

## Who is Wronged by Wrongful Exploitation?

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In paradigmatic cases of wrongful exploitation, the exploiting party takes advantage of the exploited party, or of a feature or set of features of the exploited party or their circumstances, in order to obtain benefits that would not have been available in the absence of the opportunity to exploit.<sup>1</sup> Most accounts of wrongful exploitation explain its wrongness in terms of an allegedly morally objectionable feature of the interaction between the exploiter and the exploited.<sup>2</sup> More precisely, these accounts tend to be aimed at explaining what is distinctively wrong with *transactions* that are exploitative despite being both voluntarily agreed to and mutually beneficial (Meyers 2004; Zwolinski 2007; Powell & Zwolinski 2012; Dänzer 2014; Ferguson 2016; Faraci 2019; Kates 2019, pp. 28-29; Miklós 2019). This is because while interactions that are non-voluntary or harmful to the interests of at least one of the parties can also be exploitative, the most challenging ethical questions are raised by cases involving voluntary and mutually beneficial transactions that seem, intuitively, to be wrongfully exploitative.

The primary reason that voluntary and mutually beneficial transactions have been thought to raise a distinctive challenge for accounts of wrongful exploitation is that, at least in many of the central cases discussed in the literature (e.g. much sweatshop labor), the view that the transactions are wrongfully exploitative conflicts with an intuitively appealing claim, which Alan Wertheimer calls the “Nonworseness Claim” (1996, p. 289). In its most general form, this Claim states that it cannot be morally worse for a person A to engage in a voluntary and mutually

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<sup>1</sup> For the claim that advantage-taking in order to obtain benefits is an essential component of any account of exploitation, see Vrousalis (2018, p. 2).

<sup>2</sup> An exception is the indirect consequentialist account of the value of anti-exploitation norms offered by Richard Arneson (2013). For critical discussion of Arneson’s view, see Sample (2016).

beneficial transaction with another person B than it is for A to refrain from transacting with B altogether.<sup>3</sup> The Claim is appealing because the very same concern for the interests of those whom we tend to think are wrongfully exploited that motivates our objections to intuitively exploitative conduct seems to give us reason to reject any view on which it is better, morally speaking, to do nothing to improve their lives than it is to transact with them in ways that benefit them at least a bit (so long as they agree to the transaction).

When combined with the claim that it is permissible for an allegedly exploiting party to refrain from transacting with an allegedly exploited party, the Nonworseness Claim implies that the allegedly exploiting party's action is not morally worse than a permissible option. If we make the plausible assumption that options that are not morally worse than a permissible option are themselves permissible,<sup>4</sup> then the conjunction of the Nonworseness Claim and the permissibility of refraining from transacting entails the permissibility of transacting on any terms that are both mutually beneficial and voluntarily accepted. And since it is widely assumed that at least many intuitively exploitative transactions are ones that it would be morally permissible for the allegedly exploiting party to refrain from engaging in altogether,<sup>5</sup> those who aim to offer accounts of wrongful exploitation that can capture widely held intuitions about both which transactions are wrongfully exploitative and which transactions it is permissible to refrain from

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<sup>3</sup> For roughly this formulation of the Claim, though without the explicit limitation to voluntary transactions, see Wertheimer (1996, p. 289); Snyder (2008, p. 390); Bailey (2011, p. 238); Barnes (2013, p. 28). For explicit inclusion of the limitation to voluntary transactions, see Faraci (2019, p. 170). For formulations that include both this limitation and a requirement that no third parties are harmed, see Ferguson (2016, p. 956); Malmqvist (2017, p. 478). I discuss several variants of the Claim in Berkey (2021).

<sup>4</sup> For discussion of this claim, see Bailey (2011); Pummer (2016; 2019); Horton (2017); Berkey (2020a); Ferguson & Köhler (2020).

<sup>5</sup> For this claim with reference to intuitively exploitative sweatshop employment transactions, see Meyers (2004); Zwolinski (2007, p. 699; 2012, p. 169); Barnes (2013, p. 38); Kates (2019, pp. 27, 34); Preiss (2018, pp. 885-886, 890).

engaging in generally reject the Nonworseness Claim (Meyers 2004; Snyder 2008, pp. 402-403; Snyder 2013, p. 358; Preiss 2014; Faraci 2019; Kates 2019).

It is unsurprising that those who aim to provide an account of the wrongness of intuitively exploitative yet voluntary and mutually beneficial transactions, while holding that at least some of these transactions are ones that it would be permissible for the exploiting party to refrain from engaging in altogether, tend to claim that there are features of the transactions that explain their wrongness that would not be present if the exploiting party chose not to transact at all. After all, if such features can explain the wrongness of intuitively exploitative transactions, and are absent when no transaction takes place, then we will also have an explanation of how it can be possible for non-transaction to be permissible despite the fact that a wrongfully exploitative transaction would be both voluntary and beneficial to the exploited party,

The most commonly accepted view is that the feature of wrongfully exploitative transactions that explains why they are wrong is that the benefits that they produce are distributed unfairly.<sup>6</sup> Others have argued that the wrongness of exploitative transactions is explained by the fact that they are disrespectful or degrading (Wood 1995; Sample 2003). Because these accounts locate the wrongness of the exploiters' actions entirely in features that are claimed to be *internal* to the relevant transactions, the explanations that they offer do not provide any grounds for objecting to non-transaction on the part of (potential) exploiting parties.

