**What is Wrongful Exploitation?**

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In this paper I want to offer an account of unfair advantage taking or wrongful exploitation. Such an account is of great importance in a world like ours, which is so much organized around voluntary exchange and voluntary coordination. Some of these agreements and some of this coordination, though voluntary, are morally suspect. And it is the job of such an account to illuminate the morality of the suspect transactions, to articulate the underlying structure in virtue of which the transaction is morally problematic and to pinpoint the element of these problematic transactions that constitute unfair advantage taking. My main focus will be on unfair advantage taking in agreement making but the definition I offer will, I think, cover cases of unfair advantage taking in other kinds of cases such as in free riding on the cooperative activities of others and abuse of trust. These cases have, I think, a common structure that can be illuminated by a single concept.

 My main concern here, in addition, is to illuminate the concept. So I will not be coming down hard on particular examples since I think the concept has an essentially moralized character. The concept includes important moral elements so that disagreement on basic moral principles will affect which cases one takes to be genuine cases of wrongful exploitation and which ones one does not. Nevertheless, I think that the examination of the nature of wrongful exploitation does help us discriminate to some extent between different moral theories since some moral theories may have difficulty accounting for any of our intuitions about wrongful exploitation. The moralized character helps us understand, I think, the unity in the very heterogeneous set of cases that come under the rubric of exploitation. Morever I think that wrongful exploitation is a distinctive kind of wrong even though it does piggyback on other wrongs. Finally, unfair advantage taking is a very particular kind of unfairness. The unfairness attaches to the action of the advantage taker. In this sense unfair advantage taking is distinct from unfairness in the background conditions that agreements take place in. The latter notion is a structural notion that involves a set of facts that give a person a less than equal say in the process of making agreements. Fairness and unfairness in this sense are terms that apply to a large scale institutional structure much as fairness and unfairness in political decision making do.[[1]](#footnote-1) They need not refer to the particular actions of particular persons or groups of persons. I will argue that someone can be absolved of the charge of unfairly taking advantage of another even when the background conditions of agreement making are unfair to that other person. I will try to elucidate the relation between these notions later in the paper.

 I will proceed here dialectically by discussing some paradigm views of exploitation and showing why they fall short and then I will introduce my own view and defend it by examining different examples of exploitation.

*Substantive and Procedural Accounts of Exploitation*

One of main debates in conceptions of exploitation is that between what might be called substantive conceptions of exploitation and procedural conceptions of exploitation. The classical natural law tradition emphasized the substantive dimension of exploitation. These accounts tend to focus on some inequality in the things exchanged and urge that there is wrongful exploitation when there is unequal exchange. In part, Marx’s conception of the exploitation of labor seems to be grounded in this idea that unequal exchange (in Marx’s theory, when the worker receives less than the value of his labor in his wage) is exploitative. The common law tradition attempts to emphasize the procedural dimension. The common law tradition seems to assert that there is wrongful exploitation when there is some defect, usually of voluntariness, in the process by which the exchange has come about. I think that one main trouble with conceptions of exploitation is that they tend to come down on too hard one side or another of this divide while some kinds of exploitation seem to be more procedural while others are more substantive. Conceptions of exploitation tend to accentuate the insights in one dimension and then miss the insights in the other dimension. We need an account that crosses this divide even while showing an underlying unity to the idea of exploitation.

*Procedural Account*

Let us start with the more procedural accounts of exploitation. One analysis of wrongful exploitation is that:

1. A exploits B when A benefits from a transaction with B where B is not participating voluntarily.

This kind of analysis seems to be the principal analysis in traditional common law doctrine. This schema is used to interpret the traditional rescue cases of exploitation. A comes across a stranded motorist (B) in a snow storm who is threatened with potentially severe harm or death if he stays out in the storm. A then exacts an extraordinarily high fee from B and then saves B. The analysis above suggests that B is not voluntarily participating in the transaction because he has no acceptable alternative to A’s proposal. Another kind of typical example that this is supposed to capture is the case in which B is woefully uninformed or B is a minor with little deliberative capacity to understand the proposed agreement.[[2]](#footnote-2)

 In all these cases, the analysis points to a severe defect in the voluntariness of the agreement that B is entering into. This analysis is puzzling since it does not capture the central case of unfair exchange in this context. Suppose that A comes across B in the same context but A offers to help B if B will pay for the gas. Or take another case in which a person has contracted a serious illness that must be treated by surgery lest the person die. The surgeon offers to perform the surgery but only if the usual price is paid. Here too, the person may have little acceptable alternative to accepting the proposal. This latter case does not seem exploitative and yet the characterization of the will of B is broadly the same. He does not have any acceptable alternative. The account must class what are intuitively clear cases of exploitation with intuitively clear cases in which there is no exploitation.

 Now we may reject the account of voluntariness that requires an acceptable alternative and look more to the quality of will of the person who is accepting the proposed offer. In the snow storm above, the tow truck operator may encounter a deeply flustered stranded motorist who is in a state of severe anxiety or fear that undermines fully rational decision making. We may say that in this case there is a genuine defect in the will of the motorist. And we may say that when the tow truck driver benefits from this exchange in which the motorist is not fully in possession of his faculties, we have exploitation of motorist by tow truck operator.

