

Exploitation, Human Rights, and Corporate Obligations

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Abstract

In this paper, I argue that there is an inconsistency between the content of some of the labor-related human rights articulated in key documents, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, and the obligations ascribed to various actors regarding those rights in the UN Guiding Principles on Business and Human Rights (UNGPs), and in particular the obligations ascribed to corporations. This inconsistency is important not only because there are reasons to want these important documents to embody a consistent moral vision, but also because it is mirrored in much public and academic discussion. Recognizing the inconsistency, I claim, can help us to see some of the moral limitations of both familiar public responses to exploitative labor practices and influential philosophical accounts of the wrong of labor exploitation. In light of these limitations, I argue that there are strong reasons to accept a more expansive account of the human rights-related obligations of corporations than that found in the UNGPs, and in particular that we should accept that corporations have obligations to actively contribute to lifting people out of poverty.

Keywords: exploitation; justice; labor rights; obligations; sweatshops

It is well known that some of the labor-related human rights articulated in key documents such as the Universal Declaration of Human Rights (UDHR)¹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)² are, in at least one sense, profoundly aspirational. Ensuring that all individuals enjoy what the content of the relevant rights suggests that they are entitled to would require radical transformations of a range of features within the global economy, as well as massive changes to the practices and norms of important economic actors, and of economic life more broadly. For example, Articles 23-25 of the UDHR state that

¹ United Nations Universal Declaration of Human Rights, UN Doc A/810, GA res. 217A (III) (adopted on 10 December 1948) ('UDHR').

² United Nations International Covenant on Economic, Social and Cultural Rights, UN Doc 14531, GA res. 2200A (XXI) (adopted on 16 December 1966) ('ICESCR').

[e]veryone has the right to work...to just and favorable conditions of work...to equal pay for equal work...to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity...to...reasonable limitation of working hours and periodic holidays with pay...to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care.³

Similarly, Article 7 of the ICESCR states that everyone has the right

to the enjoyment of just and favorable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) fair wages and equal remuneration for work of equal value... (ii) A decent living for themselves and their families... (b) Safe and healthy working conditions... (d) reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.⁴

And Article 11 states that everyone has the right to ‘an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions’.⁵

³ UDHR, note 1, Articles 23-25. The text of the UDHR and other documents that I will reference use male pronouns, which might suggest that they were written on the assumption that the labor-related human rights are at least most relevant for men, perhaps because men were assumed to be more likely than women to work in order to provide for a family. While it would be preferable for the text to have been written in a gender-neutral way, I will quote the original without altering it throughout this paper. I will, however, follow the currently standard interpretation, and understand the relevant rights as generating equal entitlements for all persons.

⁴ ICESCR, note 2, Article 7.

⁵ ICESCR, note 2, Article 11.

We are, of course, extremely far from living in a world in which everyone's compensation, working conditions, and broader standard of living meet the conditions that are described as rights in these Articles. Indeed, for a large percentage of the global population, these conditions are very far out of reach. Consider, for example, that it is estimated that as of March 2024, 689 million people were living on less than US\$2.15 per day.⁶ If we think, plausibly, that \$2.15 per day falls well short of what would constitute 'just and favorable remuneration' that is sufficient for 'a standard of living adequate for the health and well-being of [one]self and [their] family', then the number of people whose rights should be thought to be unsatisfied is much larger.⁷

Despite the fact that the rights that I have noted are deeply aspirational when considered in relation to both the current state of the world and what we can realistically expect to be achieved in the near future (and, unfortunately, likely in even the medium-term future as well), when considered in relation to most of the views that have been defended in philosophical discussions of what is required as a matter of global justice or international humanitarianism,⁸ they appear quite modest. We might think that they at least roughly reflect the minimum that any reasonable person might think everyone is entitled to in a world that is as wealthy as ours.

⁶ This figure is in 2017 Purchasing Power Parity (PPP) terms; see 'March 2024 Global Poverty Update from the World Bank: First Estimates of Global Poverty until 2022 from Survey Data', <https://blogs.worldbank.org/en/opendata/march-2024-global-poverty-update-from-the-world-bank--first-esti> (accessed 17 September 2024).

⁷ The number of people estimated to fall below US\$3.65 per day is 1.81 billion, and the number of people estimated to fall below US\$6.85 per day is 3.59 billion; March 2024 Global Poverty Update, note 6.

⁸ Some deny that principles of justice apply beyond national borders, and so would reject the claim that these rights specify requirements of justice, strictly speaking. For an example of such a view, see Thomas Nagel, 'The Problem of Global Justice' (2005) 33:2 *Philosophy & Public Affairs* 113. For contrary, cosmopolitan views, see Kok-Chor Tan, *Justice Without Borders* (Cambridge: Cambridge University Press, 2004); Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2006); Gillian Brock, *Global Justice: A Cosmopolitan Account* (Oxford: Oxford University Press, 2009).

Any account of individuals' rights, or entitlements of justice more generally, must be paired with an account of the obligations of various relevant agents (e.g. states, corporations, and individuals) to contribute to ensuring that the conditions specified in the content of the rights and entitlements are realized. In order to be consistent, the account of the relevant obligations must be such that if they are all satisfied, then the conditions specified in the content of the rights and entitlements will be realized. To see why this is the case, consider the following example:

The Right to Food on a Desert Island: A, B, and C find themselves stranded on a desert island. They know that a ship will pass by in two weeks, and that anyone who is still alive will be rescued then. A and B each have enough food to eat very well for two weeks, or to eat well enough to survive without any serious health issues for three weeks. C has only enough food to survive without any serious health issues for one week. There is no other food available on the island.

Presumably most people will want to say that, in this situation, C has a right or entitlement to at least enough food to survive without any serious health issues for two weeks. Clearly, if C has such a right, then it must also be the case that A and B have, between them, obligations to redirect a portion of their food to C. The claim that C has a right to enough food to survive without any serious health issues for two weeks would be meaningless – would make no sense – in the absence of a claim to the effect that A and B have such obligations.

With respect to the labor-related human rights that I have noted, the most important document that articulates a view about the obligations of relevant actors is the United Nations

Guiding Principles on Business and Human Rights (UNGPs).⁹ The key distinction that is drawn in the UNGPs is between the obligations of states, on the one hand, and the obligations of corporations, on the other.¹⁰ Specifically, states are said to have ‘obligations to respect, protect and fulfil human rights’, while corporations are obligated ‘to comply with all applicable laws and to respect human rights’.¹¹ The most important implication of this formulation of the obligations of corporations is, of course, that they are not obligated, as states are, to protect and fulfil human rights (or to contribute to their protection or fulfilment).

It might seem that there is no threat of inconsistency between the content of the rights articulated in the UDHR and the ICESCR, and the obligations attributed to states and corporations, respectively, in the UNGPs. After all, there are actors that are assigned obligations to protect and fulfil human rights – namely states – so that conditions in which relevant human rights are not adequately protected or fulfilled can be understood as involving failures on the part of states to satisfy their obligations. So long as the particular obligations attributed to states are such that compliance with them would ensure that the relevant human rights are protected and fulfilled, there is no inconsistency between the content of the rights and the account of the associated obligations.

⁹ Human Rights Council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, A/HRC/17/31 (21 March 2011) (‘UNGP’).

¹⁰ Throughout this paper, I use the term ‘obligations’ to refer to what the UNGPs call the ‘responsibilities’ of corporations. This allows for consistency with references to the obligations of states, thereby avoiding using distinct terms for requirements that are associated with the very same human rights. This is important because my argument relies on the claim that what is required of states and corporations together must, in the aggregate, be sufficient to ensure that if those agents do what is required of them, then everyone’s human rights, as they are properly understood, will be fulfilled. Referring to the requirements that apply to different agents using distinct terms, as the UNGPs do, makes it more difficult to keep clearly in mind this way in which the content of the requirements that apply to states and those that apply to corporations must be related. In addition, it seems to me that ‘obligation’ captures more clearly than ‘responsibility’ the normative force of the claims that I intend to make. For example, while at least most will surely think that it is clear that if an agent fails to fulfil an obligation, they are blameworthy in the absence of excusing conditions, and those to whom the obligation was owed have a claim against them, it seems less obvious that these implications follow when an agent is described as having failed to comply with a responsibility.

¹¹ UNGP, note 9, General Principles.

