

A Relational Account of Exploitation in Clinical Research

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A dissertation

submitted in partial fulfillment of the
requirements for the degree of

Doctor of Philosophy

University of Washington

2019

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Program Authorized to Offer Degree:

Philosophy

University of Washington

Abstract

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Exploitation is an important concept in moral and political philosophy. There is an increasing focus on exploitation as an important concept that limits how clinical research is conducted. Yet, there is disagreement at nearly every level regarding the source of wrongness of exploitation, its connection to injustice, and the practical importance of exploitation. This dissertation considers whether the most compelling available theories of exploitation are capable of addressing all of the theoretical and practical problems of exploitation that have been cited in the theoretical and bioethics literature, and finds them wanting. The main approach that I take is to consider exploitation as wrongful advantage taking of relational inequalities. Exploitation is a problem of dynamics between/among people, and is grounded in the instrumentalizing of inequalities for advantage. How exploitation affects and degrades relationships explains its connection to injustice and exploitation's special importance to clinical research ethics.

ACKNOWLEDGEMENTS

This dissertation would not have been possible without the support and mentorship of a number of people. First and foremost, I want to acknowledge my parents, Dr. Ihsan and Judy Awan. Their encouragement, support, and ever-present love has been an extraordinary source of motivation and inspiration. Mom and Dad, I am where I am because of who you are and the lessons that you imparted to me.

I have benefitted from the experience and care of truly stellar teachers through my life. I want to recognize my first philosophy instructor, John Sutula Ph.D., for sparking a life-long interest and passion in the examined life, and for showing a level of care and interest that I hope to model in my career.

As an undergraduate at Lehigh University, Professor Roslyn Weiss, Ph.D. was fabulous mentor and teacher and has been a great influence on my thinking and growth as a philosopher. Professor Robin Dillon, Ph.D., my thesis advisor, taught me how to think independently and challenge assumptions in a rigorous and thoughtful way. Professors Weiss and Dillon, I grew enormously as a philosopher and a person because of the attention, thoughtfulness, and seriousness with which you took my ideas, and I am forever grateful for that.

Throughout my time as a graduate student at the University of Washington, I have benefitted enormously from the prodigious philosophical talents, patience, and mentorship of my committee members from the Department of Philosophy, Professor Michael Blake, Ph.D. and Professor Sara Goering, Ph.D., who have both been inspiring teachers, generous mentors, and constructive interlocutors on a wide variety of philosophical problems. Professor Alison Drake, Ph.D. from the Department of Global Health has been an invaluable resource for thinking about research in practice and the complexities, trade-offs, and systematic issues that present themselves. As Chair of the committee and a long time mentor, Michael deserves much of the credit in stretching my philosophical thinking, and I could not ask for a better chair and advocate.

Finally, and with overwhelming appreciation, I want to recognize Nicole Basta, my partner in life, constant source of support, and *sine qua non*. I cannot wait to see what the future holds.

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Chapter 1. THE CONCEPT OF EXPLOITATION

1.1 INTRODUCTION

Exploitation is a difficult concept. The motivation for this project is that it is not clear what sort of problem exploitation is. Is it a wrong like harm, where an individual is made worse off relative to some baseline? This view seems too simplistic to cover cases where people willingly, if not enthusiastically, choose exploitation. Examples of this sort range from sweatshop waged labor to commercial surrogacy. Is exploitation more like coercion, where its presence precludes the possibility that a person is genuinely consenting? There is good reason to think about the relationship between exploitation and coercion because the worst examples of research ethics violations, as in Nazi Germany or Imperial Japan, were obviously and horrifyingly coercive.¹

These two questions, whether exploitation is a wrong like harm and whether exploitation is more like coercion, are examined in detail in the first chapter of this dissertation. I am convinced, due primarily to Alan Wertheimer's *Exploitation*, that exploitation is distinct from both harm and coercion, as certain cases of exploitation can be both consensual and mutually advantageous. But sorting out the wrong of exploitation in consensual and mutually advantageous transactions is messy. It is not obvious how a person could be wronged if she agrees to a transaction, genuinely consents, and also benefits from that transaction. Such a transaction would be preferable to not transacting, *ceteris paribus*, as the exploited person is made better off. Yet, that is precisely the central paradox of exploitation that Wertheimer, and many others, have tried to explain.

¹ Robert Jay Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide*, (New York: Basic Books, 1986)

The difficulty of exploitation stems primarily from its contentiousness. The wrongness of exploitation is not in question, but the source and explanation of that wrongness is.² This chapter examines the concept of exploitation, in a broad sense. I will begin not with theory but with use, and specify the different senses of the term before sketching the contours of exploitation as a normative concept. The first section of this chapter distinguishes between common senses of the word ‘exploitation’.

To step back for a moment from defining exploitation and tracing the contours of the concept, the problem that drives me towards this topic is how one ought to understand the concept of exploitation in the context of globalized clinical research. Philosophy is just now starting to address the deep complexity of this field. How should we understand the great disparities in power, knowledge, and expertise that are commonplace in research? This question starts from a moral point of view. As a philosopher with an interest in how research is actually conducted and how policy, incentive structure, and institutions shape actions, it is obvious that exploitation is a powerful normative concept for affecting change.³ How we solve or address exploitation is derived from what is the wrong of exploitation that needs to be addressed. In Wertheimer’s case, the problem of exploitation is distributional in nature. Consequently, the appropriate change in the distributive split would alleviate the exploitation. I have always found this answer woefully inadequate to deal with the actual cases of exploitation in research that are present in the world. Taking advantage of a vulnerable person is not *simply* repaired by undoing the unfair split, or by paying a person more to make up for their loss.

² Jeremy Snyder, “Needs Exploitation”, *Ethical Theory and Moral Practice*, 2008, 11(4): 389–405.

³ Alisa L. Carse, and Margaret Olivia Little. "Exploitation & Enterprise of Medical Research." In *Exploitation and Developing Countries: The Ethics of Clinical Research*, edited by Ezekiel J. Emanuel and Jennifer S. Hawkins, 206-245, (Princeton: Princeton University Press, 2008)

I take Elizabeth Anderson's relational approach to egalitarianism as my main inspiration for this project.⁴ Anderson's approach to inequality is that it is primarily relational as opposed to *merely* distributive, and that standing in a relationship of equality is the proper substantive account of what sort of equality matters. I think that exploitation is a problem of relational inequality, namely the wrongful advantage taking of relational inequality. The repair of a relational inequality is not unrelated to distributive concerns, but has much more to do with how the institutions, incentive structures, and norms between parties structure the interactions. My goal is twofold: 1) to spell out why a relational account of exploitation is compelling, from a moral point of view, 2) to suggest what a relational account of exploitation has to say about exploitation's relationship to justice and 3) to propose how clinical research could seek to avoid and eliminate exploitation in practice.