 But this analysis seems to me to suffer from some similar difficulties as the above analysis and a couple more difficulties. One, it cannot discriminate between the case in which the tow truck operator offers to help the motorist for a fair price and the case in which the operator offers to help only for an extraordinary price. The motorist could be equally flustered in either case. But only the second case can be a clear case of exploitation. Two, the view seems to fail to count as exploitation the context in which the operator helps a perfectly cool and collected motorist for an extraordinary price. After all, a perfectly cool and collected motorist would be rational in agreeing to an extraordinary price on the hypothesis that the alternative was likely death or severe injury. But this does seem like a fairly clear case of exploitation.

 So we can see a general worry about defective voluntariness theories. They cannot discriminate between clear rescue cases of exploitation and rescue cases that seem clearly not to be exploitation. Both the acceptable alternative and the defective will views have the same problem here. The defective will story has the additional difficulty that it cannot account for many of the clear cases of exploitation that the acceptable alternative approach can capture.

 The rescue cases are at the core of the intuitive cases of wrongful exploitation. Any view that cannot account for all these cases must bear a very strong burden of explanation, which theorists have not offered. I will suggest that the best account of exploitation can accommodate these cases. And it can show what one would have to argue in order to show that these are not wrongful cases of exploitation.

One further worry about the procedural accounts is that they usually rely on the notion of the involuntary. But this is a highly ambiguous notion.

We sometimes count actions as involuntary because of some quality of the will, as in when someone is pushed into someone else. There is no will involved in this kind of case or as in when someone acts out of ignorance of what they are doing. Perhaps a person who acts while sleepwalking displays this feature as well. Or an intermediate case of defect of will of this sort is when a person acts out of terrible fear or anger or some emotional weakness.

We sometimes count an action as involuntary because it was coerced or because the agent was deceived by someone else. In the first case, there is no suggestion of a lack of will altogether or even that the person has any defect in the will at all; it has rather more to do with the relationship with another person.

Another notion of the involuntary ties it to conditions of responsibility and excuse. These conditions, however, are deeply dependent on prior moral notions, which is why they are in turn highly context dependent.

One finds that accounts of exploitation slip from one account of voluntariness to another. The reason for this is that for any notion of involuntariness save the notion which involves a lack of will altogether, if one argues that a relation is exploitative because of involuntariness in one context, one is committed to arguing that the very same involuntariness is present in cases that seem obviously non-exploitative. Involuntariness as lack of an acceptable alternative seems to explain why we think that a surgeon asking an exceptionally high price for a life saving treatment is exploitative until we see that the very same “involuntariness” attends the offer of life saving treatment for a reasonable price.

I think the same kind of concern attends impaired decision making because of fear or emotional weakness. Such weakness seems to explain the exploitativeness of an exploitative offer of help until we see that the presence of such weakness need not imply the exploitativeness of an offer that is more reasonable. The same issue attends coercive exploitation. When A coerces B for the sake of a benefit to A, this might seem to suggest that A is exploiting B because A is taking advantage of a weakness in B. This is what is happening in this case but it is not sufficient for exploitation since A may be coercing B for the purpose of defending his legitimate rights. Peace treaties imposed on unjust aggressors in this way are coercive and the

*Substantive Accounts*

Substantive views have, by contrast, a relatively easy time with the rescue cases. These are the traditional source of examples for this view. Aquinas, for instance, argues that exchange ought to be equal and that in the putatively exploitative rescue case, it is not equal. Of course, it is rarely clear what the equality in these theories is equality of or what the basic measure of the value of the goods exchanged is. For Aquinas the objective measure is best given by a competitive market price of the goods, though there is little further said about what the conditions of competition are. Aquinas quickly adds that the market price need not be the price at which a seller sells a good if the seller values an object at a higher rate than the competitive market price.[[3]](#footnote-3) That is if the seller values something at higher than the market price the seller may rightfully sell it to a buyer at the higher price. Hence it is the cost to the seller that determines the value of the good for the purpose of determining when the exchange is equal.

 One thing is clear is that it is not the utility of the things exchanged that determines the relevant measure of equality. And this would definitely get the wrong account in the rescue cases. Obviously the marginal utility of being rescued to the person rescued is likely to be significantly higher than the marginal utility of the money demanded even of a highly extortionate price. If we were looking for equality in the marginal utilities, it would be hard to see how we could have non-exploitative exchange in the rescue cases, only the rescuer would be the exploited person. This would be a strange result to say the least.

In addition, Aquinas argues that “…if the one man derive a great advantage by becoming possessed of the other man’s property, … the latter ought not to raise the price, because the advantage accruing to the buyer, is not due to the seller, but to a circumstance affecting the buyer.”[[4]](#footnote-4) Hence, in the rescue case, Aquinas wants to say that the rescued person may receive his life from the rescue but it is not due to the rescuer but due to the special circumstance the rescued person was in. The rescuer did undergo some cost in helping the rescued person and that is what the rescuer can be said to give the rescued person but the life or even the great utility that the rescued person received was not given to him by the rescuer. A higher price than the market price for a rescue or the cost of the rescue is all the value that the rescuer contributed.