I will argue, however, that the obligations that are attributed, and that could plausibly be attributed, to states do not meet the condition that compliance with them would guarantee that the labor-related human rights are adequately protected and fulfilled. In addition, corporations following applicable laws and complying with the obligation to respect human rights, as that obligation is typically understood, will, on their own, tend to do little, if anything, to contribute to the protection, and especially the fulfilment, of the relevant human rights. If this is correct, then we are faced with two options. First, we can abandon the relevant labor-related human rights, and claim that they ought not be included in our account of human rights or universal moral entitlements. Or, second, we can endorse a more expansive account of the human rights-related obligations of corporations – specifically, one that attributes to corporations obligations to contribute to the protection and fulfilment of human rights, and in particular obligations to contribute to lifting people out of poverty.

The limitations of the account of the differential obligations of states and corporations embodied in the UNGPs can be recognized more clearly by considering the issues raised by sweatshop employment, which is widely viewed as a paradigm case highlighting the failures of the current global economy to live up to the standards articulated in the core human rights documents. Many scholars hold that when workers are employed in sweatshop conditions, their employers and/or the multinational corporations that purchase products from their employers¹²

¹² As is widely noted in discussions of the ethics of sweatshop employment, most sweatshops are operated by small, local firms that contract with multinational corporations to produce products for them. See, for example, Denis G. Arnold and Norman E. Bowie, 'Sweatshops and Respect for Persons' (2003) 13:2 *Business Ethics Quarterly* 221, 225-6; Chris Meyers, 'Wrongful Beneficence: Exploitation and Third World Sweatshops' (2004) 35:3 *Journal of Social Philosophy* 319, 329; Iris Marion Young, 'Responsibility and Global Labour Justice' (2004) 12:4 *Journal of Political Philosophy* 365, 366-7; Gordon G. Sollars and Fred Englander, 'Sweatshops: Kant and Consequences' (2007) 17:1 *Business Ethics Quarterly* 115, 116; Jeremy Snyder, 'Needs Exploitation' (2008) 11:4 *Ethical Theory and Moral Practice* 389, 399; Matt Zwolinski, 'Structural Exploitation' (2012) 29:1 *Social Philosophy and Policy* 154, 162; Brian Berkey, 'Sweatshops, Structural Injustice, and the Wrong of Exploitation: Why Multinational Corporations Have Positive Duties to the Global Poor' (2021) 169:1 *Journal of Business Ethics* 43, 45.

are guilty of wrongful exploitation.¹³ Recently, Peter Muchlinski and Denis Arnold have suggested that transnational corporations that contract with local suppliers that employ workers in sweatshop conditions, and do not take adequate steps to ensure that wages and working conditions meet standards of the kind specified in the labor-related human rights, fail to comply with their obligation to respect human rights.¹⁴ If we think that this is a plausible claim, then we must ask what these transnational corporations could do in order to ensure that they comply with their obligation to respect human rights. That is, we must consider which among their options regarding, for example, their product sourcing and contract provisions with suppliers should be thought consistent with satisfying the obligation to respect human rights. And relatedly, we must ask whether all of the ways that they could comply with their obligation to respect human rights are necessarily consistent, in combination with states satisfying their labor-related human rights obligations, with the fulfilment of these rights for all.

I will suggest that when we reflect on these questions, it becomes clear that on familiar and plausible ways of understanding what the obligation to respect the labor-related human rights involves, as well as widely accepted ways of understanding the wrong of exploitation, compliance by corporations with the obligation to respect human rights and to avoid exploitation

¹³ See, for example, Meyers, note 11; Sonja Dänzer, 'Unfair Trade, Exploitation, and Below-Subsistence Wages' (2014) 1:2 *Moral Philosophy and Politics* 269; Michael Kates, 'Sweatshops, Exploitation, and the Case for a Fair Wage' (2019) 27:1 *Journal of Political Philosophy* 26; Michael Kates, 'Sweatshops, Exploitation, and the Nonworseness Claim' (2023) 33:4 *Business Ethics Quarterly* 682; David Faraci, 'Wage Exploitation and the Nonworseness Claim: Allowing the Wrong, to Do More Good' (2019) 29:2 *Business Ethics Quarterly* 169. For contrary views, see Benjamin Powell, 'In Reply to Sweatshop Sophistries' (2006) 28:4 *Human Rights Quarterly* 1031; Matt Zwolinski, 'Sweatshops, Choice, and Exploitation' (2007) 17:4 *Business Ethics Quarterly* 698; Benjamin Powell and Matt Zwolinski, 'The Ethical and Economic Case Against Sweatshop Labor: A Critical Assessment' (2012) 107:4 *Journal of Business Ethics* 449.

¹⁴ Peter Muchlinski and Denis G. Arnold, 'Sweatshops and Labour Law: The Ethical and Legal Implications of Ignoring Labour Law in Developing Countries' (forthcoming) *Business and Human Rights Journal* 1. Arnold has made similar claims with other co-authors previously; see Arnold and Bowie, note 11; Denis G. Arnold and Laura P. Hartman, 'Moral Imagination and the Future of Sweatshops' (2003) 108:4 *Business and Society Review* 425; Denis G. Arnold and Laura P. Hartman, 'Beyond Sweatshops: Positive Deviancy and Global Labor Practices' (2005) 14:3 *Business Ethics: A European Review* 206; Denis G. Arnold and Laura P. Hartman, 'Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops' (2006) 28:3 *Human Rights Quarterly* 676.

is insufficient, even in combination with states satisfying their obligations, to ensure the fulfilment of the labor-related human rights for all. And I will argue that, in light of this insufficiency, we ought to endorse the second of the two options that I noted above – that is, we ought to accept a more expansive account of the obligations of corporations, including an obligation to contribute to lifting people out of poverty.¹⁵

Before proceeding, it is important to clarify some key features of the argument that I will develop. First, for the purposes of this paper, I will use the term ‘sweatshops’ in a way that is, in one sense, broader, and in another, narrower, than familiar uses in public discourse as well as in some scholarly discussions. Specifically, I will use it (subject to the exclusions noted below) to refer to any places of employment in which at least some workers are paid less than is plausibly required in order for their labor-related human rights to be fulfilled, and/or in which the hours that at least some workers are made to work exceed the maximum that is consistent with those human rights, properly understood, and/or in which the working conditions of at least some workers are beneath the standards set by those human rights, properly understood.¹⁶ I will exclude, however, those places of employment in which the workers subjected to any of these

¹⁵ While a number of other scholars have defended more expansive accounts of the human rights-based obligations of corporations than that found in the UNGPs, my argument is distinctive in relying on an account of the content of the labor-related human rights, and proceeding to claim that the UNGPs account is incompatible with this view about the content of the rights. For other arguments for more expansive accounts, see, for example, David Bilchitz, ‘The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations?’ (2010) 7:12 *SUR International Journal on Human Rights* 198; Florian Wettstein, ‘Silence as Complicity: Elements of a Corporate Duty to Speak Out Against the Violation of Human Rights’ (2012) 22:1 *Business Ethics Quarterly* 37; Florian Wettstein, ‘CSR and the Debate on Business and Human Rights: Bridging the Great Divide’ (2012) 22:4 *Business Ethics Quarterly* 739; David Jason Karp, *Responsibility for Human Rights: Transnational Corporations in Imperfect States* (Cambridge: Cambridge University Press, 2014; for a somewhat skeptical perspective on expansive accounts that nonetheless allows that corporations can have obligations beyond respecting human rights, see John Douglas Bishop, ‘The Limits of Corporate Human Rights Obligations and the Rights of For-Profit Corporations’ (2012) 22:1 *Business Ethics Quarterly* 119.

¹⁶ This usage is broader than familiar uses because it allows workplaces that are not production facilities (for example, for clothing or electronics) to count as sweatshops. This is important for the purposes of this paper because workplaces that are not production facilities can employ people on terms that leave their labor-related human rights unfulfilled.

conditions have easily available to them alternative employment opportunities that would allow them to avoid all of the conditions. For example, a law firm that subjects very highly paid attorneys to a requirement to work extremely long hours does not count as a sweatshop, at least so long as the attorneys could easily find employment elsewhere that would not require such long hours, and that would also provide pay and working conditions that exceed the thresholds set by the labor-related human rights, properly understood.¹⁷

In addition, while I do not deny that the label ‘sweatshop’ is appropriately applied to workplaces that, in addition to paying low wages and/or requiring long hours and/or subjecting workers to poor working conditions, also subject workers to, for example, forced labor, sexual abuse, wage theft, deception about aspects of the working conditions, or other clearly objectionable conditions,¹⁸ my references to sweatshops in this paper will refer only to those workplaces that do not subject workers to any of these additional conditions. This artificially narrow usage is necessary in order to ensure that the argument remains focused on the ways in which actors involved in employing people in conditions characterized by low wages, and/or long hours, and/or poor working conditions might be thought to be failing to comply with their obligation to respect human rights.