1.2 'EXPLOITATION' AS A CONCEPT AND IN ORDINARY LANGUAGE

Exploitation has both descriptive and normative meanings. There are at least two senses of the term 'exploitation'.⁵ First, exploitation is simply a synonym for "use", as in "The chess grandmaster exploited some sloppy positioning on the board" or "I exploited my knowledge of Thai cuisine to make a great dinner." This sense of 'use' is non-moralized and is understood to mean "to use for a purpose." The second sense of exploitation is also a form of use for advantage, but it is clearly normative. "You exploited me" is not something that one says without expressing moral

⁴ Elizabeth Anderson, "What Is the Point of Equality?" *Ethics* 109, no. 2 (1999): 287-337.

⁵ The other sense that I have in mind is the exploitation of natural resources. This sense of exploitation is somewhat archaic, but referred to bringing untamed nature/resources from a state of valuelessness (or at the most having only potential value) into a state of usefulness. This is a distinct sense of exploitation as value is essentially created *sui generis*, as opposed to the standard non-normative sense of utilizing knowledge, skill, circumstance, etc. for advantage. Another sense of exploitation is as an adjective, as in Exploitation films, which is a genre of cheaply produced films made to take advantage of a trend or cultural moment. Exploitation film is its own genre, unrelated to the normative sense of the word.

criticism. To be exploited is to be wronged, and to exploit is to commit a wrongful act. It is this sense of the term that I will refer to when I talk about exploitation. This project assumes that exploitation is a term of moral criticism, in Ruth Sample's words: "Our ordinary and general understanding of exploitation always proceeds from a moral point of view."⁶

Proceeding with this assumption that exploitation is normative, I want to ask more specific questions and find more determinate answers about the precise normative contours of exploitation. Non-normative exploitation might be positive, but does the general understanding of exploitation as a pejorative afford any exceptions? Essentially, can exploitation ever be normatively positive (or neutral)? Michael Gorr writes that "[i]t is difficult even to conceive of a case in which we would describe someone's behavior as the *justified* exploitation of another person."⁷ The only cases that might be justified cases of exploitation are cases where an all-things-considered judgment is made, such as a choice where A must choose between exploiting B or doing something even worse to B. But this does not make exploitation *per se* something that can be positive. Exploitation is a distinct wrong. For the purposes of my discussion, I consider exploitation wrong in the *pro tanto* sense, i.e. when evaluating exploitation, a case is wrong to the degree that it is exploitative, other things being equal. This view does assume that exploitation can come in stronger and weaker forms, but I think that is a plausible assumption. Just as abuse can be more or less wrong depending upon its intensity and duration, so can exploitation be wrong depending on its level or degree of exploitation. The charge of exploitation should do *some* moral work, in and of itself, and not simply because of a wrong that is merely incidental to a case of exploitation.

⁶ Ruth Sample *Exploitation: What It Is and Why It's Wrong*. (Lanham, Md.: Rowman & Littlefield, 2003), 56

⁷ Michael J. Gorr, *Coercion, Freedom, and Exploitation*. (New York: Peter Lang, 1989), 114.

As a note on my methodology here, I am not arguing that common use of exploitation *normatively defines* the moral point of view through which exploitation should be understood. Rather, I am making the following claim: a normative account of exploitation should have the resources to cover as broad a range of normatively defensible accounts of exploitation as there are. Exploitation occurs in personal relationships, like a marriage, in impersonal relationships, as in a transaction in a market. Most importantly in my view, exploitation is a central concern in research ethics as well, where the nature of the relationship between exploiter and exploited is not entirely clear. What I aim to do in this initial chapter is define the contours along which a theory of exploitation exists (descriptively), and begin to narrow down the concept normatively by appeal to analysis and common-sense intuition regarding cases. Such an account is by no means decisive, but it will have the virtue of being broadly compatible with not only my own intuitions, but with a defensible account of what exploitation is. What I call the “real-world paradigm of exploitation” is a descriptive account which is not pre-theoretical. The real-world paradigm of exploitation is general, but also constricts the normative contours of a theory of exploitation. It is my contention that a relational account of exploitation best fits the real-world paradigm defined in Chapter 1 and best explains what is wrong with exploitation as a matter of normative theory, which will be discussed in Chapter 2.

The concept of exploitation is distinct from different conceptions of exploitation. Following Rawls, we can define the concept of X as distinct from various conceptions of X.⁸ This distinction is useful when a concept is contentious in the right sort of way. The concept of justice, e.g. principles that establish basic rights and settle questions of distribution, is distinct from different conceptions of what those principles are. Much like Rawls’s point about the

⁸ John Rawls, *A Theory of Justice*, Revised Edition. (Cambridge, M.A.: Belknap Press of Harvard University Press, 1999), 5

concept/conception distinction as applied to justice, there is an underlying commonality to accounts of exploitation. In Alan Wertheimer's formulation, this is the concept of exploitation: A exploits B when A takes unfair advantage of B.⁹ I prefer a slightly broader formulation: *A exploits B when A wrongfully takes advantage of B.*¹⁰ This wrongful advantage taking (WAT) formulation will be useful moving forward, despite it not being particularly instructive on its own.

The WAT formulation of exploitation is helpful in a few ways. First, it should be noted that there are two parties to exploitative interactions, A and B. These need not be individuals, but could be agents of various sorts, including individual, corporate, collective, etc. What is important is that the parties are distinct in the sense of there being an exploiter and an exploitee.¹¹

At this point, nearly every account of exploitation will begin with a list of cases, or a paradigm case of exploitation, in order to move from platitudes to something more concrete.¹² I have a different approach: to begin with how the term exploitation is commonly used, and try to identify the functional role that 'exploitation' plays. There is already reason to think that exploitation is not easily made into an uncontroversial single account. One of the most frustrating parts about defining exploitation as a theoretical concept is trying to address responses to readers and theorists who have incompatible intuitions about the supposed paradigm cases of exploitation. Many of the cases that are described as paradigmatic are thinly described and have resulted in

⁹ Alan Wertheimer, *Exploitation*, (Princeton, N.J.: Princeton University Press, 1996), 10

¹⁰ One point of contention among exploitation theorists is whether exploitation is necessarily unfair.

¹¹ This would seem to preclude the possibility of exploiting one's self, but I do not think that this is necessarily so. On some accounts of exploitation, such as Alan Wood's, action for advantage that consisted in mere use inconsistent with human dignity is all that is required for exploitation. On this conception of exploitation, it is possible to exploit one's self.

¹² Wertheimer, Sample, Valdman, and Vrousalis certainly adopt this strategy. Goodin's approach is the exception, but he is more confident than I am that exploitation is a univocal concept. Robert Goodin "Exploiting a situation and exploiting a person" in Reeve, Andrew. *Modern Theories of Exploitation*. (London: Sage Publications, 1987).

conflicting intuitions among reasonable people, among philosophical experts and non-experts alike. For example:

Snow: A tow truck driver happens upon a motorist stranded in a ditch during a snowstorm. The driver, A, offers to tow B out of the ditch, but only for twice the normal price that A would charge. B accepts the offer.¹³

This case from Alan Wertheimer's *Exploitation* strikes many as an obvious case of exploitation. A seems to have B "over a barrel" and able to charge whatever rate A wants. While there isn't coercion *per se*, there is a sort of force in the situation. This is what those convinced that Snow is a case of exploitation would say: "A has power over B to enforce whatever terms A wants, charging twice the price is an exploitative act." I count myself a skeptic, but not because I find substantive problems with the previous explanation, though I will address my view of the wrongness of exploitation in Chapters 2 and 3. The problem with Snow, in my mind, is that it is woefully under-described.