This is an intriguing argument and there is something right about it but the basic problem with it seems to be that the market price is itself a function of the “circumstances affecting the buyers.” It is a function in part of the demand for the object. So it is hard to see how the market price is giving us a valuation of the product that is independent of the buyer.

 If we take the competitive market price, there are a host of difficulties to be worried about. One, it is often hard to know what market we are talking about. Does it have to be world market prices or local prices? What of the market of like objects? Is that relevant? Two, there often are no competitive markets for the goods involved. The creation of international treaties is sometimes said to be exploitative but it is hard to characterize it in terms of markets. Three, sometimes competitive market prices can be exploitative as well. Intuitively at least Marx is on solid ground when he asserts that the competitive market price for labor can be exploitative when there are a lot of unemployed people, the workers are not organized and the alternative to employment for most workers is very bad while the alternative to not employing a worker for an employer need not be bad since there are many others. The price, supposing the groups of employers and employees are sufficiently well insulated (due to differences in education, wealth etc) will be quite low and intuitively it would seem that it could be quite exploitative. And sometimes the very idea of offering a price for a certain kind of good suggests exploitation as in the case of prostitution. We needn’t agree with every one of these cases to see that the idea of exploitation as unequal exchange measured in terms of market price is not giving us a necessary condition of exploitation.

 There are three other classes of cases that might suggest a more general criticism of the substantive views. The first is the case of irresponsible exchange. Suppose one person wants to buy a car but is not willing to put any time into determining what a good car is or what an appropriate price is and so goes into a store willing to get the first car at the first announced price and does so. Now suppose that the usual job of the car salesman is to bargain, fully expecting that the buyer will haggle and the price will come down. Instead the buyer accepts the first announced price and the deal is made right away. The salesman even says that they can talk more about the price but the buyer just waives him off. Here, the buyer has bought a car at a price that is greater than the market price or the cost of getting rid of the car or any objective price that might be thought reasonable. But it is not at all clear that the buyer has been exploited or that the salesman is exploiting even though the deal is unequal in some way. Here it seems that the process is driving our judgment that the arrangement is fair. The buyer has every opportunity to make a good deal and does not avail himself of them.

If irresponsible or heedless participation in exchange can legitimize an exchange even though the exchange is unequal, it appears that substantive unfairness in the outcome is not a sufficient condition of exploitation. This is because a feature of the process, the irresponsible action of the buyer and the reasonably conscientious actions of the seller, can defeat the idea that there is unfairness in the agreement even if the price is obviously problematic by normal market standards. Unequal exchange seems insufficient to justify a judgment of exploitation.

It seems unnecessary as well in many circumstances. For instance, if the salesman manipulates the buyer into buying a car at a good price and the buyer did not want to do this, it seems like there may be exploitation here as well even though the buyer paid a good price. Here, process seems to be driving our judgment that there is exploitation despite equal exchange.

Two other examples suggest that unfairness in the outcome are not necessary to exploitation either. First, some kind of deception or emotional manipulation to get someone to engage in an exchange that they do not want can undermine an exchange even if it is for a fair price. Suppose that B does not want to sell her car to anyone. But B loves A though A does not love B. A gets B to sell her car to him, for the market price (or any price that seems fair), by saying how much he needs the car and intimating that he might love B if she sells him the car. Or A relies on the existence of some kind of emotional quirk in B to get B to sell him the car at the fair price. B becomes flustered under certain circumstances at which point she can be manipulated into doing something she later regrets. A knows this and pounces and thereby gets B to sell at the market price. Another case is one in which A enters into some kind of convoluted exchange with B which has the effect that B sells her car (without entirely understanding this). She sells it at the fair market price. But I think we would still want to say that A has exploited B in these cases.

To be sure, we might be able to apply Aquinas’s idea here that the seller may sell an item at a higher price if the seller values the item at that higher price. But even here we may run into trouble. For suppose that B is willing to sell her car at some price but not to A. A very much wants B’s car. But A nevertheless manages to get B to sell her car at the price she wants to sell it through one of the machinations mentioned above. It still seems that A has exploited B. Now there may be a further measure of the value of B’s car that somehow includes the value of selling it to one person rather than another or on one day rather than another or any set of details that determine the circumstances under which B is willing to sell her car. But the standard of value for determining equal exchange seems to become elusive in these circumstances. For any particular standard it would seem we can set up an example that suggests that there can be exploitative exchange even while there is equality. Here it seems that we have a case in which we can have an exploitative agreement even though the price paid for the item is a fair price. The substantive outcome of the transaction is fair in whatever sense one wants to think of it but the transaction is exploitative.

Another example of exploitation that Alan Wertheimer discusses seems to be a counterexample to the thesis that unfairness in the distribution of goods that arises from an exchange is necessary to an exploitation claim. The example is one of a psychotherapist engaging in sexual relations with a client. One might think that the psychotherapist is exploiting the client in this context but it is hard to see that this is the consequence of an improper distribution of the benefits of the relationship. No doubt there is a rule with some moral force against sexual relations between therapist and client, which is there to protect the integrity of the therapeutic process and thus in some sense to protect the interests of the client and the therapist. The therapist violates that rule by proposing sexual relations with the client. The therapist is exploiting the client because she is relying on a weakness in the client, which the therapeutic process is designed to help remedy, to acquire some benefit for herself.