An additional implication of views on which the wrong-making features of wrongful exploitation are internal to exploitative transactions is that only parties to such transactions can

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<sup>6</sup> Fairness-based views are accepted by Wertheimer (1996, Ch. 7); Meyers (2004, pp. 320-321); Mayer (2007a, pp. 137-138, 141-142; 2007b, p. 608); Barnes (2013, p. 31); Dänzer (2014); Ferguson (2016, pp. 953, 955, 966-967; forthcoming); Sollars & Englander (2018, pp. 23-27); Faraci (2019); Kates (2019, pp. 33-34, 44-45). I suggest that these views tend to rely on an overly narrow account of the value of fairness and its relevance to the ethics of employment in Berkey (2020b).

be *directly wronged* by the exploiting parties in virtue of the fact that their conduct is wrongfully exploitative.<sup>7</sup> One is directly wronged by another's wrongful conduct only if one has an undefeated complaint on her own behalf against the agent for engaging in the wrongful conduct. One is directly wronged in virtue of the fact that another's conduct is wrongfully exploitative only if the features of the conduct that make it wrongfully exploitative contribute to grounding an undefeated complaint on one's own behalf against the agent for engaging in the wrongful conduct. If the features that make conduct wrongfully exploitative are necessarily internal to exploitative transactions, then only those who are parties to the transactions can have complaints on their own behalf in virtue of the fact that those wrong-making features are present.

I suspect that many proponents of views on which the wrong-making features of wrongful exploitation are internal to exploitative transactions would take the fact that only parties to such transactions can be directly wronged to be an appealing feature of the general approach to explaining the wrong of wrongful exploitation that their views represent. On views of this kind, exploitation directly wrongs the exploited parties to wrongfully exploitative transactions, and *only those parties*. In the case of sweatshop employment, for example, only those employed in sweatshop labor could be directly wronged. Others might, of course, be indirectly wronged. For example, the children of an exploited sweatshop worker might be indirectly wronged by her employer's conduct, since they would be better off if their mother's wages and working conditions were not exploitative. But since failing to make those children

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<sup>7</sup> Conduct that is wrong in part because it is exploitative will sometimes be wrong for additional reasons as well. In those cases, views on which the wrong-making features of wrongful exploitation are internal to the relevant transactions can allow that individuals who are not among the parties to the transactions might be directly wronged by the exploiters, but this will have to be explained by reasons that do not play a role in making it the case that the conduct is wrongfully exploitative.

better off is not, on the relevant views, among the features of the employer's conduct that makes it wrongfully exploitative, the children are not directly wronged.

The overall picture that follows from views on which the wrong-making features of wrongful exploitation are internal to exploitative transactions, then, is that the exploited parties to such transactions are the only directly wronged parties, and that any indirectly wronged parties must have undefeated complaints against the exploiters' conduct that are grounded in facts about how the exploitation of the directly wronged parties has affected their morally relevant interests.<sup>8</sup> Many will find views of this kind appealing. After all, when we are confronted with the question of who is wronged by, for example, sweatshop employment, the obvious answer is that it is those who are employed in sweatshop labor.

In the remainder of this chapter, however, I will argue that there are strong reasons to think that in some cases of wrongful exploitation, individuals who are not parties to the relevant transactions are as seriously and as directly wronged as the exploited parties to those transactions. Specifically, I claim that when we expand our focus beyond the exploitative transactions themselves, and reflect on the broader context within which many such transactions take place, we should recognize that exploitation often wrongs<sup>9</sup> a much broader class of agents than those who are taken advantage of within them. In particular, I argue that in at least many cases, those who would have preferred to occupy the place of the exploited party to a transaction, but were not selected to participate in the transaction, are wronged by the exploiting party. If this is correct, it has important implications for how we ought to understand the wrong-making

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<sup>8</sup> The range of potentially morally relevant interests that might ground claims to have been indirectly wronged can be understood quite broadly, so that the claim here is compatible with any plausible moral theory and associated account of individuals' morally relevant interests.

<sup>9</sup> In the remainder of the chapter I will omit the qualifier 'directly' when referring to direct wrongs and variants of that notion (e.g. "wronged parties"). These references should be read as referring to direct wrongs unless otherwise noted.

features of wrongful exploitation, and for how we ought to think about the remedial duties of wrongful exploiters.