There certainly is a sense in which Snow might be a clear case of exploitation, supposing that A is acting to take advantage in an egregiously immoral way. If B is at danger of death or some grievous harm, it seems that A has a plausible duty to rescue B and A profiteering from the situation would be exploitative of B. But I do not find this explanation usefully illuminating. A choice between life and death is not the typical situation that the concept of exploitation covers. And it isn't obvious how to extend the lesson of Snow to less high-stakes cases without a significant amount of theoretical machinery.¹⁴ Putatively exploited college athletes are not going

¹³ Wertheimer, *Exploitation*, 212

¹⁴ I will certainly use theoretical machinery to build a theory, but at this early stage I proceed by specifying what the concept of exploitation does, then describe as accurately as possible what features a complete account of exploitation tends towards, and then move to theory building.

to die or be grievously harmed by Universities or the NCAA, but they still might be exploited. On the other hand, if B is simply in a hurry and wants to get out of the ditch and just decides to overpay for convenience (given B's knowledge of either other lower cost tow-trucks or some other method of safely getting out of the storm), I don't see a case of exploitation at all, nor is my intuition that B is exploited very strong.¹⁵ Paying too much for something out of a desire for convenience, out of laziness, or simply because one doesn't particularly care about the price is not strongly indicative of being exploited.

The lesson here is that disagreement regarding cases of exploitation are not simple to resolve, absent significant philosophical argument. Given that the term 'exploitation' leads to many different intuitions depending upon case details, I do not want to begin with a paradigm case. Rather, I begin with how the term is actually used, pick out any usefully illustrative features that a theory of exploitation should have, and see how well the relational approach that I favor might satisfy these virtues. I don't intend to resolve the debates around the term, but I do want to offer a limited *functional* argument in favor of my account of exploitation, based on the major premise that one virtue of a theory of exploitation is its consistency with what I call a *real-world paradigm of exploitation*. The basic structure of this argument is as follows:

1. There is reasonable disagreement about the concept of exploitation.
2. If there is reasonable disagreement about the concept of exploitation, then there is no determinant meaning of exploitation to serve as a basis for theory-building.

¹⁵ Wertheimer's interpretation of such a case is somewhat obscure. If A had a duty to rescue, he would be treating B unfairly by profiteering. However, if B chose to pay a non-standard price, A does exploit B in Wertheimer's mind. Though the unfairness involved might be morally excused by B's consent. See Chapter 3 of Wertheimer, *Exploitation*. But it would seem to remain a case of exploitation according to Wertheimer's theory. I will discuss this further in Chapter 2.

3. The functional role of ‘exploitation’ may be plausibly described by analyzing the use of the term in ordinary language, and this analysis provides a real-world paradigm of exploitation’s meaning.
4. A theory of exploitation that is consistent with a real-world paradigm of exploitation’s meaning is superior to a theory which is less consistent, other things being equal.
5. The Relational Account of Exploitation that I will offer is both consistent with a real-world paradigm of exploitation and has reasonably equivalent theoretical virtues to other accounts.
6. Therefore, one virtue of the Relational Account of Exploitation *over alternatives* is that it is consistent with the real-world paradigm of exploitation.

In this chapter, I will offer support for premises 1-3. Chapter 2 will argue in support of premise 4, and Chapter 3 will argue in favor of premise 5. In the next section of this chapter, I will analyze ‘exploitation’ in light of its use and in light of theoretical accounts of exploitation. I begin with a complete discussion of the range of ways in which exploitation is used, expanding upon the initial discussion of this topic used to set the stage earlier in this chapter.

1.3 THE NORMATIVE USE OF EXPLOITATION

In the subsequent discussion, I am excepting the non-normative sense of ‘exploitation’ as mere use, as the normative sense of exploitation is my primary interest. A philosopher may quite unobjectionably exploit her knowledge of logic to establish a conclusion. In ordinary normative language, ‘exploitation’ is a certain kind of wrong which applies to certain transactions or relationships. To claim that A exploits B is to say that A has done something *prima facie* wrong. To claim that an arrangement is exploitative is to make a complaint. While there might be cases of justifiable or all-things-considered acceptable exploitation, there is no case of exploitation which is an unqualified good. However, the precise meaning of exploitation is far from clear. How might we decide when and to what extent exploitation occurs? I take the approach of starting with an

analysis of ‘exploitation’ in ordinary language, as formal analysis of ‘exploitation’ as a normative concept should capture the “essence” of what exploitation actually is.

Starting with a dictionary definition is a reasonable place to begin for an analysis that relies on common use. The Oxford English Dictionary definition of wrongful exploitation is “The action or fact of taking advantage of something or someone in an unfair or unethical manner; utilization of something for one’s own ends.”¹⁶ The range of disjunctions in this definition already points to a complex concept. First, exploitation may be an action or a fact, i.e. it may be used to describe an interaction among or between agents, or it may describe states of affairs which are independent of any particular actions. The former, agential formulation of exploitation, where there is an exploiter and an exploitee is common in the theoretical literature, and most theories of exploitation require an exploiter and exploitee. However, it is certainly true that exploitation in ordinary understanding is not so restricted. It is perfectly cogent to describe a situation as exploitative, without there being a clear exploiter. Whether this requirement would be important for a normative account of exploitation is less clear.¹⁷ But, as a matter of use, it is indisputable that both actions and states of affairs may be described as exploitation.

The problem with Wertheimer’s focus on unfair advantage, compared to wrongful advantage taking (WAT) is that taking unfair advantage is cashed out in distributive terms: an unfair distribution of goods between exploiter and exploited. Unfair distribution is surely one sort

¹⁶ "exploitation, n.". OED Online. June 2019. Oxford University Press. <https://www-oed-com/view/Entry/66651> (accessed June 20, 2019). The other definitions of exploitation are non-normative claims synonymous with (1) use and (2) the commodification of resources. I will restrict my discussion to the normative sense of the term. There are cases where the non-normative sense of exploitation could be used in a normative claim. For example, the claim that “The exploitation of those natural resources in such a pristine wilderness is unconscionable.” In this case, the apparent use of exploitation as a “thick” ethical term is obvious, but the substance of the concept is still quite contentious, given the three senses discussed.

¹⁷ I will return to this point when discussing what a theoretical account of exploitation ought to do.

of exploitation, but it is ill-fitting to describe an exploitative spouse as one who has failed to distribute goods properly rather than one who has failed in a relationship, abused good will, or failed in reciprocity. Such failings are more appropriately described as wrongful for their own independent reasons, as opposed to stretching the idea of unfairness too far.¹⁸

The OED definition of exploitation is certainly consistent with exploitation as WAT. While WAT is not particularly informative, actual use of language does provide a more concrete way forward. The OED definition emphasizes three distinct senses of wrongdoing: (1) unfair gain, (2) wrongful use of another, and (3) corruption. To those, we might also add three more from common use: (4) using a loophole, (5) inequitable power differences, and (6) using a vulnerability. A brief explanation of each follows.