 So against the substantive accounts we can say that they fail to provide necessary conditions of exploitation because some cases of exploitation seem to involve exchange at fair prices, however one wishes to define them; and they fail to provide sufficient conditions of exploitation because some cases of exchange at clearly unfair prices seem not to be exploitative. And against the procedural accounts offered so far, which rely on some kind of involuntariness, they fail to provide sufficient conditions of exploitation since some cases that are counted as involuntary are not exploitative. And they fail to provide necessary conditions.

*A Hybrid Account*

Some have proposed accounts of exploitation that involve both the procedural and the substantive dimensions of exploitation. For example, Mikhail Valdman defends the view that A wrongly exploits B when and only when A extracts excessive benefits from B who cannot, or cannot reasonably, refuse A’s offer.[[5]](#footnote-5) Here we can see the two elements described above. First, the exploitation requires an excessive transfer from B to A. And second it must be because B is in a position in which he cannot reasonably refuse the agreement. Valdman does not describe the second condition in terms of involuntariness; but that is no matter since he is invoking a condition that many would describe as involuntary namely the absence of an acceptable alternative. What is important for us is that he is concerned with an agreement between A and B in which A benefits excessively and in which B has no acceptable alternative.[[6]](#footnote-6)

 It seems to me that some of the above counterexamples may not damage this account. For instance, suppose that A is a surgeon and B is a patient with a life threatening cancer that can be removed by surgery. But A only performs this surgery for a price that is significantly above the market price for reasons we need not explore. A informs B that there are other doctors who charge less but B waives him off and says that he wants A to get started. A performs the surgery for the very high price. Here it is plausible to think that the price is excessively high but that B has an acceptable alternative to which he refuse to have recourse. But there is a nearby case that is a counterexample. A is a surgeon who charges the right price, whatever that is, but B doesn’t really want A to do the surgery, for some reason. A, knowing this, lies to B in telling B that there are no acceptable alternatives even though there are. A is simply trying to increase his client base. B thinks he has no acceptable alternative and so pays the right price for the surgery to A. It seems to me that A is exploiting B in this context even though he is not receiving excessive benefits from B.

 The problem here is that in the understandable theoretical concern to understand how exploitation can occur in mutually advantageous and consensual circumstances some theorists forget that exploitation also occurs under other conditions such as lying, manipulation and coercion. Once we broaden the scope of our analysis to include these kinds of cases, we can see that the above conditions are not necessary.

 It also seems to me that the therapist case above is also a counterexample to the thesis that excessive benefits and lack of an acceptable alternative are necessary conditions for exploitation. It is hard to describe the therapist as getting excessive beneifts. The problem is that he is getting the wrong kind of benefit and it is not obvious that the clients have no acceptable alternative. We have some rather complex moral norms relating to sex. And they are relevant to the claim of exploitation. For instance, suppose that it costs a tow truck driver a certain amount to save a person in a storm. We may think that it is not wrong for the tow truck driver to charge this fee in a particular instance. But now suppose that the going rate for sexual services is below this fee and the tow truck driver asks for the relevant sexual service from the person she is saving along with no further fee. This still seems wrongfully exploitative even though it is hard to say that the transfer is one of excessive benefits. The problem is that this is the wrong kind of benefit.

 Another worrisome kind of case is the case of sweatshop labor. It may be that the employers are receiving too much in this kind of case, but it is not obvious that the employee’s urgent needs are at risk or even that the employee will not be able to live a minimally decent human life without the job.

 What I think is hard to question is that the condition above is sufficient. Valdman argues that there is an obligation not to charge excessive benefits when a person has no acceptable alternative and this does seem right and may explain the wrongness of exploitation in the cases that exemplify these features. To be sure, much will depend on what the notion of excessive amounts to. My guess is that we will have to import another idea here to explain it, but I will discuss this in what follows. In any case, since the view does not seem to capture necessary conditions, it does not give us an account of what exploitation is or even what makes exploitation wrongful more generally.

*Beyond Procedure and Substance*

What we have here is a dialectic between procedural and substantive accounts of exploitation. The procedural accounts seem to fail to come to grips with the rescue cases while the substantive accounts seem to fail to grasp the cases in which irresponsibility or some defect of will or cognition is playing a role. Yet both of the types of views bring insight to the discussion. They do seem to capture parts of what we have in mind by exploitation. And we have also seen that a combination of the elements brings added insight; it may give us a sufficient condition, but it nevertheless fails to offer a set of necessary conditions. What I want to propose is a conception of exploitation that is neither procedural nor substantive but that abstracts from these two dimensions while explaining how the different dimensions have the moral significance that they do have.

 I want to propose a conception of exploitation that is able to account for at least most of the main cases or at least the principal reasoning that goes on in the main cases. I am still assuming that there is a sufficient amount of unity in our uses of the terms exploitation and unfair advantage taking to make sense of this project despite the fact that the two rival approaches on offer so far fail to capture the whole of what is going on in the notion of exploitation.