I will proceed in the remainder of the chapter as follows. In section 1, I will discuss two types of cases in which it seems plausible that those who would have preferred to become (exploited) parties to an exploitative transaction, but were not selected as transaction partners, are wronged by the exploiting parties. And I will offer an initial explanation of why this conclusion seems appealing that relies on considerations that are similar to those that motivate the Nonworseness Claim (but does not, strictly speaking, require that the Nonworseness Claim is correct). Next, in section 2, I will describe some central components of an account of the wrong-making features of wrongful exploitation that is suggested by the argument in section 1, and suggest some reasons to find an account of this type plausible. Finally, in section 3, I will note what the arguments in sections 1 and 2 seem to imply with regard to the remedial duties of wrongful exploiters. I will contrast this view with one that has recently been defended by Erik Malmqvist and András Szigeti (forthcoming), and argue that there are important reasons to prefer the view suggested by my argument.

### **1. Who is Wronged by Wrongful Exploitation?**

In some cases it is clear that wrongful exploitation wrongs only the exploited party to an exploitative transaction. Consider, for example, the following case:

*One Dose of Drug, One Person in Need:* A has one dose of drug D, for which he paid the market price of \$10. B has a medical condition that is fatal unless treated with one dose of D. There are no other sources of D to which B can gain access in time to save her life,

and there is no one else in danger of dying whom A could save using his dose. A offers to give the dose to B in exchange for ninety percent of the income that she will earn for the remainder of her life. B accepts A's offer.<sup>10</sup>

In this case, it is clear that A wrongs B, and that this wrong is plausibly understood as a wrong of exploitation. A takes advantage of B's condition, and the desperate circumstances that she is in because of it, in order to obtain substantial benefits for himself. B clearly has a strong complaint on her own behalf against A's conduct. And because no one else has any similar complaint on their own behalf, it seems clear that B is the only person who is wronged by A's exploitative conduct.

It is also worth noting that in this case the fact that the transaction is mutually beneficial does not present any grounds for skepticism about the claim that A is guilty of wrongful exploitation. This is because he is obligated to provide the dose to B for at most a reasonable price (perhaps the \$10 market price). Because refraining from transacting with B is not a permissible option, the Nonworseness Claim cannot be appealed to in order to suggest that the intuitively exploitative yet voluntary and mutually beneficial transaction must be permissible. So even defenders of the Claim should accept that this is a clear and uncontroversial case of a voluntary, mutually beneficial transaction that is wrongfully exploitative and wrongs the exploited party.

If we adjust the details of the case in a particular way, however, an important reason to doubt that only those who are parties to an exploitative transaction can be wronged becomes clear. Consider the following case:

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<sup>10</sup> This is a slight variant on a case that I provide in Berkey (2021). For similar cases, see Zwolinski (2012, p. 156); Vrousalis (2018, p. 2).

*One Dose of Drug, Ten People in Need:* A has one dose of drug D, for which he paid the market price of \$10. Ten people have a medical condition that is fatal unless treated with one dose of D. There are no other sources of D to which any of the ten can gain access in time to save their lives. None of the ten has any special entitlement to A's dose. A offers to give the dose to any one of the ten in exchange for ninety percent of the income that she will earn for the remainder of her life. All ten clearly indicate that they would like to accept this offer – indeed each begs A to choose her. A gives the dose to B, with the result the remaining nine all die.<sup>11</sup>

It seems clear that A is just as guilty of wrongful exploitation in this case as he was in the previous case. Once again, the fact that the transaction is voluntary and mutually beneficial provides no grounds for skepticism, since A is obligated to provide the dose to one of the ten, and to charge no more than a reasonable price – refraining from transacting is not a permissible option.

In this case, however, it does not seem especially plausible to think that A wrongs *B and only B*. B is the only one of the ten people in need of the drug who was a party to the exploitative transaction, so any view on which only parties to an exploitative transaction can be wronged by wrongful exploitation will imply that only B is wronged. There are, however, several reasons to find this implication troubling. First, A did not owe it to B in particular to provide her with the dose of D for at most a reasonable price. It would have been equally permissible for him to give

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<sup>11</sup> This is also a slight variant of a case from Berkey (2021).

it to any of the other nine for a reasonable price.<sup>12</sup> In comparison with a range of permissible options, then, A's exploitative conduct was *much better for B*, and much worse for each of the other nine than the option in which she is selected for the transaction. Because each of the ten is identically situated prior to the point at which B is selected for the transaction, and because B's selection is much better for her than it is for the others despite the fact that the transaction is clearly wrongfully exploitative, there seems to be good reason to think that if B has a complaint on her own behalf against A's conduct, then each of the others has one as well. And since B and each of the others quite reasonably prefers being selected for the exploitative transaction over not being selected, it also seems implausible to think that B's complaint is significantly stronger than those of the others. Indeed, if anything, the others' complaints would appear to be stronger.

Of course, since A has only one dose of the drug, none of the ten can have a legitimate complaint to the effect that she in particular was not given the drug for a reasonable price. Each can complain only that A failed to provide it to one of the ten for at most a reasonable price. Importantly, this complaint precisely tracks the nature of the wrong that A commits. A is obligated to provide the drug to one of the ten, and to charge at most a reasonable price. Because of this, it seems correct that each of the ten has a complaint on her own behalf when A fails to discharge his obligation. Any view that implies that only B is wronged by A's exploitative conduct in this case, then, would seem to be grounded in an inaccurate view about the nature of the wrong that A commits, since such views are incompatible with recognizing that the nine who are not selected to be parties to the transaction have complaints on their own behalf that are at least comparable in strength to B's complaint, and are therefore comparably wronged.