Exploitation might refer to (1) *unfair gain*. One of the most common senses of exploitation is a transaction that is regarded as *unfair*. An exploitative transaction in this sense is one where the exploiter benefits much more than the exploitee, or the exploitee is not benefitted as much as she ought to benefit relative to some baseline of fair distribution.

Exploitation might also be regarded as (2) *wrongful use of another*. Wrongful use should be taken broadly here, as in use for some-or-another purpose, though typically for a benefit to the exploiter. Use typically implies a procedural and/or substantive fault, as in the accusation that one has been used in a relationship. An exploiter might act in harmful or negligent ways in order to benefit. The harmful/negligent acts might be closely connected to the benefit, as in when a predatory lender writes one-sided terms into a contract for the lender's benefit, or the negligent

¹⁸ Whether unfairness is the right standard normatively is discussed in chapter 2. To preview my skepticism, exploitation in personal relationships, and especially in the clinical research context, are ill-suited to accounts of distributive unfairness, compared with concerns about respect and standing. Certainly, a failure of reciprocity may be described as a sort of unfairness, but this is a broad sense of unfairness.

acts might be distant from the exploitative act, as when a political party creates a harmful problem in order to gain politically during a later election.¹⁹

Third, exploitation might refer to exploiting one's authority or position, so there is exploitation in the sense of (3) *corruption or self-dealing*, which occurs when one party uses their position to benefit themselves inappropriately. Exploiting one's authority does not necessarily involve the inappropriate use of another, which makes this a distinct sort of exploitation compared to the previous sense. What distinguishes corruption from using a loophole is that the corrupt exploiter uses her authority to create advantages or loopholes, rather than merely utilizing an existing loophole. Another distinguishing feature is the response to corruption. When the corrupt exploiter is caught, closing the loophole is not enough; rather, the effective response to an abuse of authority is to remove the authority or check the authority.

The fourth sort of exploitation is (4) *using a loophole*, which comes in both normative and non-normative forms. A loophole might be a path to an advantage that is merely a novel strategy, lacking evaluative content. An example of a merely descriptive form of loophole use is using a "cheat code" in a recreational computer game, or a strategy in a sport that might violate the "spirit" of the rules without violating any technical requirements. This is the more common sense of the term, yet a loophole might be normatively laden, for the line between a novel strategy and rule-breaking may be bitterly contentious. The difference between good strategy and bad sportsmanship is hard to define and evaluate in practice, and rules are often adjusted in light of perceived loopholes. The same is true on issues of government policy and regulations, e.g.

¹⁹ For example: "First, obstruct any and all efforts to strengthen the economy, then exploit the economy's weakness for political gain." Paul Krugman, "Obstruct and Exploit," *The New York Times*, Sep. 10, 2012), A25. Obstruction for political gain is wrongfully exploitative in a way that obstruction out of principled disagreement is not.

disputes around whether a tax policy is a justified incentive or a loophole. Using a loophole in this latter sense is a form of exploiting a situation in an objectionable way.

Exploitation might also be connected a statement about (5) *inequitable power differences*. When someone says that “Walmart exploits its workers” or that “The top 0.1% exploit the rest of us” these might refer to specific actions, like union-busting or tax-avoidance, but they might also be reasonably interpreted as claims about unjust power arrangements in and of themselves. In this restricted sense, the *power difference itself* is the target of the complaint. Indeed, ordinary claims such as “Neoliberalism is exploitative” are difficult to understand without this sense of ‘exploitation’, because the substance of the critique is about large geopolitical arrangements and institutions working in concert; to think that the meaning of this charge is reducible to smaller scale malfeasance misses the point of the statement that Neoliberalism, *as a system*, is exploitative. Whether such an account can be made normatively coherent is a different matter, and an account of exploitation as power-difference is certainly less specific and clear than the previous versions, but it does have its supporters, namely classical Marxists.²⁰

The final sense of exploitation is exploiting a vulnerability, i.e. (6) *using a vulnerability* for gain. This sense is distinct from unfair benefit or wrongful use, as one can wrongfully use another without using any particular vulnerability, though there is certainly some overlap among speakers who talk about wrongful use and use of vulnerabilities. Exploitation as using a vulnerability is arguably a mere instance of wrongful use rather than its own type, but I consider

²⁰ Two serious conceptual problems with this sense of exploitation concern are how power differences themselves are exploitative, given the ubiquity of power differences along so many dimensions, for example: doctor to patient, parent to child, employer to employee. In each of these relationships the typical power dynamic may be reversed depending upon circumstances. One possible way to revise this account is to regard only systematic power imbalances as wrong, but this leaves open the second challenge: why is the inequality itself, rather than the use of that inequality exploitative? These to me are serious objections, and the primary reason why my normative account will reject this sense of exploitation.

this sense separately for two reasons: first, Robert Goodin's very influential normative account of exploitation takes advantage seeking in *peculiar* situations to be an explanation of what exploitation is in both descriptive and normative cases.²¹ Second, there are certainly cases where the use of a peculiar situation or a vulnerability in a person is the primary target of moral criticism. One example of this is exploiting another's obsession with an innocuous hobby to get an atypically high price for a tchotchke. This is not obviously unfair or (obviously) wrongful, but it does seem like exploiting something odd by using a vulnerability, which might be regarded normatively as criticizable. This is similar in one sense to exploiting a loophole: we can exploit particular *features* of a person, and this, in itself, might be wrong. Vulnerability here should be regarded as taking advantage of a particular feature of a person/situation or of preying upon a weakness for advantage.

Enumerating these many senses of exploitation is important for two reasons. First, it is worth noting the range of ways that exploitation is understood and used in ordinary language. Exploitation can involve agential relationships or states of affairs. Exploitation might involve unfairness, wrongful use, corruption, rule-misuse, inequity of power, and/or vulnerability. Each of these conceptions of exploitation would specify distinct normative accounts. To take a single example, unfairness in a transaction is far from settled in the philosophical literature, and divides into three further senses: micro-level transactions between agents, macro-level transactions among larger collectives, and in general background conditions. Fairness in any of these levels is extremely theory laden, and we might approach them from very different philosophical groundworks. A Kantian, a Contractarian, and a Consequentialist will have very different approaches to how such concepts work. I think that theoretical accounts of exploitation should

²¹ Robert Goodin "Exploiting a situation and exploiting a person" in Reeve, Andrew. *Modern Theories of Exploitation*. (London: Sage Publications, 1987)

align with ordinary language, at least in broad strokes. The ways in which the term is used are entirely reasonable. Describing exploitation theoretically in a way that utterly fails to engage with these multiple evaluative senses of the term would make a theoretical account incomplete, absent an error-theory. The second reason for this analysis is that it points to the near impossibility of an account of exploitation that is able to cover the range of senses already described. I cannot even begin to think of how uselessly abstract an account of exploitation that covered *every* plausible instance of ‘exploitation’ would be. I will have to restrict the scope of the concept of exploitation and the word ‘exploitation’ even within the realm of the purely normative.