¹⁷ There is an interesting debate about whether certain workers, for example adjunct instructors in academia, who are in fact paid little, and/or required to work long hours, should be thought to be wrongfully exploited by their employers given that they typically have available to them employment opportunities outside of academia that would pay well and provide reasonable hours and working conditions. See, for example, Jason Brennan and Phillip Magness, ‘Are Adjunct Faculty Exploited: Some Grounds for Skepticism’ (2018) 152:1 *Journal of Business Ethics* 53; Daniel Koltonski, ‘Vocations, Exploitation, and Professions in a Market Economy’ (2018) 44:3 *Social Theory and Practice* 323; Scott Hill and Justin Kloocksiem, ‘Adjuncts are Exploited’ (2021) 50:3 *Philosophia* 1153.

¹⁸ While conditions such as these remain, unfortunately, fairly common, there is no serious debate about whether they are morally permissible, as there is about low pay, long hours, and poor working conditions. These practices are characterized as clearly impermissible by those with widely differing views about the central issues in the philosophical debates about sweatshops and exploitation. See, for example, Meyers, note 11, 319; Zwolinski, note 12, 710-12; Snyder, note 11, 389.

The second feature of the argument that is important to note is that, while I will, following the UNGPs (and typical non-academic discussions), refer to corporate obligations to, for example, respect human rights, I take no position on the difficult question of whether corporations are themselves moral agents that can have obligations, or if, instead, we should understand references to corporate obligations as, in effect, a kind of shorthand for ultimately more complex sets of obligations held by individual human beings who are members of corporations.¹⁹

Finally, it is important to note that the argument that I will make treats the rough account of the content of the labor-related human rights described above, and the rough account of the obligations of corporations in relation to these rights found in the UNGPs, as philosophical positions, and asks whether, as a matter of principle, these accounts are compatible. The answer to this question, as well as the answer that I suggest to the further question of what we ought to conclude about the obligations of corporations if we think that the accounts are not compatible, have no direct implications for whether, all things considered, the text of any of the documents referenced ought to be changed. If we think, as seems plausible, that these documents serve

¹⁹ The view that corporations are agents in their own right, and can therefore themselves be the bearers of moral obligations, is now the dominant view in the debate. For an important early defense of this view, see Peter French, 'The Corporation as a Moral Person' (1979) 16:3 *American Philosophical Quarterly* 207. More recent defenses include David Silver, 'A Strawsonian Defense of Corporate Moral Responsibility' (2005) 42:4 *American Philosophical Quarterly* 279; Denis G. Arnold, 'Corporate Moral Agency' (2006) 30:1 *Midwest Studies in Philosophy* 279; Philip Pettit, 'Responsibility Incorporated' (2007) 117:2 *Ethics* 171; Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford: Oxford University Press, 2011); Kendy M. Hess, 'Does the Machine Need a Ghost? Corporate Agents as Nonconscious Kantian Moral Agents' (2018) 4:1 *Journal of the American Philosophical Association* 67. For the view that corporations are not moral agents and cannot, in themselves, be the bearers of obligations, see Manuel G. Velasquez, 'Why Corporations are Not Responsible for Anything They Do' (1983) 2:3 *Business and Professional Ethics Journal* 1; Manuel G. Velasquez, 'Debunking Corporate Moral Responsibility' (2003) 13:4 *Business Ethics Quarterly* 531; David Rönnegard, 'How Autonomy Alone Debunks Corporate Moral Agency' (2013) 32:1-2 *Business and Professional Ethics Journal* 77; David Rönnegard, *The Fallacy of Corporate Moral Agency* (Dordrecht, Springer, 2015). For an intermediate position, according to which corporations are merely 'secondary moral agents', see Patricia Werhane, 'Corporate Moral Agency and the Responsibility to Respect Human Rights in the UN Guiding Principles: Do Corporations Have Moral Rights?' (2016) 1:1 *Business and Human Rights Journal* 5.

purposes other than reflecting a single consistent, consensus philosophical position about the rights of individuals and the obligations of various relevant actors, then it is possible that there are reasons to accept some inconsistencies across documents of these kinds.²⁰

It might be objected that if the documents are not best understood as offering, or even attempting to offer, a consistent philosophical view about the relevant rights and obligations, then it is inappropriate to treat them, in effect, as presenting philosophical positions on these issues at all. This objection, however, seems to me mistaken, primarily because even if the documents were not crafted specifically to offer such philosophical positions, their content is surely aimed at reflecting what the authors viewed as widely accepted moral commitments that ought to be assessable from a philosophical perspective. For example, the content of the rights described surely can be understood to reflect a broad consensus regarding some of the minimal moral entitlements of people living in a world like ours, and the content of the obligations articulated in the UNGPs can surely be understood as reflecting a consensus about the minimum that we are justified in expecting from states and corporations operating in a world like ours. The fact that the documents may have also been crafted in a way that aims to, for example, limit objections from interested parties (for example, corporations), or to avoid making compliance seem onerous, such that many actors might simply dismiss them as unrealistic, does not undercut the reasons to critically examine their content from a philosophical perspective.

I will proceed in the remainder of the paper as follows. First, in section I, I will note two key features of several of the labor related human rights that are important for assessing the effects of various kinds of conduct, and in particular corporate conduct, on the extent to which

²⁰ I am inclined to think that it is a significant drawback of a set of related documents that they express inconsistent commitments, and that there are reasons to take note of any inconsistencies and aim to eliminate them if possible. I will not, however, defend this claim in this paper.

those rights are fulfilled. In addition, I will offer a brief moral defense of the view that these rights ought to be understood as having these features. In section II, I will describe some of the prominent objections that have been made against sweatshop labor, and in particular objections to the effect that sweatshop workers are wrongfully exploited, and consider how this charge might be argued to be compatible with the UNGPs view that corporations are obligated to respect human rights, but not obligated to contribute to their protection or fulfilment. In section III, I will argue that the content of at least some of the relevant labor-related human rights prevents us from being able to consistently accept both that sweatshop employment constitutes a failure by involved corporations to respect human rights, and that there are no corporate obligations to contribute to the protection or fulfilment of these rights. Finally, in section IV I will conclude by briefly offering some reasons to resolve the inconsistency between the content of the labor-related human rights, the UNGPs view about corporate obligations, and the widely accepted view that sweatshop employment is wrongfully exploitative by rejecting the UNGPs view and accepting that corporations have obligations to contribute to the protection and fulfilment of the labor-related human rights.

I. Some Features of Labor-Related Human Rights

It is important to consider precisely how we should understand what the labor-related human rights imply that individuals are entitled to. Once again, according to the UDHR and the ICESCR, these rights include:

1. The right to work.²¹
2. The right to just and favorable conditions of work.²²

²¹ UDHR, note 1, Article 23, section 1.

²² UDHR, note 1, Article 23, section 1; ICESCR, note 2, Article 7; see also the related right in ICESCR, Article 7, section b, to ‘safe and healthy working conditions’.

3. The right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity.²³
4. The right to reasonable limitation of working hours.²⁴
5. The right to a standard of living adequate for the health and well-being of himself and his family.²⁵

The most important thing to notice about these rights is that they are clearly rights the fulfillment of which requires that various opportunities, conditions, and benefits are provided to all. For example, the right to work would be fulfilled only if everyone who would like to work has the opportunity to do so – that is, only if everyone who actively seeks a job can find one. Given the content of the other rights noted, the labor-related human rights would be jointly fulfilled only if everyone who seeks a job can find one that offers just and favorable conditions of work, and in particular reasonably limited working hours and pay that ensures an adequate standard of living and an existence worthy of human dignity. The labor-related human rights, then, are together what I will call *opportunity and outcome-focused rights*.²⁶ What this means is that the fulfillment of the rights requires that a sufficient set of opportunities is made available to all, and that all of those who appropriately pursue those opportunities are ensured that certain outcomes obtain (for

²³ UDHR, note 1, Article 23, section 3; see also the formulation in ICESCR, Article 7, section a, sub-section ii, which provides for the right to ‘remuneration which provides all workers, as a minimum, with... a decent living for themselves and their families’.

