

The Value of Fairness and the Wrong of Wage Exploitation

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ABSTRACT: In a recent article in this journal, David Faraci argues that the value of fairness can plausibly be appealed to in order to vindicate the view that consensual, mutually beneficial employment relationships can be wrongfully exploitative, even if employers have no obligation to hire or otherwise benefit those who are badly off enough to be vulnerable to wage exploitation. In this article, I argue that several values provide potentially strong grounds for thinking that it is at least sometimes better, morally speaking, for employers to hire worse off people at intuitively exploitative wages than to hire better off people at intuitively fair wages. Rather than suggesting that hiring badly off people at intuitively exploitative wages is permissible, however, I suggest that this gives us reason to think that employers can be obligated to hire worse off people rather than better off people *and* to pay them non-exploitative wages.

KEY WORDS: exploitation, fairness, Interaction Principle, Nonworseness Claim, sweatshops

In a recent article in this journal (Faraci 2019), David Faraci argues that the value of fairness can plausibly be appealed to in order to vindicate the view that consensual, mutually beneficial employment relationships can be wrongfully exploitative, even if employers have no obligation to hire or otherwise benefit those who are badly off enough to be vulnerable to wage exploitation.¹ One of his central aims is to show that the Nonworseness Claim, according to which engaging in a consensual, mutually beneficial transaction cannot be morally worse than refraining from transacting, cannot be defended on theory-neutral grounds (Faraci 2019, 174-77).² And, he argues, because the Nonworseness Claim cannot be defended on theory-neutral

¹ For defenses of fairness-based views of the wrong of exploitation, see Wertheimer (1999, Ch. 7); Meyers (2004, 320-21, 324); Mayer (2007a, 137-38, 141-42) and (2007b, 608); Barnes (2013, 31); Dänzer (2014); Ferguson (2016, 953, 955, 966-67); Sollars & Englander (2018, 23-27); Kates (2019, 33-34, 44-45).

² The Nonworseness Claim is introduced (and rejected) by Wertheimer (1999, 289-93). For slightly different formulations of the Claim, see Snyder (2008, 390); Bailey (2011, 238); Barnes (2013, 28); Ferguson (2016, 956); and Malmqvist (2017, 478). The minor differences in these formulations do not matter for my purposes in this article. I discuss various versions of the Claim in Berkey (forthcoming[b]).

grounds, it cannot ground the kind of theory-neutral defense of the permissibility of employing people on intuitively exploitative terms that some (e.g. Zwolinski 2007; Powell & Zwolinski 2012) have claimed to offer. Whether some consensual, mutually beneficial employment relationships (e.g. those between sweatshop workers and their employers) are wrongfully exploitative, then, depends at least in part on what the correct answers to certain controversial, substantive questions in ethical theory are (Faraci 2019, 170). In particular, it depends on whether, and if so to what extent, the value of fairness provides moral reasons for employers to refrain from engaging in consensual, mutually beneficial transactions on certain terms (e.g. those that are, intuitively, wrongfully exploitative).

Importantly, in order for the value of fairness to provide sufficient grounds for accepting the view that consensual, mutually beneficial employment relationships can be wrongfully exploitative even if employers have no obligation to hire or otherwise benefit those who are vulnerable to exploitation, it is not enough for that value to provide moral reasons for employers to refrain from employing people on intuitively unfair terms. Instead, at least two additional things must be true. First, there must not be any other values that make it the case that, all things considered, the moral reasons *in favor* of employing vulnerable individuals, even on intuitively exploitative terms, outweigh the reasons against doing so provided by the value of fairness. And second, the value of fairness must itself provide employers with whatever reasons it does to refrain from employing people on intuitively exploitative terms *without providing reasons of similar strength for them to hire or otherwise benefit badly off people who would be willing to accept employment on exploitative terms*. In other words, the correct view about the nature of fairness, and the way in which fairness-based considerations bear on the ethics of employment, must be such that there are not significant fairness-based reasons for employers to, for example,

hire badly off people rather than better off people generally, or to *both* hire badly off people *and* pay non-exploitative wages.

Any view about the nature of fairness and its bearing on the ethics of employment that implies that there are not strong fairness-based reasons for employers to hire badly off people (and pay them non-exploitative wages) will take considerations of fairness to apply at least primarily, and perhaps only, once an employment relationship is already in place. In other words, the way in which considerations of fairness bear on the ethics of employment is explained primarily, if not exclusively, by an Interaction Principle (Faraci 2019, 171-72). Interaction principles state that certain obligations owed to one's interaction partners are created by the decision to interact, despite the fact that in the relevant cases interaction is, morally speaking, optional. Fairness-based defenses of the view that consensual, mutually beneficial employment relationships can be wrongfully exploitative typically rest on an Interaction Principle, and the type of view that Faraci suggests can capture our intuitions about when terms of employment are permissible and when they are impermissible is no exception (Faraci 2019, 176-77).³