1.4 COMMON USE AND THEORIES OF EXPLOITATION

Messiness in ordinary language is to be expected, messiness in a theoretical account of a normative concept makes using the concept of exploitation problematic. As such, most philosophical accounts of exploitation are often simplified and narrower in scope than the general use of the term. Even restricting the scope of this discussion to the normative, exploitation is not obviously unified by any distinct wrong which could cover all six senses. Most accounts require an exploiter, but at least one does not. Some accounts focus on the outcome of an interaction, whereas others focus on the process or the relationship among the parties. Considering whether a broader “fundamental” structure might underlie these senses of exploitation is my next task.

Most theoretical accounts of exploitation seek to explain exploitation in terms of (1) unfair benefit, (2) wrongful use and/or (6) using a vulnerability. The other senses of exploitation, (3) loopholes and (4) corruption are not frequently distinguished from the former sorts, nor are

they discussed in the literature in great detail *qua* exploitation.²² Classically Marxist accounts typically explain exploitation in terms of (5) inequities of power and treat the other senses of exploitation as derivative of power imbalance, if they are treated distinctly at all. The simplification of exploitation to a restricted sense should be based on reasons, as failing to cover the range of cases means that a theory of exploitation will also have to explain (or explain away) the senses of exploitation that are not explainable under the guise of said theory. The six senses of exploitation are not perfectly distinct in the theoretical literature, just as they are not perfectly distinct in common conversation. Such complexity is less than convenient for theorists, but should be expected when considering a complex social phenomenon like exploitation. Capturing the complexity of exploitation is inherently messy.

Recalling my widely applicable conceptual definition of exploitation, my claim is that the exploiter wrongfully takes advantage of the exploitee.²³ Such a broad definition covers a great many senses of the wrong of exploitation without being particularly useful in explaining the concept. I have been implicitly assuming something that should be made explicit at this point: that exploitation actually has a distinct wrong that is not reducible to some other normative concept. There are skeptics on this point, and there are attempts to ground exploitation not in a distinct conception of exploitation, but as a special case of a more fundamental wrong. Just as racism might be analyzed as a form of disrespect, so too might exploitation be a specific form of

²² Leo Katz is perhaps the exception to my claim, though Katz limits his discussion of loopholes to the realms of law and social-choice. Katz's view is that using a legal loophole is analogous to strategic use of voting paradoxes, in that both legal systems and voting systems are complex decision-making frameworks which are "exploitable" to various strategies. Leo Katz, "A Theory of Loopholes," *The Journal of Legal Studies* 2010 39:1, 1-31.

²³ This is wider than Wertheimer and Zwolinski's view that exploitation consists in *unfair* advantage seeking.

some other wrong. The wrongs that might fill this role are (1) coercion, (2) lack of consent, and (3) harm. I will consider each in turn.

1.5 COERCION AND EXPLOITATION

“The idea of exploitation usually implies that the exploiter is able to apply some coercive pressure that those whom she exploits are unable, or ill equipped, to resist.”²⁴

Exploitation in the real world frequently involves the worst forms of coercion. Slavery, sexual trafficking, pimping, and indentured servitude are all coercive practices that are frequently derided as exploitative. It is worth thinking about whether coercion is a central part of exploitation. Philosophers who work on analytic accounts of exploitation frequently reject coercion as a necessary condition for exploitation, while admitting that it is an aggravating factor in terms of the moral seriousness of an exploitative interaction.²⁵ That coercion makes things worse is uncontroversial. But is coercion especially connected to exploitation? There is one branch of exploitation theorists who do find coercion to be a central component of exploitation: Marxists.

One of the core claims Marx made about exploitation is that exploitation is inherently coercive, or, more precisely, expropriative. The owners of the means of production use their power to essentially force laborers to sell their productive labor for less than it is worth. In John Roemer’s summation:

“Marxian exploitation is defined as the unequal exchange of labor for goods: the exchange is unequal when the amount of labor embodied in the goods which the worker can purchase with his income (which usually consists only of wage income) is less than the amount of labor he expended to earn that income. Exploiters are agents who can command with their income more labor embodied

²⁴ John Harris, *The Value of Life: An introduction to Medical Ethics*. (London: Routledge, 1985)

²⁵ Alan Wertheimer, Ruth Sample, Nicholas Vrousalis, Alan Wood, among others, all agree on this point.

in goods than the labor they performed; for exploited agents, the reverse is true.”²⁶

This account does fit with the stipulated concept of exploitation, as A (the exploiter) takes wrongful advantage of B (the exploitee) for A’s advantage. For Marxists, the way that exploitation is determined is objective and distributional, rather than relational. The dynamics of A and B’s relationship are not important; what is measured is the value of the goods being exchanged. The value of the goods at issue are determined by the labor theory of value. Coercion occurs when “the threat of illegitimate harm [is] used to alter the choice of another.”²⁷ Arneson summarizes the problem this way:

“Marx owes us an elaboration of the role of coercion and forcing in his account of exploitation. The appropriation of an economic surplus by nonproducers must be a forcible taking if it is to count as technical exploitation. Without force or coercion there is no exploitation.”²⁸

One way to answer this task is to take position that any inequality in an exchange, as measured by the labor theory of value, must be coercive, as it is irrational for the party gaining less than is measured to engage in the exchange. When B agrees to take less than B has produced, B has made an irrational choice. What, besides force, could explain why B would agree? Given this definition, coercion is unavoidable and ubiquitous in class-stratified societies.²⁹ But there are two concerns that undermine this project straight away.

One is straightforward: the labor theory of value is too contentious and difficult to provide as a method for measuring who is exactly exploiting whom, as a matter of descriptive economics.

²⁶ John Roemer “Should Marxists be Interested in Exploitation?” *Philosophy and Public Affairs*, vol. 14(1) Winter 1985: 30-65. 30.

²⁷ Sample, *Exploitation*, 11.

²⁸ Richard Arneson, “What’s Wrong with Exploitation?” *Ethics* 91, no. 2 (1981): 202-227, 225

²⁹ Nicholas Vrousalis, “Exploitation: A Primer.” *Philosophy Compass* 13, no. 2 (2018): e12486. 3-4.

The complexities involved in *using* the labor theory of value make it impossible to determine who is exploiting whom.³⁰ After all, the relative values of goods change over time and a transaction that looks incredibly favorable to A may become an albatross should A's assets decline due to unforeseen circumstances, as the value of a passenger railway would decline at the dawn of commercial air travel. The second concern has two parts (1) that even supposing the labor theory of value, unequal exchange is not necessarily coercive and (2) that finding coercion in many intuitive cases of exploitation is simply implausible. On the first point, unequal exchange is claimed to be coercive whenever the exchange is unequal in virtue of the irrationality of engaging in an unequal exchange. One noted counter-example: gift giving.³¹ When B voluntarily gives A a gift, A is benefitting from B's action in such a way that B's labor is unequal to the benefit that B gets from giving a gift.³² Vrousalis points out that on this unequal exchange account of exploitation, such an incident would be exploitative and coercive. But it seems that consent ought to immunize gift giving from the charge of exploitation. Continuing this logic, if unequal exchange itself is not sufficient to establish exploitation, then further conditions beyond unequal exchange are required. There has to be more than unequal exchange to ground exploitation.