²⁴ UDHR, note 1, Article 24; ICESCR, note 2, Article 7, section d.

²⁵ UDHR, note 1, Article 25, section 1; see also the similar formulation in ICESCR, Article 11, which provides for the right to ‘an adequate standard of living for himself and his family’.

²⁶ I use this label and explain its meaning, rather than characterizing the relevant rights in terms of the familiar distinction between negative and positive rights, because in my view that distinction is insufficiently fine-grained to isolate some of the most important features of these rights, the identification of which in turn will help to illuminate the challenges faced by the UNGPs view about corporate obligations.

example, that their pay provides for an adequate standard of living, and that their work hours are reasonably limited).

A second thing to notice about these rights is that, apart from the right to work, they all specify thresholds that must be met in order for the rights to be fulfilled. Of course, the content of the rights leaves a great deal of room for debate about how to interpret the thresholds and attempt to determine when they are met. There can be reasonable disagreement about, for example, what is necessary in order for working conditions to be ‘just and favorable’, or for remuneration to ensure an existence worthy of human dignity. The formulation of the rights, however, makes clear that what they require should be understood in terms of thresholds, so that the rights of those who work in conditions that fall below the threshold are not fulfilled. This explains why, for example, we might plausibly think that the rights of sweatshop workers are not fulfilled – their jobs are characterized by working conditions that are clearly not just and favorable, by remuneration that is often less than what is plausibly required for an adequate standard of living for the workers and their families, and by hours that it would be difficult to accept as reasonably limited.

While I cannot offer a detailed defense of the claim that labor-related human rights are best understood, morally speaking, in the way that they are formulated in the documents – that is, as opportunity and outcome-focused, with the relevant outcomes consisting in certain thresholds being met – I will offer two important and related moral grounds for favoring this way of understanding these rights. The first is that it seems to effectively capture the kind of fundamental concern that we ought to have that everyone’s most basic interests are met, and more generally that everyone’s life goes at least decently well (at least as long as they are willing to contribute to society by working). A requirement that everyone is provided with at least

enough opportunities and resources (perhaps subject to pursuing the relevant opportunities) to live a minimally decent life is widely accepted as a necessary minimum component of any plausible account of justice or humanitarianism.²⁷ It seems reasonable, then, that we should understand the labor-related human rights in a way that entails a commitment to this requirement, since otherwise we would be committed to allowing that these rights could be fulfilled without what is widely regarded as the most minimal requirement that any plausible account of distributive justice must include being satisfied.

A second, related reason to favor understanding the labor-related human rights in the way that I have described can be seen by first noting that we live in a world in which most people can only, or are at least expected to, acquire the resources necessary to ensure a decent standard of living via paid labor (or via the paid labor of others, such as close family members). In light of this fact, if we do not understand the labor-related human rights in the opportunity and outcome-focused way that I have suggested, the content of the rights would likely imply that some, and perhaps many people could lack effective access to the resources and opportunities necessary for an adequate standard of living without any of their rights being unfulfilled.²⁸ While the expectation that those who are able to work either engage in paid labor or are provided for by

²⁷ It is, of course, not universally accepted. For example, some libertarians reject it; see, for example, Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974). In addition, among those who accept it as a condition for the minimal plausibility of a view, there is much disagreement about whether additional requirements, for example requirements to limit inequality above the threshold, or to give priority, above and/or below the threshold, to those who are worse off when setting policies that will affect the distribution of resources and opportunities. For discussion of the threshold-based 'sufficientarian' view, see Liam Shields, 'Sufficientarianism' (2020) 15:11 *Philosophy Compass* 1. For defenses of sufficientarianism, see Harry Frankfurt, 'Equality as a Moral Ideal' (1987) 98:1 *Ethics* 21; Yitzhak Benbaji, 'The Doctrine of Sufficiency: A Defense' (2005) 17:3 *Utilitas* 310; Robert Huseby, 'Sufficiency: Restated and Defended' (2010) 18:2 *Journal of Political Philosophy* 178. For criticism, see Paula Casal, 'Why Sufficiency is Not Enough' (2007) 117:2 *Ethics* 296.

²⁸ This would be the case, for example, if we interpreted the right to work not as entailing the right to a job, should one want one, but instead merely the right to attempt to be hired, and then understood the rights to just and favorable conditions and remuneration sufficient for an existence worthy of human dignity and an adequate standard of living as conditional rights, such that only those who independently succeed in gaining employment have the right that their employment conditions are consistent with the content of the rights.

others who do can be challenged, for example by those who support the implementation of a universal basic income,²⁹ these challenges suggest that we ought to ensure that the outcomes that I have claimed we should take to be required by the labor-related human rights are guaranteed by policies that allow for labor to be, in effect, taken out of the equation. The success of this kind of challenge, then, would not provide us with grounds for rejecting the kind of opportunity and outcome-focused rights that I have suggested we interpret the labor-related rights to be, but instead would provide grounds for detaching these rights from labor to a much greater extent than they are in the existing documents, and in much public and scholarly thought. So long as we live in a world without a universal basic income (or some other policy that eliminates the need to labor in order to provide for a decent standard of living), however, and so long as the relevant documents articulate the relevant rights as connected to labor, we have strong reasons to understand the opportunities and outcomes that I have noted are widely regarded as minimal requirements of justice or humanitarianism as guaranteed by the labor-related rights.

II. Sweatshop Labor, Exploitation, and Labor-Related Human Rights

Workers employed in sweatshops endure at least some combination of pay that is too low to provide for an adequate standard of living or an existence worthy of human dignity, hours that are too long to qualify as reasonably limited, and/or conditions of work that cannot plausibly be claimed to be just and favorable. Many sweatshop workers' jobs are characterized by all three of these conditions. It is uncontroversial, and indeed on many definitions it is (or is close to) a

²⁹ See, for example, Philippe Van Parijs, 'Why Surfers Should be Fed: The Liberal Case for an Unconditional Basic Income' (1991) 20:2 *Philosophy & Public Affairs* 101; Philippe Van Parijs, *Real Freedom for All: What (if Anything) Can Justify Capitalism?* (Oxford: Oxford University Press, 1995). For a skeptical view, see Joseph Heath, 'Why a UBI Will Never Be High Enough' (2024) 41:2 *Journal of Applied Philosophy* 289.

conceptual truth, that at least some of sweatshop workers' labor-related human rights are not fulfilled.

It is widely believed that those who employ workers in sweatshop conditions and/or the multinational corporations that make it extremely difficult for employers in certain sectors to stay in business without subjecting workers to such conditions, are guilty of wrongfully exploiting those workers.³⁰ There are two main families of views regarding how we ought to understand the wrong of exploitation.³¹ According to the first family of views, the wrong of exploitation consists in a kind of unfairness – specifically, the benefits of economic transactions, such as employment arrangements, are distributed among the parties to the transactions in ways that fail to meet a minimum standard of fairness.³² On the second family of views, the wrong of exploitation consists in a kind of degradation or disrespect – specifically, the treatment of

³⁰ Many of those who believe that sweatshop workers are, at least typically, wrongfully exploited accept both that some direct employers of such workers could not employ them on more favorable terms without being driven out of business, and that because of this fact these employers do not do anything wrong by employing those workers, at least so long as having the jobs is better for the workers than their next best actually available alternative would be; see, for example Meyers, note 11, 329; Robert Mayer, 'Sweatshops, Exploitation, and Moral Responsibility' (2007) 38:4 *Journal of Social Philosophy* 605; Snyder, note 11, 390, 398, 400-01, 404; Benjamin Ferguson, 'The Paradox of Exploitation' (2016) 81:5 *Erkenntnis* 951; Kates, note 12, 44. The most common way of maintaining that sweatshop workers who are employed by firms that could not survive if they were to, for example, pay those workers more, reduce their hours, or provide better working conditions, are still wrongfully exploited is to claim that it is the (typically large, multinational) corporations that source products from the sweatshops, and generally insist on very low prices, that make it the case that the sweatshop employers could not both improve the conditions of their workers and remain in business, and are therefore responsible for the exploitation of the workers. Some, however, suggest that the fact that many employers could not stay in business if they improved sweatshop workers' conditions provides grounds for denying that the workers are wrongfully exploited; see, for example, Gordon G. Sollars and Fred Englander, 'Sweatshops: Economic Analysis and Exploitation as Unfairness' (2018) 149:1 *Journal of Business Ethics* 15.