In my view, Faraci is correct that neither the Nonworseness Claim nor the claim that morally optional, consensual, and mutually beneficial employment relationships cannot be wrongfully exploitative can be defended on theory-neutral grounds. In this article, I take up his challenge to engage the substantive issues raised by the appeal to fairness that he and others endorse in order to argue that consensual, mutually beneficial employment relationships can be

³ In addition to the intuition that it is permissible for employers to refrain from hiring or otherwise benefiting badly off people, and the intuition that the terms of morally optional, consensual, and mutually beneficial employment relationships can be wrongfully exploitative, Faraci aims to capture the additional intuition that third parties are obligated to refrain from intervening in order to prevent morally optional, consensual, and mutually beneficial transactions from taking place, even if the terms of such transactions are wrongfully exploitative (Faraci 2019, 171, 176-80). I share this intuition, and nothing in the argument that I will make about either the range of values that are relevant to the ethics of employment, or the nature of fairness in particular and its bearing on the ethics of employment, calls it into question.

wrongfully exploitative even if employers have no obligation to hire or otherwise benefit badly off people. I argue that there are further values, for example *need satisfaction* and (relatedly) *justice*, that provide reasons to think that employing badly off people at intuitively exploitative wages can, at least in some cases, be morally better, all things considered, than employing better off people at intuitively fair wages, even if Faraci and others are correct that doing so is worse in terms of the value of fairness alone. If this is correct, then it provides grounds for doubting that appeals to the value of fairness can justify the view that employing people on intuitively exploitative terms is impermissible even if employers have no obligations to hire or otherwise benefit badly off people. Somewhat more tentatively, I argue that there may be no plausible conception of fairness itself, and its bearing on the ethics of employment, that is consistent with both the claim that employers have no obligation to hire or otherwise benefit badly off people (rather than, for example, hiring different, better off people), and the claim that consensual, mutually beneficial employment relations between employers and badly off employees can be wrongfully exploitative. I suggest that there are plausible conceptions of fairness that imply that there are, at least often, strong fairness-based reasons, and in at least some cases obligations, for employers to hire or otherwise benefit badly off people rather than hiring different, better off people. If this is correct, then these reasons will at least compete with the reasons to refrain from transacting on intuitively exploitative terms that Faraci identifies, with the result that even considerations of fairness taken in isolation (from, for example, considerations of welfare) do not unequivocally support the view that intuitively exploitative employment relationships are impermissible. Whether they are impermissible, all things considered, depends on how strong the reasons (both fairness-based and otherwise) that employers have to hire or otherwise benefit

badly off people are, and in particular on whether they generate obligations to, for example, hire badly off people rather than better off people *and pay intuitively non-exploitative wages*.

I will proceed in the remainder of the article as follows. First, in section 1, I will describe the interaction-based conception of fairness and its bearing on the ethics of employment that seems to underlie both Faraci's view and the views of others who endorse fairness-based accounts of the wrong of exploitation. In section 2, I will argue that there are values apart from fairness that plausibly provide important moral reasons that are relevant to employers' choices about both whom to hire and the wages that ought to be paid to those who are hired. I will also argue that there are reasons to worry that the conception of fairness that Faraci and other defenders of fairness-based accounts of the wrong of exploitation operate with is overly narrow, and suggest that there are plausible conceptions that imply that employers often have fairness-based reasons to hire or otherwise benefit badly off people. These two claims, I will suggest, together undermine Faraci's claim that considerations of fairness can vindicate the view that consensual, mutually beneficial employment relationships can be wrongfully exploitative, even if employers have no obligation to hire or otherwise benefit badly off people. I will conclude, in section 3, by briefly describing the type of view about the wrong of wage exploitation that is suggested by my argument in section 2.

1. INTERACTION AND THE VALUE OF FAIRNESS

Proponents of fairness-based views of the wrong of wage exploitation are typically motivated to reject the Nonworseness Claim at least in part because they aim to capture both the intuition that some consensual, mutually beneficial employment relationships are wrongfully exploitative, and the intuition that employers are, at least in general, not obligated to hire or otherwise benefit

badly off people.⁴ Accepting the latter intuition⁵ requires holding both that the welfare gains that would be enjoyed by badly off people were they to be hired do not provide employers with potentially obligation-generating reasons to hire them, and that there are not other kinds of potentially obligation-generating reasons (e.g. justice-based or fairness-based reasons) for them to do so. Any fairness-based account of the wrong of wage exploitation that is consistent with the claim that employers are not obligated to hire or otherwise benefit badly off people, then, must deny that there are significant considerations, whether of fairness or otherwise, that bear on decisions about whom among potential employees an employer ought to hire, while holding that fairness-based considerations have significant implications regarding the permissible terms of employment relationships that are in fact established. Fairness, on any view that satisfies these conditions, is a value that is relevant *only within existing economic relationships* – it has nothing to say about which economic relationships agents should form. In addition, there are, on the relevant views, no other potentially obligation-generating considerations grounded in the interests of potential employees that bear on the decisions of employers about which economic

