers surveyed answered that they were unwilling to sacrifice any wages for each of the ten improvements.

A final empirical issue relevant to the debate over sweatshops and exploitation involves sweatshops' violation of labor laws. According to Denis Arnold and Norman Bowie, such violations are widespread and often perpetrated with the implicit or explicit cooperation of state institutions.[31] Employers force workers to work overtime, suppress workers' right to unionize, engage in the illegal pregnancy screening of female potential employees, and fail to pay workers wages on time and in the correct amount. Internal investigations by the clothing company Gap revealed that "between 25 and 50 percent of its contract factories lacked full compliance with local labor laws in North Asia, Southeast Asia, the Indian subcontinent, sub-Saharan Africa, Mexico, Central America, and the Caribbean, and South America. In China, more than 50 percent of its contract factories lacked full compliance

[28] The argument that follows is made at greater length by Benjamin Powell in Benjamin Powell, "In Reply to Sweatshop Sophistries," *Human Rights Quarterly* 28, no. 4 (2006).

[29] Like all economic generalizations, this is a rule of thumb and not a necessary law. Denis Arnold and Laura Hartman have often stressed that the exercise of "moral imagination" by managers is capable of yielding solutions that improve working conditions without raising costs to employers, and document a number of cases where such improvements have been made. See Denis Arnold, Laura Hartman, and Richard E. Wokutch, *Rising Above Sweatshops: Innovative Approaches to Global Labor Challenges* (Westport, Connecticut: Praeger, 2003); Arnold and Hartman, "Beyond Sweatshops: Positive Deviancy and Global Labour Practices."; and "Moral Imagination and the Future of Sweatshops."

[30] Ben Powell and J. Clark, "Guatemala Sweatshops: Employee Evidence on Working Conditions," Department of Economics (Boston, MA: Suffolk University, 2010). The survey was conducted on employees of Nicotex and Sam Bridge, chosen because those firms were identified as sweatshops and protested by the National Labor Committee.

[31] Arnold and Bowie, "Sweatshops and Respect for Persons," 227–28. See also Arnold and Hartman, "Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops," 686–90.

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with local labor laws."[32] And this was the situation in a company that was making an active effort to ensure compliance.

There are probably a variety of relatively benign reasons for such noncompliance including ignorance of the law, lack of clarity in the law, and ignorance of implementation mechanisms.[33] But a significant part of the reason for both the lack of enforcement on the part of the state and the lack of compliance on the part of the sweatshop is almost certainly financial. Sweatshops do not want to comply with laws that raise their costs and decrease profitability. Governments, in turn, face cost-pressures of two different sorts. First, there is the expense associated with enforcement itself. Given the strained budgets within which many developing countries operate, this can be a significant constraint. Second, there is the possible cost associated with lost tax revenue should overly-vigorous enforcement lead the sweatshop to shut down, or its affiliated MNE to search elsewhere for a less burdensome regulatory environment. Sweatshops' willingness to violate labor law in the face of weak enforcement is thus another possible source of worker exploitation.[34]

C. Moral issues

How, then, do these empirical issues bear on the question of the moral status of sweatshops, especially the question of whether sweatshops are guilty of exploiting their workers? On an account of exploitation that is focused on transactional fairness alone, the case against sweatshops appears thin. Alan Wertheimer's account, arguably the most influential fairness-based account of exploitation, is founded on the idea that for at least a broad range of cases, the fairness of a transaction between *A* and *B* can be analyzed in terms of the agreement that would be reached between them in a hypothetical competitive market.[35] A motorist who comes across a driver stranded in a snowstorm and takes advantage of his monopoly

[32] Arnold, "Working Conditions: Safety and Sweatshops," 638.

[33] Arnold and Hartman, "Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops," 688–89.

[34] Little has been written in the extant literature on the moral issues surrounding labor law violations. I address the issue in a preliminary way in a paper written with Benjamin Powell. See Matt Zwolinski and Ben Powell, "The Ethical and Economic Case for Sweatshop Labor: A Critical Assessment," (San Diego: University of San Diego, 2011).

[35] Wertheimer, *Exploitation:* 230. I should stress, however, that Wertheimer puts forward the model of a hypothetical competitive market only as a *model* of fairness and only as one that is plausible in "a certain range of cases." There has been an unfortunate tendency in the literature, I think, to single out this idea as the core of a general theory of fairness and of exploitation. Construed as such, as numerous commentators have pointed out, it is barely plausible. But Wertheimer's book, as I read it, does not attempt to set out any *general* theory of the unfairness that lies at the heart of exploitation. Commentators who focus too narrowly on the model of competitive markets are thus likely to miss the rich and context-sensitive analysis that pervades the remainder of the book, where Wertheimer reaches penetrating insights about fairness without attempting to squeeze them into an overarching theory.