What makes coercion distinct from exploitation in Wertheimer and Zwolinski's formulation is that coercion fails to capture the typical dynamic of exploitative interactions.

Coercion characteristically involves *threats* by which the coercer proposes to make her victim *worse* off unless she does as the coercer demands. Exploitation, in contrast, often involves *offers* by which

³⁰ Arneson, "What's Wrong With Exploitation", 223-225

³¹ Vrousalis, "Exploitation: A Primer," 4-6

³² This is a *ceteris paribus* claim. Assume that A does not produce some down-stream good that is greater in value than the gift that is received and that B does not have some special psychological state that would make gift giving a rewarding activity in some profound way. Simply take the act as one person gifting some good to another, without any reciprocation.

the exploiter proposes to make her victim *better* off if she does as the exploiter proposes.³³

While coercion can be a part of exploitation, instances of exploitation that do not involve coercion are quite common. Consider the following case:

Sweatshop: B is unemployed, with meager prospects. A offers B work at a sweatshop for meager pay. B understands that the conditions are brutal but needs the money. B accepts A's job offer.³⁴

Sweatshop strikes me as an intuitively plausible case of exploitation, at least supposing that the brutal conditions are wrongful. In this case, there is an offer, rather than a threat. While it appears that B has no *good* options besides acceding to A's offer, having no good options is not equivalent to coercion. A patient who needs chemotherapy to treat cancer is not coerced by a physician who offers a marginally effective treatment. This is not to say that Sweatshop is a paradigm case of an informed decision, far from it. Clearly the background of bad options is where normative attention ought to go, but that is exactly the point: A is not coercing B. Nor would I say that the *circumstances* are coercing B. We can make a distinction between force and limited options and coercion.

There are well-grounded Marxist views of exploitation that avoid these problems. Richard Arneson and John Roemer have sympathies with the Marxist concern about power and inequality, but reject Marx's own analysis of exploitation.³⁵ G.A. Cohen offers the clearest reinterpretation of

³³ Matt Zwolinski and Alan Wertheimer, "Exploitation", *The Stanford Encyclopedia of Philosophy* (Summer 2017 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/sum2017/entries/exploitation/>.

³⁴ Wertheimer 1996, 212

³⁵ Richard Arneson, "What's Wrong with Exploitation?" *Ethics* Vol. 106, No. 1 (Oct., 1995), pp. 63-85 and John Roemer "Should Marxists be Interested in Exploitation?" *Philosophy and Public Affairs*, vol. 14(1) Winter 1985: 30-65.

Marx, what he calls a “Plain argument” from a Marxian (but not Marxist) perspective that avoids the labor theory of value.

1. Labor and labor alone creates value.
2. The capitalist receives some of the value of the product.
3. Thus, the laborer receives less value than he creates, and
4. The capitalist receives some of the value the laborer creates.
5. Therefore, the laborer is exploited by the capitalist.³⁶

For Cohen, the labor theory of value is less important than the context in which these exchanges occur, and there the compromised freedom of social circumstances explains why labor is more problematic than gift-giving, and why exploitation is coercive. In Cohen’s own words:

“Some can live without subordinating themselves, but most cannot. The latter face a structure generated by a history of market transactions in which, it is reasonable to say, they are forced to work for some or other person or group. Their natural rights are not matched by corresponding effective powers.”³⁷

We should look back at a specific potentially exploitative interaction. Consider the Inconvenient Snowstorm case, where we are assuming B is merely inconvenienced by being stranded before A comes along.³⁸ When B chooses to pay the higher than usual price for the tow, this is a perfectly consensual exchange. Even supposing that B was in a paradigmatically inferior position in the class structure relative to A, I do not see any present threat to make B worse off. A makes an offer that is more advantageous to A than B might prefer; that is not the same as a threat to make B worse off. This is true whether we take threats to be absolute or relative to a normative baseline. Assuming B is rationally self-interested, B would not engage in a transaction that lowered her

³⁶ G.A. Cohen, “The Labor Theory of Value and the Concept of Exploitation” *Philosophy & Public Affairs*, Vol. 8, No. 4 (Summer, 1979), 338-360: 346-347.

³⁷ G.A. Cohen “Robert Nozick and Wilt Chamberlain: How Patterns Preserve Liberty” *Erkenntnis*, Vol. 11, No. 1, (May, 1977), pp. 5-23, 18.

³⁸ For the purpose of this example, B knows that other options for aid beyond A are forthcoming, but simply desires to save some time.

well-being. Not being stuck in the snow, even at a higher than typical cost, seems perfectly rational supposing that B valued her time sufficiently. Taking a moralized relative baseline in Snow, B would have no claim to have been coerced as B has no *moral right* to demand a tow at some pre-established price. It might be wrongfully exploitative for A to set such a price, but such an action does not rise to the level of coercion.

1.6 CONSENT AND EXPLOITATION

There is another way to understand how exploitation might contain coercion, if what appears to be consensual interactions are really defective; this is consistent with concerns about false consciousness in seemingly unobjectionable consensual interactions. Defects in consent would not depend on the labor theory of value, but would require an account of how precisely consent fails in purported cases of exploitation. Consider the following case:

Fraud: A offers to sell B a house that A does not have a valid title to. B agrees to pay the negotiated price directly to A.

No one would say that A should keep the proceeds of the sale without legally delivering the house to B. This is simply a case of fraud by A. This is true even if A was a shady character whose actions should have been obviously suspicious to any observer. B is not at fault for A's improper act. We might say that B was too easily fooled, but that does not mean that the agreement bound B to pay A. B's lack of due diligence is unrelated to the failure of consent based upon A's fraud. Now consider this case:

Bankers: A and B work for competing financial institutions. They arrange a complex sale of assets that both think will be mutually beneficial. However, A has a strong suspicion that the assets B is selling are worth much more than B believes.

In Bankers, A and B consent to the sale, but something appears not quite right. Bankers seems similar to Fraud, in that A is trying to use an advantage over B in order to benefit. But this is not *obvious* fraud, or even obviously wrong. After all, A and B get the relevant assets that were being discussed. That they assign relative different values to the assets is a mundane difference common to most exchanges. Rather, the difference here is that B is in a worse epistemological position compared to A. Has B been exploited here? David Miller would say yes:

“First, the transaction must typically be more advantageous to the exploiting party and less advantageous to the exploited party in some benchmark transaction which we use (tacitly or explicitly) as a point of reference. Second, the actual transaction must have come about through some special advantage which the exploiter enjoys, upon which he capitalizes to induce the exploited to engage in this relatively less beneficial exchange. Both the terms of the exchange and the causal history leading up to it are necessary ingredients in identifying a case of exploitation.”³⁹

Miller’s point is that the exploiter, A, has some method for capitalizing on B’s relative weakness by inducing B’s action. This can be through a violation of consent or through a relative advantage, such as superior information. It is at least plausible that A exploits B in Bankers, but can we find some reason to think that B did not offer valid consent?⁴⁰

As Wertheimer points out, besides cases of altruistic self-sacrifice, consent is often suspect in cases where one party consents to be harmed. Harm is certainly *possible* in a case like Bankers,

³⁹ David Miller “Exploitation in the Market” in Andrew Reeve, ed., *Modern Theories of Exploitation* (Beverly Hills, CA: Sage Publications) 1987, p. 156.