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<sup>12</sup> Perhaps in cases of this kind those in A's position are obligated to conduct a fair lottery to determine who will get the dose. My argument that giving the dose to B at an exploitative price does not wrong only B does not depend on either accepting or rejecting this requirement.

The central feature of the case that generates the challenge to the view that only B is wronged is that prior to its becoming the case that B is the exploited party within the relevant transaction, the exploiting party makes a choice about with whom he will transact, from among a group all of whom reasonably prefer to be selected for the transaction (despite the fact that it will be wrongfully exploitative). When this is the case, I submit, it is implausible to hold that only those who are selected for a voluntary, mutually beneficial transaction that is nonetheless wrongfully exploitative are wronged by the exploiting party. After all, in such cases the exploited party to the transaction is at least made somewhat better off in a way that she consents to, while those who are not selected for the transaction are left in the very conditions that made them vulnerable to exploitation in the first place. The fact that they are not parties to the exploitative transaction is not a reason to think that they can have no complaint on their own behalf against the conduct of the exploiting party, and so not a reason to think that they cannot be wronged by that party's wrongfully exploitative action.

It might be objected that while A does wrong all ten of the people in need of the drug, he commits the distinctive wrong of exploitation only against B.<sup>13</sup> Perhaps, for example, A wrongs all ten by making an exploitative proposal to them. Since the proposal was directed to all of them, all have the same complaint on their own behalf against A for making the wrongful proposal. But, the objection suggests, the other nine do not have a complaint on their own behalf against A for transacting on the proposed terms with B. Perhaps all ten would have a complaint on their own behalf if A gave the dose to no one; but so long as he gives it to one of the ten, those who do not receive it can have no complaints on their own behalf against A for transacting on the terms that he does with the one who does receive it.

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<sup>13</sup> Thanks to Ben Ferguson and Matt Zwolinski for encouraging me to discuss this objection.

There are two related reasons that we should find this objection unconvincing. The first is that it would seem to require that we think that prior to the time at which it becomes the case that B is selected for the transaction, the only duty that A has to the ten is to ensure that one of them receives the dose. This is because if he owes it to each of the ten to provide one of them with the dose for no more than a reasonable price, then all of the ten will have a complaint on their own behalf if he violates that duty – when one violates a duty that is owed to particular people, those people have grounds for complaint on their own behalf that those to whom the duty is not owed do not have.<sup>14</sup> It seems more natural, however, to think that A's duty to each of the ten is, from the start, to provide the dose to one of them at no more than a reasonable price, as opposed to thinking that he is first obligated to the ten to provide the dose to one of them, and then, once B has been selected to receive it, obligated to her to refrain from charging more than a reasonable price.

The second reason to find the objection unconvincing is that by transacting with B on wrongfully exploitative terms, A acts without proper regard for the interests of all ten of those in need, and indicates that he is unwilling to forego the gains that he can obtain by insisting on exploitative terms in order to promote their interests as much as morality requires. Insofar as A's insisting on exploitative terms in his transaction with B makes it clear that he has insufficient regard or concern for the interests of all of those who are situated similarly to B, it provides all similarly situated individuals with grounds for a complaint on their own behalf against his conduct.<sup>15</sup>

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<sup>14</sup> Of course, everyone is entitled to complain on behalf of the moral community at large whenever one violates a duty.

<sup>15</sup> It might be suggested that A's insisting on exploitative terms in his transaction with B also suggests that he would have insufficient concern for the interests of virtually anyone, should they have been among those in need of the drug. It might then be objected that my argument therefore implies that anyone to whom A would refuse to provide the drug without extracting a wrongfully exploitative price has a complaint on their own behalf against A's conduct. This objection is unpersuasive, however, since there is a distinction between actually possessing the interests that

While *One Dose of Drug, Ten People in Need* is a somewhat contrived example, in many cases that are thought to constitute paradigmatic examples of wrongful exploitation via voluntary, mutually beneficial transactions, the exploiting parties select with whom they will transact from among large groups of individuals, all of whom hope to be chosen. Consider, for example, the following quite realistic case involving sweatshop employment:

*Sweatshop Hiring:* Firm F opens a sweatshop in a large city in a poor country. It advertises five hundred jobs in the facility that require very long hours in poor and relatively unsafe working conditions, for rather low wages that are insufficient to meet even the basic needs of a typical worker and her family. Because the wages offered by the sweatshop are nonetheless higher than what typical residents of the city earn in the other forms of employment available to most people, ten thousand people apply for the positions. All of the applicants strongly prefer being chosen for one of the sweatshop jobs over continuing to work in their current occupations. F selects five hundred of the applicants and enters into voluntary and mutually beneficial yet nonetheless wrongfully exploitative employment contracts with them.