⁴ Among those who accept fairness-based accounts of the wrong of wage exploitation, the claim that employers are not obligated to hire or otherwise benefit badly off people is explicitly endorsed by Meyers (2004); Barnes (2013, 38); and Kates (2019, 27, 34), and is at least implicitly endorsed by most others. It is also, of course, endorsed by those who deny that consensual, mutually beneficial employment relationships can be wrongfully exploitative (e.g. Zwolinski (2007, 69) and (2012, 169)), as well as by many who accept non-fairness-based accounts of the wrong of wage exploitation (e.g. Preiss (2019, 885-86, 890)). Although Faraci gives some indications that he accepts this claim as well (2019, 169, 174), his argument can be read as aimed at establishing that the value of fairness can ground a conditional obligation to pay employees non-exploitative wages in the absence of a prior obligation to hire or otherwise benefit those employees, without taking a position on whether there might actually be such a prior obligation. If this is the right way to read his argument, then he need not deny that either the other values to which I appeal, or even the value of fairness itself, might provide grounds for an obligation to hire or otherwise benefit badly off potential employees. I am grateful to an anonymous reviewer for encouraging me to clarify this.

⁵ As Faraci suggests (2019, 184, fn. 11, 185, fn. 18), it is a point of essentially universal agreement in the literature on sweatshops and exploitation that employers are not obligated to hire or otherwise benefit badly off people. One of my aims in this paper is to suggest some reasons to be at least somewhat skeptical of this claim, despite its widespread acceptance. In particular, I will provide reasons to think that employers at least have *conditional obligations* to hire badly off people rather than better off people – that is, even if it is true that it is permissible for an employer to hire no one, *if* she is going to hire someone, then so long as all else is equal she ought to hire a badly off person rather than a better off person.

relationships they should enter into, and specifically about whom among potential employees they ought to hire.

Faraci suggests in general terms what a conception of fairness and its bearing on the ethics of employment must look like if it is to support the view that consensual, mutually beneficial employment relationships can be wrongfully exploitative, even if employers have no obligation to hire or otherwise benefit badly off people (2019, 177). The central idea is that the value of fairness determines the range of permissible distributions, *among participants*, of benefits produced through cooperative activity. As Faraci puts it, an employer's hiring an employee "generates new obligations...because the...moral significance of *fairness* has become salient within their interaction" (2019, 177, italics in original). In order for the value of fairness to "become salient" within the interaction, of course, it must not have been relevant to the choices made prior to the interaction - at least as far as fairness is concerned, employers must have no reasons to, for example, hire certain potential employees rather than others. But once they have in fact hired particular people, those people acquire a moral claim to a fair share of the benefits produced by the cooperative activities in which they engage together.

There is no question that there are widely shared intuitions to the effect that fairness bears on how the benefits produced through cooperative activity ought to be shared among participants in that activity. I do not aim to challenge those intuitions – I accept that among the reasons provided by the value of fairness are reasons to distribute the benefits produced by cooperative activity in certain ways among the participants in that activity. Fairness-based accounts of the wrong of wage exploitation that are consistent with the view that employers are not obligated to hire or otherwise benefit badly off people, however, require that there are *no other significant*

fairness-based reasons that are relevant to the ethics of employment,⁶ in addition to requiring that there are no other values that provide potentially obligation-generating reasons (grounded in the interests of potential employees) that are relevant to decisions about whom to hire. It is these claims that I aim to challenge in the following section.

2. THE ETHICS OF EMPLOYMENT: FURTHER VALUES AND THE RANGE OF FAIRNESS-BASED REASONS

In order to see both the ways in which important values beyond fairness might be relevant to decisions about whom to hire, and the ways in which fairness itself might be implicated in these choices, it is helpful to begin by considering various transactions and potential transactions. Consider, first, an expanded version of the simple case with which Faraci begins his article (2019, 169):

Owner and Employee: Owner is well off, and Employee is very badly off. Owner offers Employee full-time employment at a wage that is insufficient to meet his basic needs. Employee correctly judges that taking the job would make him better off than he is currently, and that he has no better alternatives available. So, he accepts Owner's offer. As a result, Owner makes substantial profits, and Employee becomes slightly less badly off. Specifically, the employment relationship increases Owner's well-being from 500 to 520, while it increases Employee's well-being from 40 to 42. Assume that the well-being level corresponding to having all of one's basic needs just barely met is 50.

⁶ They may even require that there are *no* other fairness-based reasons that are relevant to the ethics of employment, though I will not defend this claim here. Faraci's claim that fairness "becomes salient" within particular established economic interactions suggests that he may accept the stronger claim.