³¹ In recent years Nicholas Vrousalis has developed an interesting and important alternative account, according to which exploitation is wrong in virtue of being a form of domination; see Nicholas Vrousalis, 'Exploitation, Vulnerability, and Social Domination' (2013) 41:2 *Philosophy & Public Affairs* 131; Nicholas Vrousalis, *Exploitation as Domination: What Makes Capitalism Unjust* (Oxford: Oxford University Press, 2023). For the purposes of this paper, I must leave Vrousalis's account aside.

³² For endorsement of fairness-based accounts of the wrong of exploitation, see Alan Wertheimer, *Exploitation* (Princeton, Princeton University Press, 19996), Chapter 7; Meyers, note 11; Robert Mayer, 'What's Wrong With Exploitation?' (2007) 24:2 *Journal of Applied Philosophy* 137; Mayer, note 28; Michael Randall Barnes, 'Exploitation as a Path to Development: Sweatshop Labor, Micro-Unfairness, and the Non-Worseness Claim' (2013) 10:1 *Ethics and Economics* 26; Dänzer, note 12; Ferguson, note 28; Sollars and Englander, note 28; Kates (2019), note 12; Kates (2023), note 12.

exploited workers by their employers (or, perhaps, by other agents, such as multinational firms that source products from their employers) is objectionably degrading or disrespectful.³³

Proponents of fairness-based accounts tend to rely, at least implicitly on a principle according to which when multiple parties engage in economic cooperation that generates benefits, each of the contributing parties is entitled to a share of the benefits that at least meets whatever the appropriate minimum standard of fairness requires.³⁴ They then claim that when employing workers in sweatshop conditions is wrong (as most claim it at least usually is), this is because those workers do not receive a share of the benefits that is at least minimally fair – instead, their employers and/or the multinational firms that source products from their employers use their greater bargaining power to extract an unfairly large proportion of the benefits for themselves. While this type of account of the wrong of exploitation seems potentially best-suited to explain why the low wages that are typical of sweatshop employment are wrongfully exploitative, facts about the burdens of long hours and poor working conditions can at least play a role in explaining why considerations of fairness suggest that sweatshop workers’ pay is typically objectionably low. In addition, in principle proponents of this kind of view could argue that economic cooperation is unfair, and therefore exploitative, when the *burdens* that must be endured in order to produce the benefits of the cooperative activity are distributed unfairly, and not only when the benefits are distributed unfairly. They could then argue that, at least typically,

³³ For endorsement of disrespect or degradation-based accounts, see Allen Wood, ‘Exploitation’ (1995) 12:2 *Social Philosophy and Policy* 136; Ruth Sample, *Exploitation: What It Is and Why It’s Wrong* (Lanham, MD: Rowman and Littlefield, 2003). For a respect-based account of the wrong of employing workers in sweatshop conditions that is not framed in terms of exploitation, see Arnold and Bowie, note 11; Denis G. Arnold and Norman E. Bowie, ‘Respect for Workers in Global Supply Chains: Advancing the Debate Over Sweatshops’ (2007) 17:1 *Business Ethics Quarterly* 135.

³⁴ This principle is articulated most clearly, and defended in the greatest detail, in Kates (2023), note 12.

when some workers are expected to work unreasonably long hours and/or work in poor conditions, the relevant burdens are in fact distributed unfairly.³⁵

Proponents of respect-based accounts³⁶ claim that sweatshop employers (and/or the firms that source products from them) exhibit or express disrespect for their employees when they pay them low wages, require them to work long hours, and/or require them to work in poor conditions. These accounts must, of course, rely on claims about the conditions that must be met in order for economic cooperation between those with greater resources and bargaining power and those with less to avoid charges of disrespect or degradation on the part of the more powerful party. There is debate about precisely how we should understand these conditions, but, unsurprisingly, proponents of respect-based accounts all hold that sweatshop employment fails to meet the conditions. In addition, unlike proponents of fairness-based accounts, they do not seem to face the challenge that it is more difficult to see how some of the conditions of sweatshop labor that are typically thought to be objectionable can be explained to be so by their account. It is, for example, no more mysterious how it can be claimed that requiring people to work long hours, or to work in poor conditions, is disrespectful or degrading, than how it can be claimed that paying people very low wages is disrespectful or degrading. The unified explanatory potential of the view is quite clear.

Are these families of views about the wrong of exploitation compatible with the UNGPs view that corporations are obligated to respect human rights, but are not obligated to contribute to the protection or fulfilment of those rights? In order to defend their compatibility, proponents

³⁵ This line of argument is not explicitly developed in any of the literature of which I am aware, and the focus of most defenders of fairness-based views is on the distribution of the benefits (typically income and wealth) that are produced by economic cooperation, though the long hours and poor working conditions that characterize typical sweatshops are also widely noted.

³⁶ For ease of exposition, I will refer to the accounts that appeal to the claim that the wrong of exploitation consists in a kind of degradation or disrespect as ‘respect-based accounts’.

of each type of view must argue that employing workers in sweatshop conditions constitutes a failure to respect some of the labor-related human rights, such as the right to just and favorable working conditions, the right that work hours are reasonably limited, and/or the right to just and favorable remuneration. In addition, they must argue that the grounds for holding that employing workers in sweatshop conditions constitutes a failure to respect human rights do not also commit us to accepting that corporations have at least some obligations to contribute to the protection or fulfilment of human rights.

In the case of fairness-based views, the claim must be, at least roughly,³⁷ that employing people in conditions in which they receive an unfairly low share of the benefits of economic cooperation (and/or shoulder an unfairly high proportion of the relevant burdens), and in which at least some of their labor-related human rights are unfulfilled, constitutes a failure to respect their human rights. In effect, the view is that what respecting the labor-related human rights requires is that employers satisfy a conditional obligation,³⁸ the content of which is, roughly, the following: *if an agent (e.g. a corporation) employs someone, then (if they can) that agent must ensure that the employee's labor-related human rights are fulfilled.* On this view, respecting human rights requires fulfilling those rights, but only on the condition that the employer in question is engaged in economic cooperation with others whose labor-related rights will be fulfilled if (and often only if) the employer fulfills them.

³⁷ For ease of exposition, I will avoid the more complex formulations that would be required to explicitly cover the cases in which we might think that firms that source products from sweatshops are the parties guilty of wrongful exploitation and/or failure to respect human rights. The explanations that I offer, however, should be understood as including this possibility.

³⁸ Some defenders of fairness-based accounts of the wrong of exploitation explicitly endorse the claim that the wrong consists in failing to satisfy a conditional obligation; see, for example, Kates (2019), note 12, 34. For discussion of conditional obligations in general, see Theron Pummer, 'Whether and Where to Give' (2016) 44:1 *Philosophy & Public Affairs* 278; Tina Rulli, 'Conditional Obligations' (2020) 46:2 *Social Theory and Practice* 365; Brian Berkey, 'Effectiveness and Demandingness' (2020) 32:3 *Utilitas* 368.

The relevant claim will have at least a fairly similar structure on respect-based views. For proponents of this kind of view, the key idea must be that employing people in conditions that, for independent moral reasons, count as disrespectful or degrading, and in which at least some of their labor-related human rights are unfulfilled, constitutes a failure to respect their human rights. And just as on the fairness-based view, the obligation to fulfil the human rights of those who are employed will be conditional – that is, it applies only when and because an employment relationship is actually in place.

Views of this kind, on which the wrong of exploitation and the failure to respect the labor-related human rights consist in the failure to satisfy a conditional obligation, appear to have the potential to explain, and potentially vindicate, the UNGPs view that corporations are obligated to respect human rights, but not obligated to contribute to the protection or fulfilment of those rights. This is because they suggest a particular way of making sense of the otherwise potentially puzzling thought that the corporate obligation to respect the labor-related human rights is, in the relevant sense, analogous to the obligation to respect other human rights, such that it is unmysterious how there could be an obligation to respect the rights in the absence of an obligation to contribute to their protection or fulfilment. The way to make sense of this, on these views, is to think that when, and only when, corporations employ people in sweatshop conditions, they are *violating* the labor-related human rights of their employees, in a way that is analogous, in the relevant sense, to the way that an agent violates another's human right to life³⁹ by killing her. In the case of the human right to life, it is at least plausible that all agents are required not to violate others' right, while at the same time some agents are not, at least as a general matter, in the ordinary course of everyday life, obligated to contribute to the protection

³⁹ UDHR, note 1, Article 3.

or fulfilment of the right.⁴⁰ Ordinary citizens are not, for example, obligated to spend any time patrolling their neighborhoods, ready to intervene if anyone's right to life is threatened, whereas states are, on most views, obligated to operate police forces in order to protect individuals' right to life.