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position by charging the driver an exorbitant sum to be rescued acts exploitatively on this account, because the price he charges is higher than the price that would be charged were multiple rescuers to compete for the driver's "business."[36] But there is little reason to suppose that sweatshops and the multinational companies are operating in a noncompetitive environment.[37] The compensation sweatshop workers receive for their labor is generally no higher than the amount they contribute to the firm (their marginal revenue product), and no lower than the value they place on their next best alternative employment.[38] Their compensation is low because the values of these upper and lower constraints are low, and not because of any failure of competitiveness in the labor market. This is why even Denis Arnold, himself one of the most persistent philosophical critics of sweatshops, thinks that on a transactional account of exploitation of the sort Wertheimer defends, the claim that sweatshop workers are exploited is implausible.[39]

Arnold seems to believe that a Kantian account of transactional exploitation of the sort defended by Allen Wood will be more successful in substantiating the charge of sweatshop exploitation. But it is not clear why this should be so. Demonstrating that the compensation sweatshop workers receive is disrespectful is hardly a simple matter, especially if one has already conceded that the compensation is not unfair. Arnold insists that any wage below a "living wage" is inherently disrespectful and fails to treat workers as beings with dignity and autonomy who are ends in themselves.[40] But it is not at all clear how he would respond to the claim, raised for instance by Sollars and Englander, that the requirement to treat others as ends in themselves generates a duty of beneficence that is imperfect in form, and cannot ground a perfect obligation on the part of employers to pay a specified wage rate.[41]

[36] Ibid., 4–5, 216–23.

[37] Denis Arnold has asserted that sweatshop employers often have monopsony power over workers, but offers no evidence in support of his claim. See Arnold, "Working Conditions: Safety and Sweatshops," 651, n. 63. It is, of course, true that sweatshops do not operate in an environment of *perfect* competition, but although he is somewhat imprecise with his terminology, this could hardly have been what Wertheimer had in mind in setting forth a hypothetical competitive market as a model of fairness. After all, in perfectly competitive markets prices are equal to the marginal cost of production and thus profits are zero. But it would be grossly implausible to say that profit *as such* constitutes sufficient evidence of exploitation. For a more extended discussion of the irrelevance of models of perfect competition to charges of exploitation, see Matt Zwolinski, "Price Gouging and Market Failure," in Gerald Gaus, Julian Lamont, and Christi Favor, ed., *Essays on Philosophy, Politics & Economics: Integration and Common Research Projects* (Stanford: Stanford University Press, 2010).

[38] Powell, "In Reply to Sweatshop Sophistries," 1032–33.

[39] See Arnold, "Exploitation and the Sweatshop Quandry," 252–53; Arnold, "Working Conditions: Safety and Sweatshops," 643.

[40] Arnold and Bowie, "Sweatshops and Respect for Persons," 234.

[41] See Gordon G. Sollars and Fred Englander, "Sweatshops: Kant and Consequences," *Business Ethics Quarterly* 17, no. 1 (2007): 118–20. Actually, Denis Arnold and Norman Bowie did write an article in response to Sollars and Englander, but had nothing more to say about

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Jeremy Snyder puts forward a more promising argument, holding that while Kantian ethics grounds only an imperfect duty of beneficence in the abstract, this duty can come to be "specified" by the particular relationships we enter into with others, thereby taking on a "perfect, strict form."[42] In the abstract, we must use our own practical reason to determine who to help, on what occasions, with what kind of and how much assistance, on what conditions, and so on. But when we enter into "relationships of use" with certain, particular others, our wide and imperfect duties become more narrowly specified. In this way "employers do not simply have an imperfect duty to help some of their employees to achieve a decent minimum some of the time; rather, employers are required to cede as much of their benefit from the interaction to their employees as is reasonably possible toward the end of the employees achieving a decent minimum standard of living."[43]

Snyder's account thus has the potential to do what Arnold and Bowie's account could not—ground a perfect obligation on the part of sweatshops to pay a living wage.[44] But Snyder's argument faces difficulties of its own. The most significant of these, I think, is not unique to Snyder's account but is characteristic of almost all accounts that condemn transactions that are mutually beneficial but in some way unfair.[45] There is a certain incoherence, I think, between our intuitions regarding exploitation and our intuitions regarding duties of aid. This incoherence manifests itself when we condemn sweatshops and the MNEs with which they contract for exploiting workers in the developing world, but do not condemn businesses that refrain from outsourcing production at all. If the empirical data we have surveyed about sweatshop wages are correct, sweatshops are providing significant benefits to their workers, while firms that do not outsource are (as far as we know) doing *nothing* to benefit them. How, 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 better-

the present question than that they felt that Sollars and Englander had ignored some of the claims they had made in defense of their position and had hence failed to engage their argument "in a substantive manner" Denis G. Arnold and Norman E. Bowie, "Respect for Workers in Global Supply Chains: Advancing the Debate Over Sweatshops," *Business Ethics Quarterly* 17, no. 1 (2007): 136–37. Having read the passages to which Arnold and Bowie refer in their response, however, it is not at all clear to me what substantive argument or claim they believe Sollars and Englander have ignored.