With respect to cases of this kind, Faraci suggests that despite the fact that the outcome in which Owner's well-being is 520 and Employee's is 42 is clearly better in terms of welfare than the initial state of affairs (in which their well-being is 500 and 40, respectively), it is plausibly worse in terms of fairness, at least if Owner could have offered different terms of employment to Employee, such that, for example, Employee's well-being would be raised to 50 while Owner's would be raised to 512 (2019, 179-80). And he suggests that the reasons to avoid unfairness are plausibly weighty enough that Owner is obligated not to hire Employee on unfair yet mutually beneficial terms, despite the fact that she has no obligation to hire or otherwise benefit him in the first place. On the view that he suggests, it is supposed to be at least plausible to assume that there are no potentially obligation-generating reasons, whether reasons of fairness or otherwise, for Owner to hire or otherwise benefit Employee (2019, 180); instead, there are only obligation-generating, fairness-based reasons to ensure that, *if* she hires him, the benefits of their cooperative activity are distributed between them in an acceptable way.

In Faraci's case, Owner and Employee are the only people whose interests stand to be affected. And it is at least not implausible to think that there are no potentially obligation-generating reasons, whether of fairness or otherwise, for Owner to hire Employee.⁷ In addition, it does seem, intuitively, that the value of fairness has implications regarding the terms of employment that it is permissible for Owner to offer to Employee, if she does choose to hire him. Specifically, it is not implausible to think that because of the way in which the benefits of their cooperative activity would be distributed, the outcome in which Owner's well-being is 520 and Employee's is 42 is worse in respect of fairness than the initial state of affairs, despite the fact

⁷ I am not entirely persuaded that this is the case, but I will not challenge the claim in this article.

that both parties are better off in absolute terms. As Faraci rightly points out (2019, 174), fairness and welfare are distinct values, and whether fairness provides reasons to avoid transacting on certain terms even when all of the parties to the transaction would benefit, and whether, if it does, those reasons outweigh the welfare-based reasons in favor of the transaction, are substantive ethical questions that ought to be answered by attempting to determine the appropriate place of fairness, and its relation to other values, within our overall ethical outlook.

Focusing on cases like *Owner and Employee*, in which the only relevant issues are whether one party will hire another, and if so on what terms, can make it seem plausible both that fairness is relevant to the ethics of employment only with respect to the distribution of the benefits of employment relationships among the parties to them, and that there are no other potentially obligation-generating reasons for employers to hire anyone in particular. After all, so long as we accept that it is permissible for Owner to refrain from hiring Employee, and that therefore there would be nothing unfair in Owner's doing so, the only morally important issue remaining would seem to be that regarding the terms of employment, conditional on an employment relationship being formed. And Faraci and others are correct that this issue seems to be best understood as one of fairness.

Focusing exclusively on cases like *Owner and Employee*, however, can lead us to overlook potentially morally important issues that arise in cases that are in fact more representative of the choices that employers typically make with respect to offers of employment, including some that can at least plausibly be understood as issues of fairness. In order to see this, consider a case involving just one more person:

Owner and Two Potential Employees: Owner is well off. A is very badly off, through no

fault of his own, while B is modestly well off. Specifically, Owner's well-being is 500, A's is 40, and B's is 200.⁸ Owner has one full-time job available, and is deciding both whom among A and B to offer it to, and the wage that she will offer to whomever she selects. A and B are equally qualified for the job, would work equally hard, and would be equally productive. Owner is considering three options. On Option 1, she will hire B and pay him the lowest wage that he will accept (which is, nonetheless, intuitively a fair wage), with the result that her well-being will rise to 512, while B's rises to 210. On Option 2, she will hire A and pay him the lowest wage that he will accept (which is, intuitively, unfair and exploitative), with the result that her well-being will rise to 520, while A's rises to 42. On Option 3, she will hire A and pay him a wage higher than the lowest that A will accept (which is also intuitively fair), with the result that her well-being rises to 512, while A's rises to 50 (see Table 1 below).

Table 1

	Owner	A	B
Initial Well-Being	500	40	200
Option 1	512	40	210
Option 2	520	42	200
Option 3	512	50	200

If we accept the type of view about the ethics of employment that is suggested by Faraci's discussion (and those of other defenders of fairness-based accounts of the wrong of wage exploitation, e.g. Wertheimer (1999, Ch. 7); Meyers (2004); Mayer (2007a and 2007b); Barnes (2013); Dänzer (2014); Ferguson (2016); Sollars & Englander (2018); Kates (2019)), then we must accept both that the value of fairness itself provides no reasons that are relevant to Owner's decision regarding whether to hire A or B, and that there are no potentially obligation-generating

⁸ Once again, assume that 50 is the level corresponding to having all of one's basic needs just barely met.

reasons for her to hire A rather than B provided by other values. And this means that we must also accept that there are no morally important ways in which the outcome of Owner choosing Option 3 is better than the outcome of her choosing Option 1 that are relevant to what she ought to do. In addition, since we are assuming that in both Option 1 and Option 3 the benefits of the employment relationship are distributed fairly among the participants in the relevant cooperative activity, we must also accept that the outcome of Owner's choosing Option 1 is no less fair than the outcome of her choosing Option 3.