This way of attempting to make sense of the view that corporations are obligated to respect the labor-related human rights, but not obligated to contribute to their protection or fulfilment, depends on the claim that respect for these rights consists in refraining from violating them, and on the claim that violating them consists in employing people on terms that leave their rights unfulfilled. While these claims do not seem obviously correct, they are not clearly implausible either. In addition, we might think that their compatibility with the UNGPs view, and with the most commonly accepted views about what the wrong of exploitation consists in, provides some reason for accepting them. Nonetheless, it is important to consider some ways in which they can be challenged. In the remaining two sections of this paper, I will argue that, despite the reasons for finding them appealing, we cannot plausibly accept both of them, and therefore should not accept the UNGPs view about the nature and limits of corporations' obligations.

III. Rights Violations, Contributions to Rights Fulfilment, and Obligations

I argued in section I that, as they are formulated in the UDHR and ICESCR, at least many of the labor-related human rights are opportunity and outcome-focused. In addition, I suggested that

⁴⁰ In my view, it is implausible to hold that some agents, such as individual private citizens, can never be obligated to contribute to the protection or fulfilment of the human right to life. For example, if an attacker is impermissibly attempting to kill many people, and I can easily prevent him from doing this in a way that involves no (or only small) costs or risks to myself and/or third parties, then surely I am obligated to protect the human rights of the intended victims. Still, my obligations might be limited to intervening in cases of this kind, while states have standing and much more extensive obligations to protect the right to life.

there are significant moral reasons to favor understanding these rights in this way. If we do understand the rights in this way, then, at least as a rough approximation, they are fulfilled when, and only when, all individuals who would like a job can find one, and all of the jobs that individuals hold are characterized by just and favorable conditions, reasonably limited hours, and pay that is sufficient for a decent standard of living and a life worthy of human dignity for the workers and their families.⁴¹

As I have suggested these rights are characterized, and as they ought to be understood, their fulfilment consists in various thresholds being met. The relevant thresholds are, for example, at least some jobs being available to those who seek employment, and, conditional on that requirement being met, at least some of the available jobs including working conditions that are above a threshold of decency, required hours that are below a threshold of reasonableness, and pay that is above a threshold of ensuring a decent living. The fairness-based and respect-based accounts of the wrong of exploitation rely, at least implicitly, on the claim that there are similarly structured thresholds that have to be met in order for an employment relationship to be non-exploitative. For example, on fairness-based views, the benefits and burdens, including pay (on the benefits side), working hours (on the burdens side), and working conditions (also on the burdens side, at least in sweatshops and other typical cases in which there are concerns about exploitation), must be distributed in a way that meets a minimum standard of fairness (i.e. a threshold). And on respect-based views, the employment conditions must meet a minimum standard such that they are not disrespectful or degrading.

⁴¹ Strictly speaking, this characterization requires some qualifications related to, for example, what it is reasonable to require of part-time employment, and the earlier noted issue related to jobs that require long hours but are occupied by individuals who are paid high salaries and typically have many good alternative employment options available to them that would not require such long hours.

One important feature of thresholds is that when outcomes fail to meet them, they can fall short to varying degrees. Sometimes it does not matter, morally speaking, whether an outcome falls short by more or by less. For example, if an individual in excruciating pain needs \$100 in order to buy a pain reliever that will ease the pain, so that no less than that amount will do her any good whatsoever, it makes no moral difference whether she receives \$99 or nothing at all. \$100 constitutes a morally relevant threshold, and any outcome in which she receives an amount below that threshold is of equal moral value – namely none at all.

In other cases, however, differences below a morally important threshold do matter morally, sometimes quite a bit. For example, if the individual in excruciating pain can eliminate the pain entirely with \$100 worth of the pain reliever, but can also alleviate it to varying degrees with lower doses of the drug, then if the drug can be purchased in, for example, \$5 increments, then differences below the threshold will matter a great deal. The individual will, for example, be much better off receiving \$80 than she would be if she received only \$20. She may have a right to the \$100 she needs to fully alleviate the pain, but the threshold specified in the content of the right is not all that matters. In fact, the very moral considerations that explain why she has the right (i.e. the moral importance of eliminating her pain) also provide grounds for thinking that differences below the threshold matter. Indeed, they not only provide grounds for thinking that these differences matter – they also provide grounds for holding that *her right is closer to being fulfilled* when she receives \$80 than it would be if she received only \$20.

We must ask, then, whether the labor-related human rights are the kinds of rights on which differences below the threshold matter morally, and on which, therefore, they are closer to being fulfilled in some sub-threshold outcomes than on other sub-threshold outcomes. And the answer here seems, quite clearly, to be that they are the kind of rights on which differences

below the threshold matter. Some people whose pay falls short of the threshold for a decent living and a life worthy of human dignity are paid more than others, and their being closer to being paid enough for a decent living means that their right is closer to being fulfilled than the rights of those who are paid less. Similarly, some people who are required by their employers to work hours that are not reasonably limited are required to work longer than others. Those whose unreasonably long hours are nonetheless shorter than the even more unreasonably long hours of others are closer to having their right to reasonably limited hours fulfilled.

Importantly, it is morally good, all else being equal, to act in ways that make it the case that people's opportunity and outcome-focused rights are closer to being fulfilled than they otherwise would be.⁴² If I contribute \$60 to the person in excruciating pain, and thereby bring the total that she receives from \$20 to \$80, I have done something morally good, and have made it the case that her right is closer to being fulfilled than it otherwise would be (though I have not made it the case that her right is fully fulfilled).

This is important for thinking about whether we can accept that corporations are obligated to respect the labor-related human rights, but not obligated to contribute to their fulfilment, where respecting those rights consists in not violating them, and violating them consists, at least for corporations, primarily in employing people on terms that leave their rights unfulfilled. The cases that present the central challenge for this view are cases in which corporations employ people on terms that leave their labor-related rights unfulfilled, but nonetheless make it the case that those rights are closer to being fulfilled than they otherwise

⁴² This claim is, I take it, uncontroversial. There is a related but more controversial claim, known as the 'nonworseness claim', that is widely discussed in the debate about how to understand the wrong of exploitation, and which I will discuss briefly later in the section. Those who reject the nonworseness claim hold that in cases involving wrongful exploitation that makes it the case that the exploited party is better off than they otherwise would have been (or in which relevant rights that they possess are closer to being fulfilled than they otherwise would have been), it is not the case that all else is equal.

would be. It is widely accepted that at least some sweatshop jobs meet this condition – for example, they pay more than alternative forms of employment to which the workers have access, and/or involve shorter working hours than at least some workers would otherwise have to work, and/or provide better working conditions than the available alternative employment opportunities.⁴³

If we accept that respecting the labor-related human rights consists, for corporations, in not violating them, and that violating them consists in employing people on terms that leave those rights unfulfilled, then while we can make sense of the intuition that corporations that employ people in sweatshops are failing to satisfy their human rights-based obligations, we face a serious challenge if we also want to accept the UNGPs view about the limits of corporate obligations. The challenge arises because, on the one hand, there are, on this view, two ways that corporations can avoid violating the labor-related human rights of potential sweatshop workers: first, they can employ those workers, but pay them enough to ensure a decent standard of living, require only reasonably limited work hours, and provide just and favorable working conditions; or, second, they could avoid employing those workers at all. On the other hand, however, the second way of avoiding violating these rights will often leave those rights further from being fulfilled than they would be if the corporations in question violated them by employing the workers on sub-threshold terms that would nonetheless leave them better off in terms of pay, hours, and/or working conditions. And it is difficult to see why we would accept a view of

⁴³ Importantly, while this claim, or at least a claim very much like it, is accepted by all of those who argue that employing people in sweatshops is at least sometimes permissible (namely, when the jobs benefit the workers in comparison with their available alternatives, and they voluntarily accept their jobs) it is also accepted by many who hold that employers are (at least when they could employ their workers on better terms while remaining in business) guilty of wrongful exploitation when they employ people in sweatshops. For examples of sweatshop critics who explicitly accept a version of the claim, see Arnold and Bowie, note 11, 229, 231; Meyers, note 11; Mayer, note 30, 141-2; Snyder, note 11, 390; Kates (2019), note 11; Andras Miklós, ‘Exploiting Injustice in Mutually Beneficial Market Exchange: The Case of Sweatshop Labor’ (2019) 156:1 *Journal of Business Ethics* 59, 61.

corporations' human rights-based obligations that would imply that it is morally preferable to leave peoples' human rights further from being fulfilled than it is to employ them (on terms to which they voluntarily consent) in ways that make it the case that their rights are closer to being fulfilled. The fundamental grounds on which we accept the rights and their importance, namely concern for individuals' interests and dignity, which are promoted by their having access to work with decent pay, reasonable hours, and decent conditions, seem clearly to count in favor of preferring that corporations employ them in sweatshops rather than not employing them at all, when their doing so would make it the case that their rights are closer to being fulfilled than they would otherwise be.