There are some other desiderata that I am looking to satisfy along with the capacity to account for our intuitive reactions. One condition is that the account of the concept of exploitation that we are elaborating can explain the idea that the exploiter wrongs the exploitee. It is not merely the case that something bad or problematic has happened, a wrong has been done to the exploitee.[[7]](#footnote-7) A second related issue is to be able to explain the specific character of the wrong of exploitation. We will see that this is an issue for the view I will defend. A third desideratum is the avoidance of what Pogge calls the moral counterproductivity of such a principle.[[8]](#footnote-8) In particular, I am concerned with avoiding a principle that would prohibit opportunities to act that make everyone better off while permiting people to avoid acting in a way that makes everyone better off. The usual accounts of exploitation seem to imply this because they suggest that some mutually advantageous and consensual agreements may be wrongful exploitation and thereby prohibited. But they also suggest that the exploiter may withdraw from agreements altogether in preference to a non exploitative agreement. The consequence of this kind of approach may be that many persons are made worse off if people act in accordance with their moral duties but do not do much to act morally beyond what they are required to do. For instance, it may turn out that many people will be left unsaved if there is a requirement that the savers do so for free or very little recompense and there is a permission not to save or put oneself into the position of being able to save another. This might seem to protect a person who is being saved from extortionate demands, but it may also create incentives in people to avoid situations in which they can help. While if one can demand anything one wants, more people may put themselves in the position of helping others and thereby more people may be helped. It is an aim of my theorizing to avoid the two possibilities of saying that exploitative action is permissible on the one hand or on the other hand saying the exploitative action is impermissible but one may avoid engaging with the other altogether, thus ensuring he is worse off.

My concern here is grounded in my general sense that moral principles are generally guided by a concern to advance the interests of human beings. But I think one may be concerned to avoid the counterproductivity in this case by a less controversial concern, which is that a principle that is meant to protect the interests of a person not be such that it actually has a tendency to set back the interests of those persons. Avoidance of this feature is on a par I think with avoidance of the implication of leveling down from a principle of equality.

I will be content if it can be shown that a principle that prohibits unfair advantage taking does not, through a combination of requirements not to exploit and permissions not to help, normally set back the interests of those it is supposed to be protecting. There may be particular cases in which everyone’s interests are set back by the application of the principle, but if these are the exceptions rather than the norm, that may be sufficient to vindicate the principle under discussion. Indeed, this condition is one that I think offers support for the view that I will defend in what follows.

*Exploitation*

We can now offer an account of exploitation or unfair advantage taking. A takes unfair advantage of B if and only if two conditions hold: (1) A benefits from B doing various things, (2) A does this by violating a duty to B. This is what explains the idea that unfair advantage taking is a wrong to the person who is taken advantage of.

 A couple of things about this account should be noted here. First, unfair advantage taking can take place outside the context of agreement making, such as in free riding or in abuse of trust. Second, unfairness in agreement making is not sufficient for unfair advantage taking. Unfair advantage taking involves something further. It involves how one responds to unfair circumstances or at least to circumstances in which one has some kind of duty of remedy. Principles of fair agreements specify an ideal of agreement making, principles of unfair advantage taking specify how an individual must act to deal with non-ideal circumstances in which fairness is not fully achieved. They presuppose that one has some kind of duty of remedy towards the person who is the potential victim of unfair advantage taking. And it is usually the case that one does not have a duty to remedy all of the unfairness in the making of an agreement. So one may make an unfair agreement with another without taking unfair advantage of that other.

 Of course one’s conception of unfair advantage taking will depend on what duties of remedy one thinks persons hold towards one another. I have stated that the principle of equality of opportunity and equal resources are the basic principles of fair exchange. And I have asserted that each person owes a fair contribution to the equality of opportunity of all other persons. The duty of remedy is determined by that basic notion. So on the view I have characterized I argue that unfair advantage taking consists in failing to act in accord with one’s duty of remedy in context of making an agreement with a person with lesser opportunities.

*Fairness and the Leveling Down Puzzle*

There is a worry with any such set of requirements that they may have the perverse effect of dissuading the wealthy from employing the worse off. This could have the perverse effect of making the worse off even worse off than they would be were they to be taken advantage of. This does seem like a legitimate worry. It is somewhat analogous to a leveling down worry.

My response to this invokes the definition of unfair advantage taking, which includes a violation of a prior duty. The idea is that the wealthy cannot avoid the duties of contributing their fair shares to the worse off by avoiding employment relations. They still owe the duties. And they owe them to everyone. So the fair share they would be required to pay would be required anyway. In effect it would determine a baseline. To say that one does not want to employ very poor persons on the ground that one does not want to discharge the duty of repair and thereby avoid the charge of unfair advantage taking is confused. One owes the duty anyway. The question is how one discharges it.

But this does suggest another puzzle. Could the wealthy pay a sum towards some development agency and then take full advantage of the worse off persons in labor contracts? It isn’t clear this would make any sense economically but in any case it seems problematic. The reason why this is problematic is because taking advantage of the unequal opportunities of (say) developing world workers is in some way worse than merely failing to discharge the duty of opportunity enhancement. Taking advantage of unfortunate workers is a kind of public way of treating persons as less than equal. It is highly expressive of a failure to recognize the worker as an equal. Failing to discharge one’s duty more generally, since it is not directed at any particular person, does not have the same public meaning.