There are, however, reasons to doubt all of these claims. Consider first that if Owner hires A, then A's basic needs will be at least better satisfied than they would be if she hires B. This is true even if she chooses Option 2 rather than Option 3, and hires A at an intuitively exploitative wage. In terms of the value of needs satisfaction, then, both Option 3 and even Option 2 are better than Option 1. And since needs satisfaction is clearly a morally important value, it is not clear why we might think that it cannot, in principle, provide potentially obligation-generating reasons for Owner to hire A rather than B.

A second point to note is that it is plausibly a requirement of justice that everyone has sufficient resources to meet their basic needs.⁹ Ideally, this requirement would be met through government policies that protect everyone from poverty. However, in the absence of such policies, in conditions in which some people in fact lack such resources, those with substantial resources available to them can help ensure that the requirement is better satisfied by acting in ways that will result in more basic needs being satisfied than otherwise would be (Berkey 2016, forthcoming[a]). Unlike some other requirements of justice, which perhaps can, in principle, only

⁹ Some would claim that it is not unjust that a person lacks sufficient resources to meet her basic needs if her lack of resources is the result of choices for which she can reasonably be held responsible. Note, however, that it is stipulated that A's poverty is not the result of such choices.

be satisfied through government policy, the requirement that everyone be able to satisfy their basic needs seems best understood as one that an individual (or firm) might sometimes be best able to contribute to satisfying by directing resources to badly off people, including potentially by hiring them. And since this is the case, it is not clear why we might think that justice cannot, in principle, provide potentially obligation-generating reasons for Owner to hire A rather than B.¹⁰

If needs satisfaction and justice can, as I have suggested, provide potentially obligation-generating reasons for Owner to hire A rather than B, then it would seem that her choosing Option 3 is clearly morally better, all things considered, than her choosing Option 1, since Option 3 is better in terms of those values and at least equally good in terms of fairness. It would also seem at least possible that Owner's choosing Option 2 is better, morally speaking, than her choosing Option 1, even if it is worse in terms of fairness. Of course, determining whether this is so in any particular case would, so long as we accept the conception of fairness that Faraci and others endorse, require determining the relative importance of considerations of fairness and the considerations, such as needs satisfaction or justice, that might compete with it. And this is just the kind of substantive ethical reflection that Faraci rightly insists we must engage in if we are to adequately address the issues in the ethics of employment with which he is concerned. My suggestion, then, does not rely on any purportedly theory-neutral appeals to the Nonworseness Claim, or any similar claim, to which Faraci rightly objects.

¹⁰ The claim that justice provides potentially obligation-generating reasons for Owner to hire A rather than B is most plausible if Owner is herself a beneficiary of injustice, all things considered (Berkey forthcoming[b]). When the injustice at issue is the lack of resources necessary to satisfy basic needs, however, it does not seem implausible that anyone has justice-based reasons to contribute to remedying the injustice, including those who are not themselves net beneficiaries of injustice.

I have suggested that there are further values that might compete with the value of fairness, and thereby potentially make Owner's hiring A at an intuitively exploitative wage morally better, all things considered, than her hiring B at a fair wage, even if doing so is worse in terms of the value of fairness alone. But there is, in addition, at least some reason to think that the value of fairness itself might favor hiring A rather than B, and, somewhat more controversially, might even favor hiring A at an intuitively exploitative wage over hiring B at a fair wage.

Consider, first, the question whether the outcome of Owner's choosing Option 1 is less fair than the outcome of her choosing Option 3. While intuitive reactions to this question are likely to vary at least somewhat, there are at least some reasons to think that fairness might speak in favor of Owner choosing Option 3 rather than Option 1. For example, many people think that it is unfair if one person is worse off than another through no fault of his own,¹¹ and that when this kind of unfairness exists, there are fairness-based reasons to direct benefits to the worse off person rather than the better off person. An outcome in which the worse off person is benefitted, so that the inequality between him and the better off person is at least reduced, is, on views of this kind, less unfair. In our case, an outcome in which A's well-being is 50 and B's is 200 would count as at least less unfair than one in which A's well-being is 40 and B's is 210.¹² If this is

¹¹ This is the central motivation for luck egalitarian accounts of distributive justice, according to which inequalities resulting from "brute luck" are at least presumptively unjustified. On views of this kind, considerations of fairness are closely related to considerations of justice, so that it is at least likely that if there are reasons of one kind that bear on Owner's choice, then there are reasons of the other kind as well.