In the debate about how to understand the wrong of exploitation, a thought roughly like this lies behind appeals to the 'nonworseness claim' by those who defend the permissibility of at least some sweatshop employment.⁴⁴ The claim, in its most general form, is that it cannot be morally worse for one agent to engage in a voluntary and mutually beneficial transaction with another agent, than it is for the first agent to refrain from transacting with the second agent altogether.⁴⁵ The claim is widely rejected by critics of sweatshop employment,⁴⁶ and there are a number of difficult and complex issues related to it that I cannot discuss here.⁴⁷ Defenders of the permissibility of employing people in sweatshops appeal to the claim, in combination with the widely accepted claim that corporations are not obligated to employ people living in such dire

⁴⁴ The term was coined by Alan Wertheimer, who rejected it; see Wertheimer, note 30. For defenses of the claim, see Zwolinski, note 12, 699-700, 707-8; Sollars and Englander, note 11, 119; Zwolinski, note 11, 167-9; Powell and Zwolinski, note 12, 460-70.

⁴⁵ I formulate the claim in this way in Brian Berkey, 'Who is Wronged by Wrongful Exploitation' in Benjamin Ferguson and Matt Zwolinski (eds.), *Exploitation: Perspectives from Philosophy, Politics, and Economics* (Oxford: Oxford University Press, 2024), 93-112.

⁴⁶ See, for example, Meyers, note 11; Snyder, note 11, 402-3; Joshua Preiss, 'Global Labor Justice and the Limits of Economic Analysis' (2014) 24:1 *Business Ethics Quarterly* 55; Faraci, note 12; Kates (2019), note 12; Kates (2023), note 12.

⁴⁷ I discuss it in more detail in Brian Berkey, 'The Value of Fairness and the Wrong of Wage Exploitation' (2020) 30:3 *Business Ethics Quarterly* 414; Berkey, note 11; Berkey, note 43.

conditions that they would voluntarily accept a sweatshop at all.⁴⁸ They argue that because it is permissible for corporations to refrain from employing anyone who is badly off enough that they would accept a sweatshop job, it cannot be wrong to employ those who voluntarily accept sweatshop jobs and are made better off than they would otherwise be in virtue of having them.

The thought that I expressed above, namely that it is difficult to see why we might accept a view on which corporations violate their human rights-based obligations by employing people in sweatshops, but do not violate those obligations when, by refraining from employing them, they leave their labor-related human rights further from being fulfilled, is similar to the one that drives the arguments that appeal to the nonworseness claim. The framing of the issue in terms of human rights that are opportunity and outcome-focused, however, changes the shape of the debate in a way that makes it in one way more challenging for defenders of the UNGPs view than it is for defenders of, in particular, fairness-based accounts of the wrong of exploitation,⁴⁹ but in another way leaves open a line of objection that is not available to critics of sweatshops on grounds of wrongful exploitation. The way in which it is more challenging for defenders of the UNGPs view is that this view is explicitly concerned, at a fundamental level, with the fulfilment of the labor-related human rights. Because that concern is fundamental, it is especially implausible that the relevant rights-based obligations could imply that, even holding all else equal, some conduct that makes it the case that the rights are closer to being fulfilled is objectionable, while conduct that leaves the rights further from being fulfilled is acceptable.

⁴⁸ For the appeal by sweatshop defenders to the claim that corporations are not obligated to employ (or otherwise benefit) people whom they might employ in sweatshops, see, for example, Zwolinski, note 12, 699; Zwolinski, note 11, 169. For endorsement of the claim by sweatshop critics, see Meyers, note 11; Barnes, note 30, 38; Kates (2019), note 11, 27, 34; Joshua Preiss, 'Freedom, Autonomy, and Harm in Global Supply Chains' (2019) 160:4 *Journal of Business Ethics* 881, 885-6, 890.

⁴⁹ It is not clear that it has the same effect for respect-based views of the wrong of exploitation, since it is doubtful that any plausible view could imply that conduct that is inconsistent with properly respecting a person could be better than a respectful (to the person) alternative in terms of respect for their human rights.

Defenders of fairness-based accounts of the wrong of exploitation, on the other hand, can claim that their fundamental concerns include fairness in the distribution of the benefits of economic cooperation, in addition to, for example, well-being improvements for the badly off and/or greater fulfilment of human rights. And they can claim that, at least sometimes, considerations of fairness take priority over these other, potentially competing considerations.⁵⁰

The way in which the human rights-based framing leaves open a line of objection that can be made by defenders of the UNGPs view is that, unlike the exploitation framing, which at least tends to limit the scope of the inquiry to the obligations of corporations,⁵¹ the human rights framing explicitly requires that we consider the possibility that accepting that other agents have obligations to contribute to the protection and fulfilment of human rights, or even to ensure their protection and/or fulfilment, can make the view that corporations lack these obligations more plausible than it would seem when considered in isolation.

Before considering whether this line of defense of the UNGPs view can succeed, it is worth briefly noting why a different response does not succeed. Some might think that the UNGPs view can be defended by adjusting the account of what respecting the labor-related human rights consists. Specifically, they might suggest that, in light of the argument in this section thus far, we should think that refraining from employing people in sweatshops is not sufficient for respecting those rights, and that instead corporations respect the rights only if, insofar as they can, and to reasonable extent, they offer employment opportunities on terms that at least meet the thresholds set by the labor-related human rights to people whose rights would

⁵⁰ See, for example, Faraci, note 12; Kates (2023), note 12.

⁵¹ Exception to this can be found in discussions of structural exploitation. See, for example, Young, note 11; Maeve McKeown, 'Global Structural Exploitation: Towards an Intersectional Definition' (2016) 9:2 *Global Justice: Theory, Practice, Rhetoric* 155; Gabriel Wollner, 'Anonymous Exploitation: Non-Individual, Non-Agential, and Structural' (2019) 77:2 *Review of Social Economy* 143; Derrick Gray, 'Rethinking Micro-Level Exploitation' (2020) 46:3 *Social Theory and Practice* 515.

otherwise be unfulfilled. The reason that this does not amount to a defense of the UNGPs view is that it defies away the distinction between respecting rights and contributing to their fulfilment. If corporations that can provide employment opportunities to people whose rights would otherwise be unfulfilled are obligated to do so, then they simply are obligated to contribute to the fulfilment of the rights. The view that respecting rights might sometimes require contributing to their fulfilment is not, in my view, implausible. But it is not a view that is available to defenders of the UNGPs account of corporations' obligations.

A line of defense of the UNGPs account that might seem more promising appeals to the claim, which is also made in the UNGPs, that, unlike corporations, states do have the obligation to protect and fulfil the labor-related human rights.⁵² A minimum condition that would need to be met in order for this defense to succeed is that the actions that states might be thought obligated to take in order to fulfil the rights would be sufficient for them to be fulfilled for everyone. This is because it cannot be the case that everyone has the right if it is not also the case that there exist obligations that are such that their being satisfied would ensure that the rights are fulfilled. There are, however, reasons to think that it is not the case that states could ensure that the labor-related human rights are fulfilled for everyone regardless of what corporations do within the constraints that state action and policy designed to promote the fulfilment of those rights would set.

What might we think states are obligated to do in order to ensure that the labor-related human rights are fulfilled? Perhaps the natural first thought is that states should adopt regulations, including minimum wage laws, workplace safety requirements, and limitations on the working hours that can be required of employees. As is widely known, however, corporations can respond to these kinds of regulations being imposed in a particular state by deciding to

⁵² UNGP, note 9, General Principles Section I.A.1, Commentary.

employ people in a different state in which the regulations are absent or weaker. And this risk of jobs being moved threatens not just efforts by states to fulfil the labor-related human rights via the policies mentioned, but at least virtually any effort by states to use policy mechanisms to ensure that the labor-related human rights are fulfilled. This is especially true in poorer states, in which certain policies richer states might be able, in principle, to adopt to try to ensure the fulfilment of the rights are not genuinely available due to resource constraints. For example, while richer states might be able to adopt a policy of providing anyone who cannot find a job that would ensure the satisfaction of their rights with a state-sponsored job, many poorer states simply lack the resources to do this, and therefore must rely on private firms to provide employment opportunities to their citizens.