*Some Examples of Unfair Advantage Taking and How to Avoid It*

Rescue

In the standard rescue cases, one person (A) is confronted with another person (B) who needs to be rescued or face a very high risk of severe harm or death. And by hypothesis B has no further option because no one aside from A can help him and because he needs help immediately. What I want to say is that in the normal case this implies that in the context A may not morally withdraw from the interaction unless there is a great cost to him. A has a duty to rescue B at fairly low cost to himself. This makes it impermissible morally for A to bargain to full advantage with B over the conditions under which the rescue is to take place. To be sure, A should receive some fair recompense for helping B, if the costs are substantial. But A must figure out how to determine fair recompense without hard bargaining with B.

 If A does bargain hard with B under these circumstances, A is in effect saying to B that he will not help B unless B pays a sum that is greater than necessary to assure A that his cost is low. If A succeeds in this, A is exploiting B.

 The above case is a case of the ordinary duty to help others at low cost to oneself. But there are other cases of helping others that do not require such a low cost. In the case of persons who help others as professionals such as doctors or lawyers or tow truck drivers, these may in fact charge a higher price for their services since their livelihoods and expertise depend on such payments. In these cases there are duties limiting what a professional can ask in these circumstances but the duty is not limited to making sure that the professional suffers a low cost. I think these kinds of cases motivate the fair price norm of exchange and may be the motivations for the substantive views. The reason why is that these cases involve a division of labor with a great deal of assymmetry of information between client and professional. A society benefits greatly by the existence of this division of labor and wants to ensure that there are enough people who will occupy these positions in the division of labor. Hence, it is important for a society to provide adequate compensation for these services. Yet because of the assymmetries of information, it is hard for the client to determine what the appropriate price is supposed to be. The client is in a potentially very vulnerable position in need of these services. Hence there is a need to have a sense of a fair price to be paid for the services. This price may be defined in terms of a kind of market price determinined by an independent appraiser (as in the case of houses) or as determined by a professional association. But what is interesting here is that what is exploitation in the relation between a rescuer and a rescued person need not be exploitation when the rescuer is a professional exercising her professional skills. And this is because of the difference in the duties we think these different kinds of people have, which in turn may be justified by different institutional needs.

 Here we can see a difficulty with the hybrid account we discussed above which prohibits charging an excessive price. What an excessive price is will depend on the nature of the duties of the rescuer. And thus it will come down to the duties.

 Valdman considers a view like the one I have sketched here and argues against it. He considers a case where it would initially cost a particular person A a lot more than he is duty bound to pay in helping someone in need. He claims that in this case, A is not bound to help B (because the cost to him is too high). Yet, he argues plausibly, A could help B for an excessive price. In doing so, he would be wrongfully exploiting B. Valdman takes this to be an argument against the idea that the duty A has to help persons in dire need is not what explains the presence of wrongful exploitation.[[9]](#footnote-9)

But it is not obvious that Valdman has understood the moral structure of the case properly. For if A can be assured of compensation for helping B up to the point where the aid is a low cost to A and A is the only person who can help B, then it seems to me that A does have a duty to aid B. And it seems to me that the price he may legitimately demand is what will ensure that the cost of his aid is low. Here it seems to me that the duty to aid explains the wrongfullness of the exploitation.

 One virtue of the account I am offering is that it seems to me that this particular account of the wrongfullness of exploitation also implies that A may not permissibly simply walk away once he learns he may not exploit B. While it seems to me that Valdman’s account suggests that in fact if the initial cost of A’s helping B is high enough, he can walk away. Hence Valdman’s account seems to suggest the possibility of permissible leveling down. While the account I am advancing does not permit the leveling down nor does it suggest the compromise position that sometimes exploitation is ok.[[10]](#footnote-10)

 Another virtue of the account is that the duty to aid creates a kind of baseline for each person to contribute to helping others in dire straits. One cannot simply avoid the cost by avoiding people because one has a kind of imperfect duty to help others generally. This imperfect duty takes on a perfect and directed form when one encounters a person in dire straits and no one else can help. In essence, I think this is the appropriate response to Pogge’s worry that morality permits one to avoid people if one can’t exploit them and thereby ensures that people may actually be worse off. If there is a general and imperfect duty, one cannot simply avoid the cost. To be sure, one might still avoid people who are potentially in need and this may make some particular persons worse off, but if people act generally in accordance with their general imperfect duties, these instances will be relatively few.

 Further I want to argue that one cannot simply discharge one’s imperfect duty to help others and then fail to help a particular person in dire straits on the grounds that one has already helped. I think intuitively this is the way we understand these duties. But there is a theoretical explanation as well. Failing to help a particular person in dire straits when one is the only one who can help is a public and clear expression of indifference to humanity, which is a greater violation than merely failing to contribute to a collective fund.

But there are puzzles. What if B cannot pay even close to a fair cost either before or after the rescue? Does this allow A to refuse help? This does suggest a genuine moral problem but it is not a problem with the analysis of exploitation.