[42] Snyder, "Needs Exploitation," 390.

[43] Ibid., 396.

[44] It should be noted, however, that Snyder himself qualifies this obligation in a number of ways, most notably by allowing that competitive pressures may make it impossible for firms to pay as much as they should under more ideal conditions. See ibid., 401.

[45] I have discussed this problem before in Zwolinski, "Sweatshops, Choice, and Exploitation," 707–10; and, "The Ethics of Price Gouging," *Business Ethics Quarterly* 18, no. 3 (2008): 356–60, and in greater detail in "Exploitation and Neglect," (San Diego: University of San Diego).

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ment)?[46] Consistency seems to require that we revise our moral beliefs: either by holding that neglect is worse than we previously thought, or by holding that exploitation is less bad than we previously thought. Either way of resolving the inconsistency, however, leads us to abandon the belief that sweatshops who exploit their workers are doing anything *especially* wrong.

Snyder is aware of this objection to his position, and has responded to it by arguing that the idea that special relationships create special moral obligations is one that is supported by both moral theory and intuition.[47] Persons can choose not to enter into relationships with individuals who stand in positions of vulnerability but, Snyder contends, "should they choose to enter these relationships, this choice helps to specify a general duty of beneficence" in a way that prohibits exploitatively low wages.[48] But this is still puzzling. For, suppose we agreed with Snyder that a company's entering into an employment relationship with a needy individual was sufficient to generate a strict, perfect duty of beneficence on the part of the company toward that employee.[49] Compliance with such a duty, let us stipulate, would require the company to provide a benefit to its employee of amount Y. But let us suppose that the employer is only willing to provide its employees with a benefit of amount X, where $X < Y$. Would it be permissible, on Snyder's account, for the employer to make its offer of employment contingent upon its workers' willingness to waive their right to benefits of amount Y? Prior to entering into a relationship with employees, the employer has only an imperfect duty of beneficence. No prospective employee has any valid moral claim upon its assistance. Thus, the company would not be acting wrongly if it refused to hire or assist the prospective employee at all. But if it is permissible for the employer not to hire prospective workers, and if hiring prospective workers at benefit level X is better for both the employer and the worker than not hiring the prospective workers at all, then how could doing so be wrong? If employees' claim to benefits at level Y is one that they may waive when it is in their interest to do so, then employers are not necessarily acting wrongly in providing their employees with benefits at level X. If, on the other hand, employees' claim to benefits at level Y is not waiv-

[46] The original statement of this concern comes from Alan Wertheimer in Wertheimer, *Exploitation:* 289–93.

[47] See Jeremy C. Snyder, "Efficiency, Equality, and Price Gouging: A Response to Zwolinski," *Business Ethics Quarterly* 19, no. 2 (2009): 305–06. This piece was published in response to my own Matt Zwolinski, "Price Gouging, Non-Worseness, and Distributive Justice," *Business Ethics Quarterly* 19, no. 2 (2009).

[48] Snyder, "Efficiency, Equality, and Price Gouging: A Response to Zwolinski," 306. Snyder is actually discussing exploitation as it pertains to price gouging in the quoted material, but I believe, given what he has written about the topic elsewhere, that he would support the extension of his claim to sweatshop labor as well.

[49] Actually, Snyder does not quite hold that it is "sufficient." Several other conditions must be met for the employer to have this duty, but as they do not affect the present argument these need not concern us here.

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able, then Snyder's account is committed to holding that employers are forbidden from entering into agreements with employees to hire them at wage level X, but permitted to refrain from hiring them at all, even if hiring them at level X is better for both workers and employers than not hiring them at all, and even if both workers and employers would prefer to enter into an employment relationship at wage level X than to not enter into any wage relationship at all. This is deeply counterintuitive.

To be clear, I am not making the strong claim that any agreement that is voluntary and mutually beneficial is thereby nonexploitative and morally permissible. I agree, for instance, with Chris Meyers that someone who offers to rescue another person from the desert only if the other consents to an act of sodomy, or to handing over their entire net worth, is acting in a way that is repugnant, exploitative, and morally wrong.[50] My claim is that the kinds of considerations we have surveyed in the section tend to undermine the claim that MNEs and the sweatshops with which they contract are treating workers unfairly and hence exploitatively. These considerations include the empirical facts about the benefits sweatshops provide to their workers, as well as the fact that MNEs are under no moral or legal obligation to provide any benefits at all to workers in the developing world. It is also worth bearing in mind that the only motivation MNEs have for providing any benefit is the increased profit they hope to gain from the exchange, and that their *capacity* to provide benefit to workers is a function of this motivation. In this way, MNEs are less like the kind of adventitious rescuer described by Meyers and more like a "professional salvor whose rescue capacity results from a planned investment."[51] Admiralty law has long recognized that the awards that may legitimately be claimed by the latter are, while not unlimited, nevertheless significantly higher than those to which the former has good claim.