Perhaps the next natural thought is that states are obligated to coordinate in order to, in effect, implement minimum wage and workplace safety requirements, along with a maximum required hours policy, at the global level. Even if we think that this is something that states are obligated to do, however, a view on which states have this obligation does not satisfy the condition that if states all do what they are required to do, the fulfilment of everyone's labor-related human rights will be guaranteed. This is because even with this kind of global policy in place, firms could still decide (and might be fairly likely to decide) to locate more jobs in high and middle-income countries, and fewer in poorer countries. And this would, of course, leave many people in poorer countries in circumstances in which their rights would remain unfulfilled.

It might be suggested, in response to this point, that firms could only *temporarily* choose to locate jobs in higher-income countries in response to a globally coordinated effort among states to require employment conditions that ensure that the labor-related human rights of all of

those who are legally employed are fulfilled.⁵³ Once everyone in the higher-income countries who would like a job is employed, and therefore everyone's labor-related human rights in those countries are fulfilled, employers would have no alternative to employing people in poorer countries. So while it might be unfortunate that the rights of those in poorer countries would likely be fulfilled later than the rights of those in wealthier countries, a globally coordinated effort among states to ensure that the labor-related human rights of those who are employed are satisfied would, at least over time, guarantee the fulfilment of everyone's rights.

It is important to recognize, however, that state coordination around the relevant requirements on employers cannot guarantee that enough jobs are made available globally to ensure that everyone who would like a job can obtain one. Corporations may, for example, choose to scale back hiring in order to reduce labor costs, and the requirements might lead to reductions in investment that would generate employment opportunities. It is an empirical question whether the result of state coordination around rights-fulfilling employment conditions would, over time, lead to full employment globally. Only in combination with choices by corporations (and other agents) that would be left open by the relevant state policies would the fulfilment of everyone's labor-related human rights result. And this means that in order to be consistent with understanding the labor-related human rights in opportunity and outcome-based terms, we cannot avoid assigning obligations beyond respecting human rights to corporations.

It might be suggested that states could supplement the requirements on employers with other policies that, with proper coordination at the global level, would guarantee the fulfilment of the labor-related human rights for all. There are, however, strong reasons to doubt that this is the case. The most important reason is that any set of policies that would actually guarantee the

⁵³ Thanks to Florian Wettstein for encouraging me to discuss this issue.

fulfilment of the rights, independent of the choices that other agents make within the constraints set by the policies, would surely be unjustly coercive. For example, states could adopt policies that not only mandate certain conditions regarding wages, working conditions, and hours for those whom corporations choose to employ, but also legally require employers to maintain certain levels of employment, and/or to employ people whom they would not independently choose to employ. Such policies would likely need to be combined with other highly coercive and intrusive policies regulating internal corporate decision-making in order to effectively guarantee that everyone's labor-related human rights would be fulfilled. Policies of this kind, however, would themselves be objectionable – there are constraints on how states may permissibly aim to ensure the fulfilment of the labor-related human rights.⁵⁴

The general lesson here is that there is no minimally realistic set of policies that states could adopt, either individually or collectively, that would guarantee that everyone's labor-related human rights are fulfilled while being consistent with plausible justice-based limitations on state coercion. Whether those rights are fulfilled will always depend, at least to a significant extent, on what corporations and other non-state actors do within the constraints set by acceptable state policy.

IV. Conclusion: Labor-Related Human Rights and Corporate Obligations

Once we recognize the inconsistency between the labor-related human rights, understood as opportunity and outcome-based rights, and the UNGPs view that limits corporations' obligations to respecting human rights, we have two options. The first is that we can reject the view that the labor-related human rights should be understood in opportunity and outcome-based terms, and

⁵⁴ For a similar argument regarding individual entitlements of justice to, for example, basic health care, see Brian Berkey, 'Obligations of Productive Justice: Individual or Institutional?' (2018) 21:6 *Critical Review of International Social and Political Philosophy* 726.

instead hold that they should be understood in a way that is consistent with the view that, for corporations, respecting human rights consists in not violating them, and violating them consists in employing people on terms that leave their rights unfulfilled. On this kind of view, those who are employed on terms that do not provide pay sufficient for a decent standard of living, decent enough working conditions, and reasonably limited hours have labor-related rights that are unfulfilled and violated, but those who cannot find work despite wanting a job may not have their rights unfulfilled or violated at all.⁵⁵ This view may have appeal to some, and in particular those who seek an account of labor-related human rights that is consistent with the fairness and/or respect-based accounts of the wrong of exploitation, on which the wrong consists in a failure to satisfy a conditional obligation to provide terms of employment above the relevant thresholds if and only if the agent in question chooses to employ people who would be willing to accept sub-threshold conditions.

In my view, this way of resolving the inconsistency is implausible, and should be rejected. What we ought to care about, at the most fundamental level, is that everyone who would like a job has the opportunity to obtain one, and that everyone who is willing to work has a decent standard of living, reasonably limited working hours, and decent enough working conditions. It is not enough that those who are fortunate enough to obtain employment enjoy conditions above these thresholds, while those who are not fortunate enough to obtain employment are, in at least many cases, even worse off than they would be with a sweatshop job. We simply cannot plausibly accept that a world in which millions are involuntarily unemployed, and live below the threshold of income necessary for a decent standard of living and a life

⁵⁵ Whether their rights are unfulfilled or violated will depend on whether they would have employment if at least one state adopted a policy or set of policies that it is obligated, as a matter of its labor-related human rights-based obligations, to adopt.

worthy of human dignity, could be a world in which there are no unfulfilled labor-related human rights.

We should, then, accept the second option, which is to hold that corporations have at least some obligations to contribute to the fulfilment of the labor-related human rights.⁵⁶ It is only by accepting this view that we can maintain the essential opportunity and outcome-based account of the content of the labor-related human rights.

While I cannot offer a detailed account of how we should understand these obligations here, I will conclude by noting what seem to me to be a few plausible candidate obligations to contribute to the fulfilment of the labor-related human rights that we might ascribe to corporations. First, we might think that corporations that can, consistent with their expected long-term thriving, provide employment opportunities to people living below the thresholds set by the rights that would make it the case that their rights are either fulfilled or closer to being fulfilled are obligated to do so, at least so long as the costs they would incur by doing so (in terms of, for example, less than maximal profits, or competitive advantage in their markets) are not too high. Second, we might think that when corporations do satisfy this first obligation by employing people who would be willing to accept sub-threshold terms of employment, they are obligated to refrain from bargaining down their wages and working conditions, and requiring the maximal number of hours that they would accept, and instead provide conditions that either ensure that their labor-related human rights are fulfilled, or, if that is incompatible with staying in business and remaining competitive, provide conditions that are as good as they can, even if they remain below the thresholds. Finally, we might think that corporations are, in general,

⁵⁶ I suggest that we should accept a similar view about the wrong of exploitation, such that employing people in sweatshops is at least often wrong in virtue of the fact that the relevant corporate actors are failing to fully satisfy obligations to contribute to improving the lives of those who badly off enough that they are willing to accept sweatshop jobs. See Berkey, note 11; Berkey, note 43; Berkey, note 45.

obligated to adopt policies that, to at least a reasonable extent, and within the constraints set by market and competitive forces, can be expected to improve the lives of people living below the thresholds in ways that are relevant to the fulfilment of their labor-related human rights. For example, even if it is not going to employ people living below the threshold itself, a corporation might adopt a policy that is somewhat more costly than available alternative because doing so makes it much more likely that a different firm will choose to employ people living below the thresholds on terms that make it the case that their rights are fulfilled, or at least closer to being fulfilled.

These are merely examples of the kinds of obligations that we might have reason to ascribe to corporations in order to maintain that the labor-related human rights really do require that everyone has access to employment opportunities and conditions of work that meet the minimum standards noted in the content of the rights. Making proper sense of these rights requires accepting a more demanding account of corporations' obligations than that embodied in the UNGPs. We should not shy away from this, given that the only alternative is to accept a watered down and implausibly limited account of the content of the rights.