Cases of Unequal Opportunity

In the case of unequal opportunity, one party (C) with many opportunities confronts another (D) who has relatively few opportunities. This implies that D will have less of a say in shaping the agreement between C and D. I think this is the kind of case we confront when wealthy or relatively wealthy persons engage in economic cooperation with poor persons with limited means and education. This is also the kind of situation that people worry about when they are thinking of sweatshop labor.

Some examples of this are as follows. One, wealthy companies contracting with poor persons in the developing world for labor is a key instance of this. In these cases, the wealthy companies have a lot of different opportunities and the individuals in the developing world have lesser opportunities because they are poor and not very well educated and so their skill set is limited. It is also because the immigration laws of other countries prohibit them from entering another country for better opportunities. Two, wealthy persons in the developed world employing migrants from the developing world are also often instances of very different opportunity sets. And, of course, affluent persons from affluent backgrounds who employ persons from poor backgrounds with little opportunity for education are another main kind of case of this sort.

The moral background behind these cases makes a big difference to our attitudes towards this kind of case. If we proceed on the basis of a principle of robust equality of opportunity and argue that all human beings ought to have such opportunities, then we can argue that all human beings have duties to contribute some fair share to the establishment of equal opportunities for others. In particular, the better off have duties to contribute a fair share to the opportunities of the worse off. Hence, the company that is employing workers in the developing world comes to the situation with some prior duties towards those individuals. Those duties do not require the company to rectify all of the inequality of opportunity in the instance, but only to contribute a fair share to the rectification. Hence they owe the developing world workers something more than the best deal they can extract from those workers. They owe them something that in effect contributes a fair share to improving the worker’s opportunities over and above what they could extract by taking maximum advantage.

So first, C has a duty not to press for advantage to the maximum. And C has a duty to contribute to D’s opportunities. To be sure, a company is not to be compared with individual persons in terms of opportunities. The relevant comparison is between individual members of the company and others. But there may be a sense in which the duties of the individual members of the company aggregate to the duty of the company. This could involve any number of things. It might involve C enhancing D’s education in some way. It might involve C ensuring that D has more of an equal say in the making of the labor contract. C does not have a duty to rectify the whole inequality (assuming it hasn’t created it) but just to do its bit in rectifying it.

I think this captures much of the discomfort people experience with what is called sweatshop labor. The trouble is that while companies often treat the situation as one where the ordinary norms of bargaining and market behavior are legitimate, in fact the ordinary norms of bargaining must be significantly curtailed. And this is because of the moral duties of the wealthy regarding the worst off. The situation is a morally fraught one.

Of course the situation becomes even more morally fraught if it is the case that the wealthy company or individual shares in some responsibility for the unequal opportunities of the developing world workers. This may be because of a past history of imperialism or neo imperialism on the part of the society of which the company is a part. Then of course the responsibilities are more extensive.

The point here is that C exploits D by engaging in ordinary market behavior and hard bargaining (which might be quite legitimate among persons who have equal opportunities) and thereby benefitting more from the transaction than is permissible.

Notice that even if C transacts with D in a non-exploitative way, this will usually not eliminate all the unfairness in the background situation between C and D. Much background unfairness may still remain. But in doing its fair share in alleviating this unfairness C is engaging in non-exploitative behavior even if unfairness remains.

Here too one might worry that this account will discourage people or groups like C from employing people like D because we have argued that C must carry a heavier cost than a simple market interaction would require. This would be a worrisome implication. D would plead with C to employ him even at the exploitative wage. D would be worse off if C were to attempt to avoid the transaction (as would C). Again we would have something like a leveling down worry here. And I think that many accounts of exploitation either imply this leveling down or end up accepting in some grudging way the permissibility of exploitation.

But here too the account I am offering gives us a more satisfying approach to these problems. I want to argue that the duty in virtue of which C’s market behavior towards D is exploitative is one that C has independent of the market transaction. C cannot escape the cost by simply avoiding the developing world. In effect, there is a cost that C must carry no matter what C does and so this cost should be understood to be the moral baseline in terms of which C ought to be reasoning about the case. C cannot say, “In order to avoid the cost of non exploitative transactions I will simply avoid transaction with D.” This is because C must suffer this cost anyway as a matter of moral requirement.

One last note to this kind of case: C may not discharge its duty of doing its fair share of enhancing the opportunities of human beings generally in the world (by say contributing to a fund that does this) and then exploit the hell out of D in particular. This is for the same reason as we saw in the duty of aid case. There is something special about the public “in your face” character of exploitation and the failure to do one’s duty to this particular person that makes this action more problematic than mere failure to contribute to the opportunities of people generally.

Cases of Diminished Capacity

Another potential site of unfair advantage taking is one in which E confronts F who has diminished capacity due to mental disability or to a poor education or poor information.

For the sake of ease of exposition let us assume first that these flaws are faultlessly possessed by the vulnerable party. In one kind of case F simply has a diminished capacity or little information or understanding of what is involved in the making of the agreement, while E has a great deal of understanding, capacity and information. F cannot figure out what the agreement actually consists in, while E can. In another kind of case, the vulnerable party F has a lesser capacity to determine the terms of the agreement in a way that advances the concerns F has or in a way that advances F’s interests. At the same time E, by hypothesis, does have this ability.