⁴⁰ Note that Bankers is distinct from a case where A and B made an exchange but B lost out because of circumstances *ex post*. It stretches my credulity to claim that bad outcomes *ex post* should lead to the charge of exploitation.

where financial losses would put B in an *ex post* worse position than not having transacted at all. But can it then be said that B *did not really consent* to the sale at all? One can imagine that it is tempting to say that B's consent should not be taken as binding; after all, it looks a lot like Fraud. In both cases A was in an advantaged position over B regarding what the outcome of the transaction would be. But I do not think that this is enough. In Bankers, B gets what is promised, namely, the assets that A is selling. While B does not get as good a price for the assets from an all-things-considered *ex post* perspective, B benefits from the exchange *ex ante* and is not defrauded.

In both Fraud and Bankers, a person is in a position of power because of an information imbalance. There are also cases where one party is vulnerable because of circumstances alone. This is a shift in concern. For John Hill, exploitation occurs when the exploited party is vulnerable in some way. “[E]xploitation is a psychological, rather than a social or an economic, concept. For an offer to be exploitative, it must serve to create or to take advantage of some recognized psychological vulnerability which, in turn, disturbs the offeree’s ability to reason effectively”⁴¹ This is one way that exploitation is frequently framed, as a disruption on reason and ability to consent.

One classic example of (supposed) exploitation comes from maritime law. In *The Port of Caledonia and the Anna* [1903] P. 184, a ship in distress agreed to pay £1,000 to the tug master in exchange for aid, but later successfully sued to recoup £800 on the grounds that “the bargain that was made was so inequitable, so unjust, and so unreasonable that the court cannot allow it to stand.” The objection to unconscionability in a contract is worth closer consideration, for there are at least two ways of understanding what is objectionable about exploitation.

⁴¹ John Lawrence Hill, “Exploitation,” *Cornell Law Review*, 79: 631–699: 637

The first way of interpreting unconscionability is that the exploitative contract merely appears as a contract, but lacks the necessary features of a contract, specifically a “morally transformative” token of consent.⁴² Consent and assent look identical to third-party observers when considering tokens of each type but consent and assent have different moral implications when the circumstances around each are examined more closely. There are certainly clear examples of purported contracts that ought not have any binding moral force between agents: agreement based on a threat, cases of deception, or where at least one party is not competent to consent to the terms of the contract. Put plainly, unconscionable contracts are no contracts at all. There is a straightforward way to understand defects in cases such as these: An armed mugger who brandishes a weapon and offers the choice between your money or your life is not making an offer at all. What appears to be an offer is thinly-veiled coercion. But are unconscionable contracts relevantly similar to threats, or some other form of coercion? Many intuitive cases of exploitation will involve violations of consent: forced labor, fraud, and deception are common features of defective arrangements. There is something to this objection, in the case of the *Anna*. While the tug master made no threat to reduce the well-being of the endangered crew, it is possible to think that the harbor had some responsibility to assist during the emergency.⁴³ This is not the reasoning that the court used in invalidating the contract as unconscionable, rather, the cost-benefit imbalance was the primary reason that the court invalidated the agreement.

It is also implausible to say that the crew of the *Anna* were mentally incompetent or lacked the biological capacity to consent. One may argue that the crew were so desperate that they could not be regarded as psychologically competent to consent to the particular offer their rescue. But,

⁴² Alan Wertheimer “Exploitation in Clinical Research” in Hawkins, Jennifer Susan, and Ezekiel J. Emanuel. *Exploitation and Developing Countries: The Ethics of Clinical Research*. (Princeton, N.J.: Princeton University Press, 2008), 63-104

⁴³ Wertheimer, *Exploitation*, 43

as Alan Wertheimer has argued, we are desperate when injured or faced with a serious illness; this condition simply does not make me incompetent to decide to take a life-saving antibiotic.⁴⁴ All decisions are made against different backgrounds of circumstance, and sometimes there are simply no reasonable alternatives. Lacking a reasonable alternative is not itself evidence of a defect in consent.

The fault in thinking that the desperation of the crew of the *Anna* undermines competence is that it assumes that there must be a reasonable alternative available for a person to make a competent decision. This strikes me as wildly implausible. Faced with a grim diagnosis, there is a strong intuitive sense that choosing to undergo surgery, chemotherapy, or some other life-saving treatment is often a defining decision in a person's life. This is a much stronger statement than we need to simply undermine the claim that desperate decisions are no decisions at all. All I need say is that the burden of proof here should lie squarely on the shoulders of those who would argue that desperate circumstances undermines competency. A better understanding of unconscionability is that there is something wrong with the tug master's decision to offer terms that are somehow worse than can be defended based on the desperation of the crew of the *Anna*.

The second, and altogether more convincing sort of concern with unconscionability, is that contracts such as these raise a justice concern. The language of the court suggests a concern with justice, as an agreement that is "so unreasonable and so unjust" points at a state interest in relations among citizens. An agreement between two citizens might raise a justice concern if either the relationship exhibits problems or if there are wider social effects. In either of these cases, the state is at least *prima facie* justified in regulating unconscionable contracts. The clearest example of such an effect is harm, to which I now turn.

⁴⁴ Wertheimer, "Exploitation in Clinical Research," 74

1.7 EXPLOITATION AND HARM

Allen Buchanan defines exploitation as being necessarily harmful. “[T]o exploit a person involves the harmful, merely instrumental utilization of him or his capacities, for one’s own advantage or for the sake of one’s own ends.”⁴⁵ It is important to distinguish between the senses of harm at issue. First, harm can be regarded in *absolute* terms, where a person is made worse-off relative to a state of affairs because of the harmful act. Secondly, harm might be *relative* to one or another standard. The standards that most matter for my purposes are *normative expectation* and *non-interaction*. The former standard would define a harm as any state of affairs where the party at issue was made worse off than would otherwise be indicated by the relevant normative expectation. The latter standard, non-interaction, would hold that a person is made worse-off by some interaction only if they are in an absolutely worse position relative to not interacting at all.⁴⁶ The normative expectation standard is more common, though I will return to the non-interaction standard when discussing exploitation in a global context.