¹² This claim might seem particularly plausible due to the fact that in the first outcome A at least has his basic needs met, while in the second he falls short of that rather morally important threshold (while B would be at least modestly well off in both outcomes). This suggests that one thing that can make an outcome especially unfair is if, through no fault of one's own, he is unable to satisfy his basic needs. In addition, even if we reject the luck egalitarian account of fairness, the outcome in which A's well-being is 50 and B's is 200 might also seem less unfair than the outcome in which A's well-being is 40 and B's is 210 because the initial distribution was itself unfair, perhaps due to wrongful actions of other agents. In cases in which this is true, employers might plausibly be thought to have reasons to take steps to remedy this unfairness by directing benefits to those who are unfairly disadvantaged rather than those who are, at least relatively speaking, unfairly advantaged. Once again, this will be most plausible in cases in which an employer is a net beneficiary of injustice.

correct, then fairness speaks in favor of Owner choosing Option 3 rather than Option 1. And if fairness speaks in favor of Owner choosing Option 3 rather than Option 1, then there are fairness-based considerations that bear on the ethics of employment beyond those that determine the permissible distributions among the parties of the benefits produced *within* employment relationships.

If any of the kinds of reasons that I have identified do in fact bear on choices like Owner's, then, generally speaking, when an employer is deciding whom among potential employees to hire, there are morally relevant reasons to hire worse off people rather than better off people (at least if those who are worse off are not responsible for their plight).¹³ And if all else (e.g. total welfare gains, expected gains for the employer, etc.) is equal (as it is in *Owner and Two Potential Employees*), then there is reason to think that an employer might be obligated to hire a worse off potential employee rather than a better off one. Perhaps the most plausible general explanation for this is that, when all else is equal, it is morally worse to direct a benefit to a better off person if, at no additional cost to oneself, one could direct the same benefit to a worse off person.

Notice also that if there are any of the kinds of reasons that I have suggested plausibly bear on decisions about whom among potential employees an employer ought to hire, it is no longer obvious that Option 2 is, overall, worse (or even worse in terms of fairness alone) than Option 1. It is, we can grant, worse in terms of the fairness-based reasons that determine the permissible distributions of the benefits of cooperative activity among participants in that activity. But if there are also reasons to prefer a distribution in which A has 42 and B has 200 over a distribution in which A has 40 and B has 210, then whether Owner's choosing Option 2 is

¹³ Additional grounds for finding this claim plausible can be found in arguments for prioritarian accounts of the moral significance of benefits (Parfit 2002).

worse, morally speaking (or even merely more unfair) than her choosing Option 1 depends on the relative weight of the reasons provided by the distinct types of considerations. Importantly, however, if one thinks that it is not impermissible for Owner to choose Option 1, despite the fact that there are reasons for her to choose Option 3 over Option 1, then it will be at least more difficult than proponents of fairness-based accounts of the wrong of wage exploitation have acknowledged to defend the view that it is impermissible for Owner to choose Option 2. Specifically, it would have to be argued that the unfairness internal to the employment relationship in Option 2 is more important, morally speaking, than both the welfare gain that A would enjoy *and* the gains in justice, need satisfaction, and/or fairness in the distribution of well-being between A and B that Option 2 would involve in comparison with Option 1.

In response, it might be suggested that there are in fact grounds for thinking that unfairness within an employment relationship is more important, morally speaking, than the other considerations that I have identified. Specifically, it might be claimed that there are good reasons to think that within an employment relationship there are *obligations* to ensure that the benefits of cooperation are distributed fairly, while with respect to decisions about whom to hire, there are merely non-obligation-generating moral reasons to give priority to those who are worse off or lack the resources necessary to satisfy their basic needs.¹⁴ One way to argue for this is to claim that since it is permissible for Owner to refrain from hiring anyone, it must be supererogatory rather than required for her to hire A rather than B. If A would have no justified complaint against Owner if she simply decided not to expand her staff, it might be suggested, then he can have no justified complaint against her if she instead chooses to hire another equally

¹⁴ I am grateful to David Faraci for this suggestion.

qualified applicant, even if that applicant happens to be much better off than he is.¹⁵ With respect to decisions about whom to hire, this line of argument suggests, whatever moral reasons there might be to prioritize benefitting worse off people rather than better off people cannot be obligation-generating.

One important thing to notice about this line of argument is that it is quite similar in structure to the argument in defense of the permissibility of employing people on intuitively exploitative terms that appeals to the Nonworseness Claim. That argument suggests that because an employee would have no justified complaint against an employer who simply did not hire him, he cannot have a justified complaint against that employer for hiring him on terms that are, though beneficial to him in comparison with the permissible alternative of not hiring him at all, intuitively unfair. Faraci and others reject that argument, since they think that employers have a *conditional obligation* to pay fair wages. That is, conditional on forming a morally optional employment relationship, considerations of fairness, on their view, generate an obligation to ensure that the benefits produced by that relationship are distributed fairly. My suggestion is that reasons of justice, need satisfaction, or perhaps even fairness itself might similarly support a conditional obligation to hire worse off potential employees rather than better off ones. Specifically, even if we think that it is permissible for an employer to refrain from hiring anyone, there might be compelling grounds for thinking that, conditional on the fact that one is going to hire someone, she is (at least if all else is equal) obligated to hire a worse off candidate rather than a better off one.