For reasons that are similar to those that made it difficult to accept that only B is wronged by A's wrongfully exploitative conduct in *One Dose of Drug, Ten People in Need*, it seems implausible that only the five hundred people hired by F are wronged by its exploitative conduct in this case.

Those who are hired had no more of a claim to be hired than those who were not selected. And

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one who engages in wrongful exploitation disregards, and it being the case that if one did possess those interests the wrongdoer would disregard them. There are good reasons to think that one only has a complaint on one's own behalf if one actually possesses the relevant interests (whereas anyone can object, as a matter of principle, to one's insufficient regard for the interests of others).

as a result of being hired, they are made better off, while those who were not selected remain in the worse conditions that made them vulnerable to exploitation in the first place. All of the applicants, we might think, have a complaint on their own behalf against F for its failure to provide fair or respectful or non-degrading wages and working conditions to those among the group who are hired. There is no compelling reason to think that only those who are actually hired are in a position to legitimately press this complaint on their own behalf. Prior to the firm deciding which five hundred applicants to hire, all of the applicants had the same legitimate interest in the terms of the subsequent transactions being fair/respectful/non-degrading, and none had a legitimate claim to be selected in preference to any of the others. Since those who are selected are made better off than those who are not, it seems objectionable to think that in being selected they acquire a strong complaint on their own behalf against F's conduct that those who are not as fortunate lack.

It is important to note that if my claims about who is wronged in *Sweatshop Hiring* are correct, then in many cases the group of individuals wronged by exploitative employers will be much larger than just those who applied for the positions that come to be occupied by exploited parties to the relevant transactions. To see why, consider the following extension of that case:

*Sweatshop Siting and Hiring:* Firm F is deciding where to locate a new production site, where it will produce clothing and employ five hundred workers in sweatshop conditions. It has narrowed the options to cities X, Y, and Z. All of these cities contain large populations of impoverished citizens, and F can expect to receive at least ten thousand applications for the sweatshop jobs in whichever location it selects for the site. After assessing the pros and cons of each location, a decision is made to locate the site in X. F

advertises five hundred positions, selects five hundred of the ten thousand applicants to hire, and enters into voluntary and mutually beneficial yet nonetheless wrongfully exploitative employment contracts with them.

In this case, the same reasons that suggest that those who applied but were not hired in *Sweatshop Hiring* are wronged also suggest that those who would have applied had the site been located in their city are wronged by F's exploitative conduct. And once we recognize this, we can also see that there is no principled basis for limiting our account of who is wronged to those who would have applied and happen to live in cities that were actually considered by F as possible site locations. For example, those who live in cities that would have been suitable sites, and would have applied had their city been considered and selected, seem to have the same relevant interests, and therefore the same basis for complaints on their own behalf, even if their city was not actually considered as a possible location for the site.

In addition to the reasons that are present in both *One Dose of Drug, Ten People in Need* and in both *Sweatshop* cases, there are further reasons that support the claim that all of those who would prefer being hired for a job in which they would be exploited over all of their other available alternatives are wronged by the exploiting parties. Most significantly, in typical labor market contexts, the presence of additional people who are both qualified and willing to accept employment of a particular type will tend to increase the bargaining power of employers and reduce the bargaining power of individual applicants, which in turn will tend to drive down wages and increase the profit margins that can be achieved by firms. Because of this, the presence of the ninety-five hundred applicants who are not hired in *Sweatshop Hiring* likely makes it possible for F to pay those who are hired less than it would have had to pay them if they

were the only people willing to take the positions. There is, then, a fairly straightforward sense in which F takes advantage of the circumstances of the ninety-five hundred applicants who are not selected in order to obtain benefits that it could not have obtained in the absence of those people. It seems accurate, then, to say that F exploits these potential transaction partners in order to ensure that the terms of its exploitative transactions with those whom they do hire benefit them as much as possible, and more than those transactions would have benefitted them had the additional potential transaction partners not been present.

And once we recognize that firms also take advantage of the fact that there are potential employees in one location in order to ensure that their transactions with those whom they hire in another location benefit them more than they would have had the potential employees elsewhere not been in the circumstances in which they find themselves, it seems correct to say that those potential employees are exploited as well. Firms that employ workers on wrongfully exploitative terms, then, often wrong a very large number of people in virtue of their exploitative conduct.

It is worth noting that in *One Dose of Drug, Ten People in Need*, it seems unlikely that the presence of the nine people who are not selected for the transaction would make it possible for A to benefit from his transaction with B more than he could in *One Dose of Drug, One Person in Need*. In those cases, each of the people in need would surely die without the drug, and so A is in a position to know that no matter how much he demands from B in either case, B will be willing to transact. A's bargaining power, then, cannot be expected to increase as the number of people who would prefer to be selected for the transaction increases.