V. Does Structural Injustice Matter?

Still, even if sweatshops cannot be said to be acting exploitatively on a transactional account of exploitation, perhaps a structural account could do better? After all, most sweatshops operate within a social context that is plagued by longstanding, deep, and massively destructive injustice. For example:

- **Suppression of Unions**—Governments in the countries in which sweatshops operate routinely suppress workers' ability to organize and bargain collectively. The suppression is sometimes vio-

[50] Chris Meyers, "Wrongful Beneficence: Exploitation and Third World Sweatshops," *Journal of Social Philosophy* 35, no. 3 (2004): 324–25.

[51] Melvin Eisenberg, "The Principle of Unconscionability," in *Law and Economics Workshop* (Berkeley, CA: Berkeley Law School, 2009), 15–16.

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lent, and is sometimes executed at the request of MNEs and/or the sweatshops with which they contract.[52]

- **Seizure of Land and Natural Resources**—Land in developing countries, like land elsewhere in the world, generally did not come into the hands of its current owners by a process of peaceful Lockean labor mixing and voluntary exchange. Violence and theft are as much responsible for current holdings as investment and labor. And Western governments' deference to rulers' alleged property rights in trade and lending reinforces this injustice.[53]
- **Protectionism**—Powerful Western governments, through their influence in international organizations such as the World Trade Organization, compel developing countries to open their markets while at the same time protecting their own markets with "tariffs, quotas, anti-dumping duties, export credits, and huge subsidies to domestic producers," thus crippling developing economies' ability to compete in those areas where they may have a genuine comparative advantage.[54]

This list could be extended indefinitely to include not just Western countries' massive imposition of externalities such as CO2 on the developing world but, depending on one's theory of justice, their ruthless enforcement of intellectual property rights or perhaps even the system of global capitalism itself. MNEs and the sweatshops with which they contract might provide workers with significant benefits, and the jobs they offer might be better than any of the other options available to workers, but if a large part of the *reason* that workers' options are so limited is the corporatist-capitalist structure of which MNEs are a significant part, then it is not at all obvious that the benefit they provide should be sufficient to get sweatshops off the moral hook.[55]

Earlier, I discussed three ways in which considerations of structural injustice might be relevant to a correct understanding of exploitation.[56] In the remainder of this section, I will critically assess each of those suggestions with specific reference to the moral debate over sweatshop exploi-

[52] See, for an extended discussion, Gary Chartier, "Sweatshops, Labor Rights, and Comparative Advantage," *Oregon Review of International Law* 10, no. 1 (2008).

[53] Thomas W. Pogge, "World Poverty and Human Rights," *Ethics and International Affairs* 19, no. 1 (2005): 7.

[54] Ibid., 6.

[55] Careful consideration of this point is necessary in order to avoid the fallacy that Kevin Carson has described as "vulgar libertarianism," in which one appeals to the virtues of free markets in order to justify some aspect of the existing social order, thereby failing to recognize or appreciate the extent to which the existing social order is not an ideally free market but a corporatist system in which the powers of government are all-too-frequently used to enhance the power of land and business interests at the expense of the poor and working classes. See, for a discussion, Kevin A. Carson, "Studies in Mutualist Political Economy," (2007), http://www.mutualist.org/id47.html., chap. 4.

[56] See above, Section III.

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tation. I will consider, first, whether identifying structural injustice might be necessary or sufficient in order to determine which particular interactions are to count as instances of exploitation (I argue that it is not); second, whether identifying structural injustice is necessary to think correctly about blameworthiness and responsibility for actions and situations of injustice (I argue that it is, but not in a way that is helpful for thinking about the special obligations of MNEs and sweatshops); and finally, whether identifying structural injustice is necessary in order to identify political and economic institutions themselves as exploitative, and not merely as a means to identifying microlevel transactions as exploitative (I argue that it is).

A. Structural injustice and transactional exploitation

Injustice at the structural level is not necessary for particular transactions to be exploitative. Nor is it sufficient. In this, I agree with Alan Wertheimer and Mikhail Vladman, and disagree with Ruth Sample and John Roemer.[57]

Injustice at the structural level is not necessary because, as Wertheimer notes, "even in a reasonably just society, people will find themselves in situations in which they can strike an agreement that will produce mutual gain, and some of these cases will give rise to allegations of exploitation."[58] Indeed, the canonical examples of exploitation of the sort offered by Meyers involve no obvious background or structural injustice.[59] Offering to rescue an individual who became stranded in the desert because of her own poor planning in exchange for her entire net worth is wrongfully exploitative because of the unfairness of the terms of the transaction, not because of the history or institutional background to that transaction. Thus it is not the case, as Roemer claims, that "we view exploitation as a bad thing only when it is the consequence of an unjust unequal distribution of the means of production."[60]

Nor is it the case that, as Sample claims, "if we gain advantage from an interaction with another, and that advantage is due in part to an *injustice* he has suffered, we have failed to give him appropriate respect" and hence exploited him.[61] Someone who takes pleasure in helping victims of injustice, and performs helpful acts solely in order to receive this pleasure, probably does not act wrongly at all and certainly does not wrong

[57] See Wertheimer, *Exploitation:* 9–10; Mikhail Valdman, "Exploitation and Injustice," *Social Theory and Practice: An International and Interdisciplinary Journal of Social Philosophy* 34, no. 4 (2008); Sample, *Exploitation: What it is and Why it's Wrong,* 74; John E. Roemer, *Free to Lose* (Cambridge: Harvard University Press, 1988), 130.