Because Faraci and other proponents of fairness-based accounts of the wrong of exploitation accept that employers can, and indeed do, have conditional obligations to pay fair

¹⁵ This is, of course, compatible with thinking that A would have a justified complaint against Owner if he was not hired because Owner engaged in discrimination on the basis of, for example, race or gender identity.

wages to those whom they hire, they cannot simply dismiss the possibility that they might also have conditional obligations to hire worse off people rather than better off people. Whether they have such obligations must be addressed by engaging in substantive ethical reflection, for the same reasons that Faraci correctly points out that we must engage in such reflection in order to determine whether employers have conditional obligations to pay fair wages to those whom they hire. There is no theory-neutral argument that can be appealed to in order to establish that there cannot be a conditional obligation to hire badly off rather than better off potential employees.

One reason to find the view that there *is* such an obligation plausible is that the considerations that most plausibly make refraining from hiring anyone permissible, for example that an employer prefers not to expand her staff and to instead put the relevant resources to some other use, do not also provide grounds for thinking that hiring a better off person rather than a badly off person is permissible. Since this is the case, any moral reasons that count in favor of hiring a worse off person rather than a better off person would seem to be unopposed by any reasons that could make it permissible to hire the better off person.¹⁶

An additional, more general reason to find the view that employers are conditionally obligated to hire badly off rather than better off potential employees plausible is that any view on which Owner in *Owner and Two Potential Employees* has strong enough fairness-based reasons to make it impermissible for her to choose Option 2, despite the welfare benefits that A would gain relative to Option 1, and on which she has no potentially obligation-generating reasons (e.g. of justice, need satisfaction, or fairness) to choose Option 3 over Option 1, seems clearly inconsistent with the sort of concern for the interests of badly off potential employees that ought

¹⁶ In other cases with this structure, it is widely thought that if one is going to refrain from exercising a moral permission not to act in a particular way, there are conditional obligations to choose an option from the relevant set that is supported by stronger moral reasons (Pummer 2016; Horton 2017; for discussion see Berkey forthcoming[c]).

to inform our thinking about the ethics of employment. The combination of the view that the fairness-based reasons that bear on the ethics of employment are limited to those that determine the permissible distributions of the benefits of employment relationships among the parties to them, and the view that these fairness-based considerations generally outweigh all of the reasons that there might be for employers to hire badly off people at wages that would distribute the benefits of the employment relationship in an intuitively unfair way, together imply that there is little, if anything, to be said against everyone in a position like that of Owner choosing Option 1.

Those who accept fairness-based views of the wrong of wage exploitation typically accept this implication. They think that it is generally permissible for employers to hire well off people rather than badly off people. But a further implication of this kind of view is that hiring patterns could systematically favor well off people over badly off people, with the result that badly off people do not become any better off, and inequalities between them and well off people grow over time, without our having any reason for moral concern about the choices that employers are making (since they are all, by hypothesis, acting permissibly). I have, however, suggested that there are reasons to think that we would be justified in being concerned, from a moral perspective, about this kind of hiring pattern, since there are plausibly reasons grounded in justice, need satisfaction, and perhaps even fairness itself for objecting to it. And since an appropriate concern for the interests of badly off people does seem to provide reasons for agents to avoid making inequalities between badly off people and well off people larger, especially if the badly off people would also enjoy no welfare gains and do not even have their basic needs met, this appears to be an important advantage of the type of view that my argument suggests we must take seriously.

I have relied most heavily on claims about the relevance of values other than fairness in order to support my claim that we must take seriously the possibility that employers have conditional obligations to hire badly off rather than better off potential employees. But the more tentative case that I have made for thinking that fairness itself might provide reasons in support of that view at least suggests that the conception of fairness and its relevance to the ethics of employment that underlies views of the kind suggested by Faraci and endorsed by other defenders of fairness-based accounts of the wrong of wage exploitation may be problematically narrow.