This means that the case for thinking that those who would prefer to have been hired in the *Sweatshop* cases are wronged by F's exploitative conduct, despite not being parties to any transaction with F, is even stronger than the case for thinking that the nine people in need who

are not selected to receive the drug in *One Dose of Drug, Ten People in Need* are wronged by A's exploitative conduct. And since the intuition that the nine who do not receive the drug are wronged by A is quite powerful, there are strong reasons to accept that the class of people wronged by the wrongfully exploitative employment practices of firms will often be very large.

I suspect that there are two main reasons why the view that wrongful exploitation can wrong people who are not parties to the relevant exploitative transactions has not previously been seriously considered in discussions of wrongful exploitation. The first is that in the cases that are typically discussed, any choices that might have been made about with whom the exploiting party will transact, from among a group of willing transaction partners not all of whom will be selected, are at best treated from the outset as irrelevant to understanding the particular wrong of exploitation, and are often ignored entirely.<sup>16</sup> What we should think about who is wronged in cases such as *One Dose of Drug, Ten People in Need*, then, is not a question that has been seriously considered, since cases of this kind tend not to be explicitly discussed.

The second reason that the view that people who are not parties to exploitative transactions can be wronged by wrongful exploitation has not been seriously considered is that a central focus of many of those who hold that there is wrongful exploitation in cases such as the *Sweatshop* cases has been overcoming the challenge presented by the Nonworseness Claim (e.g. Meyers 2004; Barnes 2013; Faraci 2019; Kates 2019). It is typically assumed that proponents of that Claim will deny that employers are guilty of wrongful exploitation in cases involving, for

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<sup>16</sup> As a representative example, consider that David Faraci opens his recent paper on wage exploitation (Faraci 2019) with a case involving a business owner and an employee, in which the employment relationship between the two has already been established, and the central question to be addressed is whether the terms of employment are wrongfully exploitative despite the fact that they are voluntarily accepted and mutually beneficial, and despite the fact that the business owner had no obligation to hire or otherwise benefit the employee in the first place. I argue that Faraci's failure to consider the fact that business owners typically choose between applicants all of whom would prefer to be hired weakens his defense of a fairness-based account of the wrong of wage exploitation on which only those actually hired are wronged in Berkey (2020).

example, voluntary and mutually beneficial sweatshop employment, and so will deny that anyone is wronged as well.<sup>17</sup> In response, many have attempted to argue that, contrary to the Claim, parties to a voluntary and mutually beneficial transaction can be wronged even in cases in which their transaction partners had no obligation to engage in the transaction in the first place. Because establishing this is their primary aim, the possibility that others might also be wronged in at least some cases of wrongful exploitation tends not to be considered.

If I am correct, however, this is an important oversight. If those who are not parties to wrongfully exploitative transactions can be wronged by the exploiting parties, this has implications for how we should understand the wrong-making features of wrongful exploitation, as well as for what we should think the remedial duties of those guilty of wrongful exploitation consist in. I will consider each of these issues in the following two sections.

## **2. The Wrong-Making Features of Wrongful Exploitation**

In *One Dose of Drug, Ten People in Need*, A has an obligation to provide the dose to one of the ten for at most a reasonable price, but he is not obligated to provide it to any particular individual among the ten. By taking advantage of the desperate circumstances that B and the other nine find themselves in, A is able to obtain benefits that he could not have obtained had he not been in a position to exploit them. A's extracting an exploitative price for the drug from B makes it the case that he provides, on net, only a portion of the total benefit that he is obligated to provide to a member (though not any particular member) of the group of people in need.

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<sup>17</sup> The discussions in Zwolinski (2007, pp. 699-700) and Powell and Zwolinski (2012) can plausibly be interpreted in this way. I argue that we should both accept a variant of the Nonworseness Claim and hold that much sweatshop employment is wrongfully exploitative in Berkey (2021).

In cases of this kind, then, the wrong of exploitation can plausibly be understood as consisting in certain ways of failing to satisfy positive duties to benefit others. When an agent has an independent obligation to benefit others to a certain extent, it is wrongfully exploitative to take advantage of the fact that others are in desperate need of a particular benefit that is among those that one is obligated to provide in order to extract benefits for oneself from the transaction in a way that makes it the case that the total amount of benefit provided to others is less than what one was morally obligated to provide.

In cases in which it is uncontroversial that an agent has a positive duty to benefit others, it is also uncontroversial that it is wrongfully exploitative to take advantage of those others and/or their circumstances in order to obtain benefits for oneself in a way that makes it the case that one fails to fully satisfy the positive duty. One important reason that this is uncontroversial is that it cannot be challenged by appeal to the Nonworseness Claim, since there is no permissible non-transaction baseline in comparison with which a voluntary and mutually beneficial yet intuitively wrongfully exploitative transaction is better for the exploited party. And because the positive duty in *One Dose of Drug, Ten People in Need* is not owed only to B, who happens to be the one selected for the transaction, but instead to all of the ten people in need, insofar as the wrong-making feature of A's wrongful exploitation is his failure to satisfy that positive duty, A's wrongful exploitation clearly wrongs all of them, since they are all equally owed the satisfaction of the duty.<sup>18</sup>