[58] Wertheimer, *Exploitation,* 9.

[59] Meyers, "Wrongful Beneficence: Exploitation and Third World Sweatshops," 324–25.

[60] Roemer, *Free to Lose,* 130.

[61] Sample, *Exploitation: What it is and Why it's Wrong,* 74.

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the person whom she helps.[62] Likewise, someone who performs a useful service at a fair price for victims of injustice does not wrongfully exploit them. A contractor who rebuilds a home that was destroyed by arson, but charges only the normal market price, is not taking unfair advantage of the owner. Perhaps a more morally virtuous contractor would rebuild the home at a discount, or for free. But a failure to exhibit supererogatory kindness does not render one's actions exploitative, and at any rate our judgment that it would be nice to give a break to someone whose home was destroyed seems independent of the *cause* of the destruction—cutting a break to someone whose home was destroyed by lightning-induced wildfire seems no more and no less virtuous. The identification of structural or background injustice, then, is not sufficient for identifying particular transactions as exploitative.

That background injustices are neither necessary nor sufficient to the identification of particular transactions as wrongfully exploitative should not be too surprising. To say this, after all, is not to say that background injustices do not matter. It is simply to say that not everything that matters, morally speaking, falls under the category of exploitation. We need not view every issue of moral concern as a nail to be hammered with the concept of exploitation. Political philosophy has other tools.

B. Structural injustice and moral responsibility

If considerations of structural injustice are not necessary or sufficient in order to determine the status of a particular transaction as wrongfully exploitative, perhaps they are nevertheless important in some way for thinking about the moral responsibility and/or blameworthiness of agents. For Iris Marion Young, as we have seen, sweatshops are a prime example of structural injustice. Structural injustice "exists when social processes put large categories of persons under a systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time as these processes enable others to dominate or have a wide range of opportunities for developing and exercising their capacities."[63] Individuals who contribute to these unjust social processes bear a kind of moral responsibility for them and for the results they produce,[64] though Young notes that it is a different *kind* of responsibility than that with which moral and legal philosophers are most familiar. It is a form of *political* responsibility, which, among other things, is a kind of responsibility that is forward-looking and discharged through collective action, rather than backward-looking and individualistic.[65] For Jeremy Snyder,

[62] This point is argued at greater length by Vladman in Valdman, "Exploitation and Injustice," 558–65.
[63] Young, "Responsibility and global justice: A social connection model," 114.
[64] Ibid., 119.
[65] Ibid., 121–23.

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this model of responsibility has direct implications for the moral responsibility of sweatshop managers and MNEs, since "even if unjust structures limit the degree of choice that employers have over the wage levels that they may offer while remaining competitive, they may yet have a [political responsibility] to change these structures. If so, the employer's [political responsibility] must be discharged if the employer is to avoid exploiting her workers."[66]

But is it fair to hold MNEs and sweatshops responsible for the unjust background conditions in which they operate?[67] Certainly in some cases it is. Consider those cases in which the MNE is causally responsible for the unjust background conditions in a fairly direct way. Some such cases will involve a form of collusion between the MNE and the host country government. The MNE agrees to contract with firms in the government's jurisdiction and thereby provide the government with tax revenues and other economic benefits, but only in exchange for the government's promise to forcibly suppress labor unions. In cases like this, where the MNE is part of the cause of the background injustice, it is certainly appropriate to say that they hold partial moral responsibility for it.[68] Other cases will be more difficult to analyze. What are we to say about a case in which the structural injustice is perpetrated by the government only because it anticipates that some MNE will show up to take advantage of it? The government suppresses workers' unions, for instance, just because it believes that in doing so it will create a more attractive environment for MNEs, which will then be more likely to do business in the government's jurisdiction and generate various economic benefits of which the government can take advantage. These cases are like those in which a pimp coerces a woman into serving as a prostitute in anticipation of the revenue that will be generated by the customers who will take advantage of her services.[69] To what extent does the person who hires the prostitute bear moral responsibility for the injustice of her situation? To what extent is he blameworthy?

The analysis of such cases is difficult.[70] They are not, however, the kind of cases that Young's account is designed to deal with.[71] For the entire

[66] Snyder, "Exploitation and Sweatshop Labor: Perspectives and Issues," 195.

[67] A more general form of the question I ask here is posed (and answered in the negative) by Wertheimer in Wertheimer, *Exploitation,* 234.