I have gestured to some general intuitions about the value of fairness, and about when that value seems, intuitively, to be implicated in decisions faced by agents, and in particular by employers. And I have suggested that those intuitions give us at least some reason to think that fairness is relevant to the ethics of employment in ways that go beyond requiring that the distribution, among participants, of the benefits produced by employment relationships meets certain conditions. Defenders of fairness-based accounts of the wrong of wage exploitation of the kind suggested by Faraci, according to which there are not (significant) fairness-based reasons for employers to hire badly off people rather than well off people, might claim that it is objectionable to appeal to the more general intuitions about fairness and when it is implicated in decisions that I have relied on. Their use of the notion of fairness, they might claim, is, in effect stipulative, and designed to allow an account of the wrong of wage exploitation to capture widely shared intuitions about what it is permissible and impermissible for employers to do, including the intuition that it is generally permissible for employers to hire well off people rather than badly off people. Faraci concludes his paper by claiming that we should be wary of claims to the effect that our intuitions about cases are “paradoxical” or in “tension” with one another, since

moral theory is at least often flexible enough to capture sets of intuitions that cannot be squared within simple theoretical frameworks (2019, 182). A stipulative definition of fairness that is designed to specify the bearing on the ethics of employment of a narrow value that is at least related to our ordinary, intuitive notion of the value can contribute to articulating a theoretical framework that can capture sets of intuitions about cases that might initially appear puzzling. If this is what Faraci and others are aiming to do, then it might seem that my claim that the value of fairness, as it is understood more generally, is implicated in further ways in the decisions of employers, is beside the point.

If, however, we take it as an appropriate aim of moral theorizing to seek to capture powerful intuitions (rather than, for example, encouraging us to revise intuitions when doing so allows us to achieve greater theoretical simplicity),¹⁷ it is not clear why we should be willing to, in effect, give up intuitions about when an important value, as we intuitively understand it, is implicated in decisions. This seems unlike, for example, rejecting theories that might seem appealing due to their simplicity, but which deny that a value that we intuitively think is important (perhaps in part because it seems to explain intuitive verdicts about particular cases that the theory cannot capture) is morally relevant at all. If we think that a value is morally important, it seems that there are strong reasons to want our theorizing to capture the full range of the reasons that it intuitively provides. Stipulative accounts that are designed to capture case intuitions, but are too narrow to capture broader intuitions about the nature of a value and when it is implicated in decisions, would seem to be objectionably ad hoc, and to trade in an objectionable way on the intuitive power of a term that refers to a value that is generally understood in a broader way. If what I have suggested about our more general intuitions about

¹⁷ I am not persuaded that this is an aim of moral theorizing that should be given an especially large amount of weight.

when the value of fairness is implicated in decisions that employers face is correct, then we should worry that fairness-based accounts of the wrong of wage exploitation are, at least in general, subject to this kind of objection.

3. CONCLUSION: THE WRONG OF WAGE EXPLOITATION

What does my argument suggest about the sort of account of the wrong of wage exploitation that we should accept? If I am correct that a range of values, including potentially the value of fairness, often provide powerful reasons for employers to hire (or otherwise benefit) badly off people rather than well off people, and potentially obligations for them to do so, this undermines the view that the wrong of wage exploitation consists exclusively in the failure to distribute the benefits produced by morally optional, consensual, and mutually beneficial employment relationships fairly. In at least some cases, a number of morally important reasons might recommend hiring badly off people at intuitively unfair wages rather than better off people at intuitively fair wages. If we want to maintain that hiring badly off people at intuitively unfair wages is wrongfully exploitative, as I am inclined to think we at least often should (Berkey forthcoming[b]), then we must accept that it is often wrong for employers to hire well off people rather than badly off people (regardless of whether they pay the well off people intuitively fair wages). And, as I have argued, it should on reflection seem plausible that doing this can be wrong, and might be wrong at least in part for fairness-based reasons.

If this is correct, then we can hold that employers are at least often conditionally obligated to hire (or otherwise benefit) badly off people, and add that, once particular badly off people are hired, they are entitled to a fair share of the benefits produced by the employment relationship. The wrong of wage exploitation, on this kind of view, will consist at least in part in

the failure to benefit badly off people as much as is (at least conditionally) morally required. The moral requirement exists because, first, in the relevant cases employers are obligated to hire from among the badly off; and second, those hired are, as Faraci and others claim, entitled to a fair share of the benefits produced by the employment relationship.

One important thing to notice about a view of this kind is that it is consistent with two claims that it is often suggested are incompatible. First, it is consistent with what I take to be a plausible claim that is at least closely related to the standard Nonworseness Claim, namely that if one is not obligated to benefit any badly off people, then it cannot be wrong to benefit some of them (without harming any others) via a consensual transaction. In addition, it is also consistent with the view that fairness provides reasons to ensure that the benefits of cooperative activities are distributed among participants in that activity in certain ways rather than others. This kind of view, then, is an example of the flexibility of moral theory that Faraci rightly highlights; while many contributors to the discussion of the ethics of employment have thought that recognizing the value of fairness requires rejecting the Nonworseness Claim, further reflection on exactly how we might plausibly understand that value suggests that recognizing it need not commit us to rejecting the Claim in all of its possible forms. This opens up a range of possible accounts of the general kind that I have described as plausible candidate accounts of the wrong of wage exploitation.

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