The *Sweatshop* cases are, of course, more challenging, since most people deny that firms have positive duties to benefit impoverished potential employees, either by hiring them or in

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<sup>18</sup> This is the case despite the fact that A's satisfaction of the duty can only in fact benefit one of the ten. The fact that they are all in need of the drug, and that A can help one of them at little or no cost to himself, makes it the case that he owes it to each of the ten to provide the drug to one of them for at most a reasonable price.

some other way. I have elsewhere argued, however, that firms that benefit from global structural injustice do have obligations to benefit those who are unjustly disadvantaged, and that therefore the wrong of much exploitative sweatshop employment can be understood as consisting in the failure of such firms to satisfy those obligations (Berkey 2021).<sup>19</sup> If my argument succeeds, then at least many firms that exploit workers in sweatshops are guilty of a wrong that shares the central wrong-making features of A's conduct in *One Dose of Drug, Ten People in Need*. They might, for example, owe an obligation to all of the potential employees who would like to be selected for a job to hire a subset of them and provide wages and working conditions that meet a high enough standard to fully discharge the obligation.

While I believe that this will often be the correct explanation of the wrong that firms such as F in *Sweatshop Siting and Hiring* are guilty of, the conclusion that exploitative firms wrong all of those who would prefer to be hired for their exploitative positions, and not just those who are actually employed in those positions, does not depend on it. This is because even if firms do not have an unconditional obligation to hire or otherwise benefit badly off people who are vulnerable to exploitation, my discussion of the *Sweatshop* cases provides grounds for concluding that if a firm in fact hires people on exploitative terms, it wrongs all of those who would have preferred to be hired for the relevant positions. This can be explained in terms of a *conditional obligation* of the kind that those who reject the Nonworseness Claim typically endorse (e.g. Kates 2019, p. 34).

On these accounts, a firm has no obligation to hire badly off people whom it could wrongfully exploit, but conditional on actually hiring some such people, it acquires an obligation to provide them with wages and working conditions that meet certain standards (e.g. of fairness

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<sup>19</sup> For other discussions of the role that structural injustice should play in our analysis of the wrong of exploitation, see Young (2004); Zwolinski (2012); McKeown (2016); Wollner (2019); Gray (2020).

or respect). If the firm hires people on terms that do not meet these standards, it wrongfully exploits and thereby wrongs those people, and because the obligation comes to be owed to the particular people hired only once the condition of their having been hired is met, only these people are wronged by the firm's wrongful exploitation.

Once we recognize that those who are not hired but would prefer to have been have complaints on their own behalf that are at least comparable in strength to those of the people who are hired and exploited, however, we should be led to understand the structure of firms' conditional obligations in a somewhat different way. Rather than taking the condition that triggers the obligations to be the hiring of particular people, we should think that the triggering condition is the decision to hire some people from among the group who would like to be hired.<sup>20</sup> When that condition is met, a firm owes it to all of the members of that group to hire a subset of them and to provide wages and working conditions that meet the standards for non-exploitation. When a firm fails to satisfy this conditional obligation, it wrongs not only those who are hired and therefore parties to a transaction with the firm, but all of those who would have accepted one of the relevant positions had one been offered to them.<sup>21</sup>

### **3. The Remedial Duties of Wrongful Exploiters**

Malmqvist and Szigeti (forthcoming) note that very little has been said about the remedial duties owed by those guilty of wrongful exploitation. It should be uncontroversial that wrongful exploiters are obligated to give up at least the excess benefits that they obtained by engaging in

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<sup>20</sup> I make a similar suggestion in Berkey (2020b, pp. 424-425).

<sup>21</sup> It is worth noting that this account of the wrong-making features of wrongful exploitation is consistent with rejecting the Nonworseness Claim. So while my argument in section 1 relies on certain intuitions that are similar to those that motivate that Claim, my conclusion that wrongful exploitation often wrongs people who are not parties to exploitative transactions does not depend on any version of the Claim being correct.

exploitation. For example, if an exploiter gains \$1,000 from an exploitative transaction, but would have gained at most \$500 from the transaction had its terms been non-exploitative, then he is obligated to give up at least the \$500 surplus. It also seems plausible that wrongful exploiters are obligated to direct whatever resources they are obligated to give up in order to satisfy their remedial duties to those who were wronged by their exploitative conduct.

If this is right, then views on which only parties to exploitative transactions can be wronged will imply that wrongful exploiters owe remedial duties only to their transaction partners, and ought to direct whatever resources they are obligated to give up to them. My view, on the other hand, implies that in many cases, the class of those to whom a wrongful exploiter might owe remedial duties will be much larger than the class of exploited parties to the relevant transactions.

Though they do not state this explicitly, Malmqvist and Szigeti develop their view of the remedial obligations of wrongful exploiters on the assumption that only the exploited parties to wrongfully exploitative transactions are wronged.<sup>22</sup> Unsurprisingly, they argue that in cases involving voluntary and mutually beneficial yet nonetheless wrongfully exploitative transactions, an exploiting party, A, owes a remedial duty to an exploited party, B, to compensate the latter by redirecting enough of the benefits that A obtained through his transaction with B to make it the case that B is as well off as she would have been had the transaction occurred on non-exploitative terms (Malmqvist and Szigeti forthcoming, p. 5).