[68] Whether they are blameworthy is a more complicated matter. It is, after all, possible that a deal struck between an MNE and the host country government will produce a situation that is on the whole beneficial to workers. Such cases would then seem to involve a conflict between respect for workers' rights and concern for their welfare, in addition to troublesome issues of distributive justice.

[69] I owe this analogy to Alan Wertheimer, in personal conversation.

[70] On the one hand, the prostitute would not be subject to coercion if the pimp did not expect people to hire her. Therefore, if everybody refused to hire prostitutes, she would probably not be coerced. Someone who does hire her thus acts as a defector in a kind of collective action problem, and is partially responsible for her plight. On the other hand, the unjust coercion has already taken place. And given that it has taken place, it might very well be the case that the prostitute really does want people to hire her—if they do not, we might

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point of Young's account was to provide a supplement to the standard liability model of responsibility, one that is applicable even to agents who are not "guilty or at fault for having caused a harm without valid excuses."[72] It is an account designed to apply to those who are "connected to but removed from" the harms produced by structural injustice, but not to establish the *blameworthiness* of such agents.[73] Rather, its point is to show that such agents have a forward-looking political responsibility to take part in remedying injustice.

But it is not clear that Young's account can accomplish even this much. Or, rather, it is not clear that it can show that sweatshops or MNEs have any *special* responsibility to remedy injustice, merely by virtue of their "social connection." Young argues, seemingly innocently, that special responsibilities to correct for injustice arise from social connection. And, rather less innocently, that simply pointing out that the persons suffering from injustice are human is "not enough" to ground the claim that we have obligations of justice toward them.[74] But the special status of social connections is never defended in an entirely clear way. Young states that the kind of social connection that generates political responsibility is "participation in the diverse institutional processes that produce structural injustice."[75] And this might make sense if we thought that agents who participated in such structures were wrongly benefiting from them at the expense of victims of injustice. But this cannot be what Young is saying. For, if what grounds responsibility is not participation in unjust structures as such but *wrongful* participation in unjust structures, then Young's account would seem to collapse into a standard liability model of responsibility. One might think instead that participation matters because it provides one with opportunities to fight the injustice. But there is no reason to think that all who participate in unjust structures will have such opportunities, nor that all nonparticipants will lack them.[76] It is hard to see, then, how "social connection" could be specified in any way that would nonarbitrarily assign any kind of special responsibility to sweatshops or MNEs for remedying structural injustice.[77] Those who own or operate

suppose, her pimp will make things even worse for her. Failing to hire her is therefore likely only to worsen her situation in the short term, and possibly the long term as well.

[71] The discussion which follows benefited tremendously from discussion with Daniel Silvermint, who discusses them in Daniel Silvermint, "Oppression and Victim Agency," Philosophy (Tucson: University of Arizona, 2011).

[72] Young, "Responsibility and Global Justice: A Social Connection Model," 119.

[73] Ibid., 118.

[74] Ibid., 105.

[75] Ibid., 119.

[76] Menial clerks in the office of a MNE might be participating in an unjust structure without the power to change it. Wealthy or politically powerful individuals in developed countries might be able to change unjust structures elsewhere despite not being participants in them.

[77] Again for a helpful discussion of these issues, see Silvermint, "Oppression and Victim Agency."

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sweatshops or MNEs might have the power or opportunity to work to remedy certain kinds of structural injustice, but if this power and opportunity is neither universally nor uniquely present among them, it will not generate any universal or unique obligation on their part.

C. Structural injustice and structural exploitation

Perhaps we have been looking in the wrong place. Instead of taking structural injustice to be evidence that particular interactions within the context of those structures are exploitative, or that parties to those transactions are morally responsible or blameworthy for the results of the injustice, perhaps structural injustice should lead us to conclude that the legal and economic institutions that gave rise to them are themselves exploitive.

This, I think, is the most promising approach for linking structural injustice to a theory of exploitation. And its absence from the contemporary philosophical literature on exploitation should be nothing sort of shocking. The modern centralized state bears significant responsibility in structuring almost every interaction that persons enter into, commercial, professional, legal, social, and otherwise. And yet, when contemporary theorists discuss exploitation, it is almost always exploitation that occurs *within* that structure, between various participants who are subject to the state's rules. To the extent that the state itself is brought up, it is as a kind of *deux ex machina* the powers of which can be brought to bear to correct exploitation in the market, the family, and elsewhere. The notion that the state itself can be a significant source and tool of exploitation is almost never mentioned.[78]

This is not the place to develop a full theory of state exploitation. But we might perhaps make some preliminary points toward the end of developing such a theory. We can note, first, that any theory of state exploitation will need to develop or rely on some theory of collective actions and/or intentions, and to be careful to distinguish those actions that are properly attributable to the collective entity we call "the state" and those that ought to be ascribed to specific individuals. Onora O'Neill's discussion of state coercion illustrates the difficulties inherent in such an approach. For determining whether capitalism is coercive, she notes,