There is evident unfairness in contexts like these. And I think the unfairness, once again, can be understood in terms of a kind of inequality of say in the process of constructing the agreement. In the first case F may be benighted or confused as to what the content of the agreement is and how to shape the contract in one way or another. The most obvious and extreme kind of case like this is one in which F does not know the language in which the agreement is expressed. Less extreme cases involve technical terms F does not understand or the agreement may be so complex that F does not have the time to figure it out. In these kinds of cases, F simply has a diminished capacity to shape the contract. The second kind of case involves F not having the knowledge to understand what the implications of the agreement are. As a consequence E is likely to have a much more efficacious say over the content of the agreement than F.

Assuming F’s ignorance or incapacity is faultless, E has a duty also not to press for full advantage in this context but to give assistance to F in terms of information and cognitive resources. Here too the duties people have are complex and vary from context to context. In the case of the division of labor, professionals have duties to explain the complex transactions to ordinary persons who are engaged in them. And we structure by law many transactions where a great deal of information not normally possessed by ordinary persons is grasped by someone who has expertise in this activity. Persons have rights to lawyers when they are accused of crimes. People usually employ agents when they buy houses and houses must be legally appraised for their value. Doctors must abide by the requirements of informed consent when they recommend treatment to patients. Violation of these norms, when it redounds to the advantage of the professional the seller is often exploitative.

*The Distinctive Character of the Wrongfullness of Exploitation*

I have argued that wrongful exploitation can only be explained with the help of a prior duty to a person that is violated, which duty is independent of and prior to the duty not to exploit. But I think there is nevertheless a distinctive duty not to exploit. This is because exploitation introduces a distinctive dimension to wronging a person. It in some crucial way seems perversely to make the person a part of the exploitation. It makes the person complicit at least in the sense that the person is acting in a way that makes exploitation possible. In contrast think of wrongfully benefitting from your wrong to another person that is not exploitative. If A kills his parent so as to receive the inheritance from the parent A is benefitting from wronging the parent. But A is not exploiting the parent because the parent’s actions do not currently contribute to the illicit advantage A gains. In contrast, A’s exploitation of B involves A’s deriving a benefit from B’s activities. B seems involved. This seems to make it a more intimate kind of wrong to B. It seems an even more public and clear way in which B’s interests are subordinated to A.

*Conclusion*

I have defended a conception of exploitation according to which A exploits B when and only when A derives an advantage from the actions of B and A derives this advantage because A has violated a duty towards B. I have tried to illustrate how this account works and how it can explain the plausible parts of the procedural and substantive conceptions of exploitation. I have also tried to show how the account can avoid the problem of counterproductivity or leveling down that seems to attend many views of wrongful exploitation. I take this to be a major point in favor of the view.

1. See my “Equality, Fairness and Agreements,” ms [↑](#footnote-ref-1)
2. See Rich Bigwood, *Exploitative Contracts* (Oxford: Oxford University Press, 2004) for an account like this. I think related accounts of exploitation can be found in Allen Wood, “Exploitation,” *Social Philosophy and Policy* 12 (1995) (for whom taking advantage of someone’s vulnerability is exploitative), and in Debra Satz, *Why Some Things Should Not Be for Sale: The Moral Limits of Markets* (Oxford: Oxford University Press, 2010) in which defects in agency are the basis of exploitation. [↑](#footnote-ref-2)
3. See Thomas Aquinas, *On Law, Morality and Politics* ed. Richard J. Regan and William P. Baumgarth (Indianapolis: Hackett, 2003) ST II-II Q. 77, Art 1 for the principle of equality in exchange. [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. See Mikhail Valdman, “A Theory of Wrongful Exploitation,” *Philosopher’s Imprint* vol. 9, n. 6 (July 2009), p. 3, 9. Another account that is close to this is in Richard Arneson, “What’s Wrong With Exploitation?” *Ethics* (91) 2, pp. 202-27. [↑](#footnote-ref-5)
6. Valdman characterizes an unacceptable alternative as one in which urgent needs are not met or in which it is not possible to lead a minimally decent life. [↑](#footnote-ref-6)
7. I think this is a worry for Hilllel Steiner’s account in “A Liberal Theory of Exploitation,” Ethics 1984. [↑](#footnote-ref-7)
8. See Thomas Pogge, “Testing Our Drugs on the Poor Abroad,” in *Exploitation and Developing Countries* ed. Jennifer Hawkins and Ezekiel Emanuel (Princeton, NJ: Princeton University Press, 2009), p. 115 and Alan Wertheimer, “Exploitation and Clinical Research,” in *Rethinking the Ethics of Clinical Research: Widening the Lens* (Oxford: Oxford University Press, 2010). [↑](#footnote-ref-8)
9. See Valdman, ibid. p. 4. Valdman also complains that the duty to aid account cannot explain why a very excessive price is worse than a somewhat excessive price since both demands would violate the duty to aid. But I don’t see why we can’t say that the duty to aid is more seriously violated the more excessive the price. [↑](#footnote-ref-9)
10. As Alan Wertheimer suggests in *Rethinking the Ethics of Clinical Research: Widening the Lens* (Oxford: Oxford University Press, 2010) chap 5. [↑](#footnote-ref-10)