They take their more significant contribution to consist in their argument for the claim that wrongful exploiters' remedial duties are not limited to this compensatory duty. This is because, they claim, wrongful exploitation causes what they call "relational harm" to exploited

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<sup>22</sup> See their brief discussion of wrongful exploitation (forthcoming, pp. 2-3).

parties that must also be remedied (forthcoming, pp. 6-8). On their view, exploiters inflict relational harm on those whom they exploit because they view and treat their vulnerability at least primarily as an opportunity to obtain disproportionate benefits from a transaction. They claim, plausibly, that “such a stance towards other people’s vulnerability is...incompatible with granting them a minimally acceptable (let alone equal) standing in one’s relationship to them” (forthcoming, p. 7). In order to remedy the relational harm that they cause, wrongful exploiters must, Malmqvist and Szigeti claim, apologize and seek forgiveness. And in the case of ongoing relationships (such as that between an employer and an employee), they must express willingness to adjust the terms of the relevant transactions so that they are made non-exploitative (forthcoming, p. 9).

The first thing to note about Malmqvist and Szigeti’s account of what makes it the case that wrongful exploiters inflict relational harm on those whom they exploit is that if we think about the broader context within which much exploitation occurs (as my *Sweatshop* cases require us to do), the account itself seems to imply that all of those who would like to be hired but are not suffer the same relational harm as those who are hired and thereby made parties to exploitative transactions. Firms that employ workers in sweatshop conditions, and the relevant individual decision-makers within them, will at least typically view *all* potential sweatshop employees and their vulnerable circumstances primarily as presenting opportunities to generate greater profit margins by paying low wages and requiring long hours in poor working conditions. In other words, they will be committed to a stance toward the vulnerability of all such people that is incompatible with granting them a minimally acceptable standing. Furthermore, because in the *Sweatshop* cases the presence of additional potential employees who would be willing to accept the relevant jobs will tend to make it possible for exploiting firms to pay even lower wages to

those whom they do hire than they otherwise could, the fact that they have the objectionable attitude that they do toward all of their potential employees contributes to their ability to obtain as much benefit as they do.

I argued earlier that this a further reason, on top of those that the *Sweatshop* cases share with *One Dose of Drug, Ten People in Need*, to think that all of those who would like to be hired for the relevant positions are wronged by firms that engage in wrongful exploitation. We can now note that it also suggests that wrongful exploiters can have remedial obligations to, for example, apologize to and seek forgiveness from all of those whose vulnerabilities they viewed primarily as presenting opportunities to benefit themselves. In light of the reasons that have been noted for thinking that potential employees in the *Sweatshop* cases are not merely wronged, but are also exploited along with those who are hired, this should seem like the right conclusion. In addition, it is worth emphasizing that Malmqvist's and Szigeti's own account of the relational harm caused by wrongful exploitation, properly understood, suggests that those guilty of wrongful exploitation will often have remedial duties to those who are not parties to the relevant exploitative transactions.

There are also reasons to favor a view on which compensatory duties are not owed only to the exploited parties to wrongfully exploitative transactions. In the *Sweatshop* cases, those who are hired are at least made better off than those who were initially similarly situated and would like to have been hired, but were not selected. On the view that I have suggested, firms owe it (either conditionally or unconditionally) to all of the members of the group of potential employees to hire a subset of them and provide non-exploitative terms of employment. When a firm fails to satisfy this obligation, it wrongs all of the members of that group, which suggests that all of them should be candidates for sharing in any compensation for the wrong that is later

provided. Now, the fact that those who are hired perform long hours of work for the firm in poor conditions may give them a particular claim to some of the compensation that those who are not hired lack. But this claim might be thought to be counteracted, at least to some extent, by the fact that those who are not hired will tend to be, on the whole, even worse off than those who are at the time that compensation might be provided. We might think that, among a group of wronged parties, those who are worst off should, all else equal, have the strongest claims to limited compensatory resources.

Recognizing that wrongful exploitation often wrongs a broader class of people than the exploited parties to the relevant transactions, then, has potentially significant implications for how we should understand both the scope and content of the remedial duties of wrongful exploiters. Because our moral concern about exploitation should be grounded primarily in a more general concern for the morally important interests of those who are vulnerable to wrongful exploitation, these implications should, I think, seem quite plausible on reflection, even if they conflict with some of our initial intuitive reactions. If I am correct, then many of those reactions are explained by the fact that our reflection on the wrong of exploitation tends to focus our attention too narrowly on factors that are internal to exploitative transactions. When our focus is appropriately broadened in ways that direct our attention to the broader contexts in which wrongfully exploitative transactions take place, we can see that a number of widely accepted claims about the wrong of exploitation should be rejected.<sup>23</sup>

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