[78] This was not always the case. The idea of state exploitation has a rich history among both classical liberal and socialist thinkers that contemporary philosophy appears to have largely lost sight of. Helpful overviews, however, can be found in Leonard Liggio, "Charles Dunoyer and French Classical Liberalism," *Journal of Libertarian Studies* 1, no. 3 (1977); Ralph Raico, "Classical Liberal Exploitation Theory: A Comment on Professor Liggio's Paper," *Journal of Libertarian Studies* 1, no. 3 (1977); Roderick Long, "Toward a Libertarian Theory of Class," *Social Philosophy and Policy* 15, no. 2 (1998); Ralph Raico, "Liberalism, Marxism, and the State," *Cato Journal* 11, no. 3 (1992); and "Classical Liberal Roots of the Marxist Doctrine of Classes," in Ralph Raico, ed., *Classical Liberalism and the Austrian School* (Auburn, Alabama: Ludwig von Mises Institute, 2010).

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requires determining "the principles that guide the institution of employment in a capitalist system."[79] But whatever might those principles be? How are we to ascribe maxims to institutions which may have evolved as "the product of human action but not of human design"? Similar problems will no doubt plague a theory of state exploitation.

Second, it will be important to distinguish between some of the different forms that state exploitation can take. At least two distinct types are readily apparent. In one, the powers of the state can be used to unfairly benefit the state itself, or the persons who constitute it in their capacity as agents of the state.[80] Suppose, for instance, that an agent of the state, acting in her official capacity, threatened unfairly to block a company's access to a particular market unless that company paid a special tax, the proceeds of which would be used to fund the activities of the state. To the extent that such a demand is illegitimate, we could say that it constitutes a kind of state exploitation—an unfair use of state power to take advantage of the (relatively) vulnerable business. A second form state exploitation might take, however, involves the use of state power to benefit persons outside the institution of the state, or agents of the state in their capacity as private persons. This phenomenon has been exhaustively catalogued and analyzed by public choice economists under the label of "rent seeking," but to the extent that we find the activity unfair or otherwise morally illegitimate, it could very well be described as a kind of wrongful exploitation.[81] A MNE that makes its entrance into a developing country (and payment of taxes to

[79] O'Neill, "Between Consenting Adults," 123.

[80] Even Marx recognized the potential for this form of exploitation. Witness his discussion of Napoleon's 1851 *coup* in his pamphlet, *The Eighteenth Brumaire of Louis Bonaparte:* "This executive power, with its enormous bureaucracy and military organization, with its ingenious state machinery, embracing wide strata, with a host of officials numbering half a million, besides an army of another half million, this appalling parasitic body, which enmeshes the body of French society like a net and chokes all its pores, sprang up in the days of the absolute monarchy. The Legitimist monarchy and the July monarchy added nothing but a greater division of labor, growing in the same measure—as the division of labor within bourgeois society created new groups of interests, and therefore new material for slate administration. Every *common* interest was straightway severed from society, counterposed to it as a higher *general* interest, snatched from the activity of society's members themselves and made an object of government activity, from a bridge, a schoolhouse and the communal property of a village community to the railways, the national wealth and the national university of France. . . . All revolutions perfected this machine instead of smashing it. The parties that contended in turn for domination regarded the possession of this huge state edifice as the principal spoils of the victor . . . under the second Bonaparte [Napoleon III] . . . the state [seems] to have made itself completely independent. As against civil society, the state machine has consolidated its position . . . thoroughly." Cited in Raico, "Classical Liberal Exploitation Theory: A Comment on Professor Liggio's Paper," 179–80.

[81] The *locus classicus* of this analysis is James Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1962). More recent explorations can be found in James Buchanan, R. D. Tollison, and Gordon Tullock, *Toward a Theory of the Rent-Seeking Society* (Texas A & M University, College Station, 1980); Gordon Tullock, R. D. Tollison, and C. K. Rowley, "The Political Economy of Rent Seeking," (Boston: Kluwer, 1988).

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that country's government) contingent upon the state's illegitimate restriction of potential competition can be said to be using the state as a tool of exploitation in this sense. Perhaps we might also distinguish between two more specific forms this scenario might take: one in which the state agent is neither morally nor legally authorized to restrict competition, and one in which she is legally but not morally authorized to restrict it. In the first, the agent of the state is acting as a kind of rogue—abusing the powers of her office in order to benefit privately. In this case, both the MNE and the state agent are *using* the state as a tool of exploitation. In the second case, only the MNE can be said to use the state in an exploitative way. The agent's action is probably best regarded as an action *of* the state and so, if anything, is an instance of the first type of state exploitation described in this paragraph.

Finally, a full theory of state exploitation will need some way to distinguish between the kinds of legitimate exchanges that occur between private persons, and the exploitative deals that occur between, say, state agents and rent seekers. Nineteenth-century classical liberals tended to make this distinction in a rhetorically powerful but philosophically clumsy way, distinguishing, as in the case of Jean-Baptiste Say, between "productive" exchanges on the market and the "unproductive" activities of government.[82] But the activity of rent seeking can be productive both in the sense of creating actual goods or services, and in the sense of producing an overall increase in utility (obviously for the parties to the exchange but also, perhaps in cases where rent seeking is employed to spur the provision of a genuine public good, for society as a whole). What makes rent seeking exploitative is not its being unproductive, but its being unfair. But what exactly this means in the context of political institutions is something that requires much further exploration.

Before bringing this section to a close, it is worth reminding ourselves that not all forms of structural injustice will be instances of state exploitation. Injustice can take many forms, and exploitation is only one of them. States can oppress their populations as well, in which case the injustice they do may neither yield nor be intended to yield any benefits of the sort at which exploitation characteristically aims.[83] And coercion can be unjust without necessarily being exploitative.[84] State exploitation, then, although it is an unduly neglected form of state injustice, is only one form among many.

[82] See, for a discussion, Patricia J. Euzent and Thomas L. Martin, "Classical Roots of the Emerging Theory of Rent Seeking: The Contribution of Jean-Baptiste Say," *History of Political Economy* 16, no. 2 (1984).

[83] Ann Cudd, *Analyzing Oppression* (New York: Oxford University Press, 2006).

[84] Coercion that is employed for paternalistic purposes, for instance, might be unjust but is not exploitative insofar as it does not involve an unfair or degrading advantage-taking. See, for a discussion, Alan Wertheimer, *Coercion,* Studies in Moral, Political and Legal Philosophy (Princeton: Princeton University Press, 1987).

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VI. Conclusion

This essay began with a debate over the moral status of sweatshops. On one side of that debate are economists and others who hold that the benefits sweatshops provide to their workers renders their conduct and the conduct of the MNEs with which they contract not wrongfully exploitative, or at least not seriously so. On the other side are those who hold that the true exploitative nature of sweatshops only becomes apparent once we shift our focus from the particular details of the exchange between sweatshop and worker, and look instead at the deep injustices in the background of that exchange.

This essay has sought to explore the moral debates over sweatshops, and to examine the way in which considerations of structural injustice might or might not be relevant to the charge of sweatshop exploitation. And the result of our inquiry has been a modest vindication of the economists' defense of sweatshops. We have seen that the existence of background injustices does not render an otherwise fair exchange wrongfully exploitative. And we have seen that while sweatshops and the MNEs with which they contract have a moral responsibility to fight unjust institutions, this is an obligation they share with everyone who is able to do so, and so cannot ground any special fault on their part.

Nevertheless, it is important not to overestimate the reach of my argument here. I have not attempted to offer an impossibility proof. It is not only possible, but it is virtually certain that some sweatshops do wrongfully exploit their workers. Those that actively cooperate with government to suppress their workers or their competitors, for instance, are guilty of not only *benefiting* from structural injustice but also *perpetuating* it for their own gain. This is wrongful exploitation of the clearest sort. And even without government intervention, it is possible for sweatshops to wrongfully exploit their workers. The fact that sweatshop workers are willing to accept a certain package of wages and benefits from sweatshops is not enough to show that package to be fair.

Drawing the line between fair and unfair offers—like many cases of conceptual line-drawing—is of course a difficult business. The unfairness that constitutes exploitation, on my view, is not the sort of thing that can be assessed by means of any precise formula. Determining the fairness or unfairness of conduct is largely a matter of balancing the reasons weighing for and against that conduct, and thus often reduces to an exercise of judgment about which reasonable people can disagree. I have argued that canonical conditions of sweatshop labor—low wages, long hours, and unsafe conditions, for instance—do not suffice to render sweatshop labor wrongfully exploitative, once the broader range of empirical and moral features of sweatshop labor are taken into account. But when, for instance, some sweatshops use their employee's fear of termination to perpetrate

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physical and sexual abuse, then to my thinking at least the balance of reasons tips decidedly toward a judgment of unfairness.

Structural injustice, then, does not render sweatshop labor wrongfully exploitative. But I sincerely hope that readers will not take away from this paper the message that structural injustice does not matter, or is of small importance. The unjust seizure of land and other natural resources by governments and plutocratic interests, the suppression of alternative opportunities for workers through restrictive intellectual property laws and trade barriers, the failure to uphold the right of workers to freely organize into labor unions, and so on are all significant injustices that affect the lives of workers in the developing world for the worse. And they may, indeed, be injustices without which sweatshops as we know them would cease to exist. To the extent that it is in our power to do so, we should work to stop and rectify them.

My concern in this essay has been to explore the moral responsibility of sweatshops, not of humanity in general. And to explore in particular their responsibility for one specific kind of wrongdoing—exploitation. There is a danger, however, in the analytic philosopher's tendency to brush aside as irrelevant those issues that do not fit neatly within the concept he is exploring. Structural injustice may not have much to do with transactional exploitation, but it has a tremendous amount to do with people's ability to live peaceful and fulfilling lives. It is thus an issue of the utmost concern for us not only as philosophers (in other papers, at other times), but as human beings.

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