I would argue that harm is not a necessary condition for exploitation. Let us recall the Sweatshop case, but stipulate that the case is (1) consensual (2) mutually beneficial and (3) exploitative. One detail that we might add to Sweatshop is that A could perfectly easily pay B (and other workers) more and make the conditions less brutal, but A prefers to keep the conditions as poor for workers as possible while still attracting desperate workers. Let us call this Sweatshop*. There is good reason to think that A exploits B in Sweatshop*; this seems like a clear case of wrongful advantage taking. Avoiding these sorts of imbalanced bargains, similar to *Port of*

⁴⁵ Alan Buchanan, *Ethics, Efficiency, and the Market*, (Totowa: N.J.: Rowman and Allanheld. 1985), 85

⁴⁶ This leaves unstated further questions about the nature of harm, such as what sorts of things make the state of affairs worse, but that question is beyond my scope. The non-interaction standard is one explanation for what is known as the non-worseness claim, which states that it cannot be worse to interact in a way that benefits a party if it is permissible to not interact at all.

Caledonia and the Anna, is one of the primary reasons that law and morality typically oppose exploitative contracts. But does that mean that there is a *harm* at issue in Sweatshop*? If there were, some party (B or someone else) would have to be harmed by B taking the job. By hypothesis, B is better off with the exploitative transaction.

B's desire for the job might ground a reason to say that A harms B. After all, if A has an obligation to benefit B in a way that is more equitable, and A uses this opportunity to extract profit from B, A is expropriating value from B for something that B has a right to (not the job, but the equitable arrangement). Every bit of value that is beyond what B might be reasonably asked to work for A would be a loss that B suffered due to A's wage-setting behavior. This looks an awful lot like harm (and coercion). Taking the strongest sense of this objection, I do not think that there is an obligation that A must pay B the maximum price A can bear. After all, such an obligation would seem to imply that failing to transact with B is just as wrong as transacting on exploitative terms. Establishing the relevant baseline for harm is the problem here. If the baseline is relative to B's well-being given non-transaction, then Sweatshop* would not be harmful. But if harm is established by something else, such as "B should be offered terms and payment which are non-exploitative" we either have a circle or an uninformative standard. A more plausible standard is that harm is established if B is denied something that B has a right to by A. But this is another uninformative standard without a groundwork in a theory of what people are owed. I cannot provide that here. Yet A's action still strikes me as exploitative.

Feinberg considers whether "harm" in exploitation interactions might also be cases of a free-floating evil. Free floating evils are regrettable states of affairs, traceable to human activity, which nonetheless do not generate a grievance on the part of any individual.⁴⁷ Examples might

⁴⁷ Joel Feinberg, *Harmless Wrongdoing*. The Moral Limits of the Criminal Law. (New York: Oxford University Press, 1988), 18-22.

include moral corruption or the extinction of a non-human species unconnected to welfare. These evils would have to be disconnected from B's desires, needs, or the desires and needs of other members of society. I do not see any way to connect A's actions to such evils. There are possible reasons to condemn the situation in Sweatshop*; it may be a case of cruelty, exploitation of the desperate, or a case of blameworthy greed. But the central important point is that A's actions in Sweatshop* may be wrong, even wrongfully exploitative, without being harmful.

1.8 THREE VIRTUES OF A THEORY OF EXPLOITATION

Given that exploitation does not require harm to the exploitee, violations of consent, or coercion, there is reason to look for another suitably substantive basis under which we can identify how exploitation functions. Recall that we can distinguish among different moral senses of exploitation. Exploitation as (1) unfair gain, (2) wrongful use of another, and (3) corruption, (4) using a loophole, (5) inequitable power differences, and (6) using a vulnerability. I believe that this analysis can provide a functional basis for a theoretical analysis. Another non-controversial move is to make a distinction between a substantive sense and a tactic. Clearly, (1) unfair gain and (2) wrongful use are general categories that do not point to a specific sort of behavior in the way that (3) corruption and (4) using a loophole do. The primary reason that corruption and loopholes are not widely discussed in the exploitation literature is because they are more frequently a narrow tactic than a widely generalizable phenomenon. Category 5, inequitable power difference, is an incredibly general and abstract category, which seems only to demand a regress to a theory of what is inequitable; this is one case where common use and theory do not seem to productively work together.

Power differences are certainly a major part of exploitation claims. Exploited victims nearly universally have less power than exploiters; but so do parents have more power than children (at least typically). I find this concept much too unwieldy to do any philosophical work. Inequitable power difference itself as exploitation strikes me as less informative than the other remaining accounts. Power imbalance is a common feature of exploitation, but not a defining characteristic. To use an analogy: the assumption of good faith is necessary for understanding language, and is a feature of conversations where understanding develops, but good faith does not explain anything about how we come to mean and understand things on its own. Power imbalances are a similar feature of exploitation, but, in themselves, do not helpfully explain anything.

Fully substantive accounts of exploitation have a wide range of phenomena to cover. Speaking only in terms of common use, exploitation can occur within personal relationships, in *quid pro quo* transactions, art, academia, in therapeutic medical relationships, and, in my main area of interest, the world of biomedical research. Unfair benefit, Wrongful Use, and Use of Vulnerability are three plausible grounding concepts for generating a useful theory of exploitation. But it isn't clear what strategy to adopt here. Exploitation might be all of these things, pointing to a single unified concept. Or, there might be exploitations, which have divergent theoretical grounds despite sharing the same linguistic base.

I am not the first to notice this difficulty.⁴⁸ Both Alan Wertheimer and Stephen Wilkinson have looked at the range of cases covered by ordinary usage of exploitation and decided to limit their analysis to a subset. In Wertheimer's case, he sees unfair benefit as the "pure" case of

⁴⁸ Jeremy Snyder argues that a theoretical account of exploitation has to be tripartite, explaining micro-fairness, macro-fairness, and wrongful use. Jeremy Snyder, "Exploitations and Their Complications: The Necessity of Identifying the Multiple Forms of Exploitation in Pharmaceutical Trials." *Bioethics* 26, no. 5 (2012): 251-258.

exploitation and builds the normative account as an explanation of what it is to unfairly benefit.⁴⁹ The other senses of the term are either not covered or are explained in terms of unfair benefit. Wilkinson's view is that all normatively important senses of exploitation are captured by (1) unfair benefit and (2) wrongful use respectively, but that unfair benefit and wrongful use provide "semi-independent accounts of two exploitations."⁵⁰ For Wilkinson, neither unfair benefit nor wrongful use are reducible, nor is there a common feature between these two conceptions of exploitation that is useful at a more general level.

Despite the many senses of exploitation, there are some common features that shape how the term is generally understood. First, a theoretical account of exploitation (whether it includes multiple grounds or not) should be *robust in scope* (RS). That is, an account of exploitation should be able to address personal and impersonal cases of exploitation and address the varying sorts of cases that characterize the use of 'exploitation'. Second, exploitation must be grounded in advantage seeking (GA). One commonality among every instance of exploitation discussed is that the exploiter seeks *advantage*; typically, though not exclusively, this is benefit, but it can also be positional gain or another form of advantage. Exploitation involves using and instrumentalizing for some purpose. Without a grounding in advantage-seeking, a theory of exploitation would be overly broad. Cruelty and negligence are bad, but they are not exploitation. To match the functional definition of exploitation, advantage seeking needs to be front and center in the account. Finally, exploitation needs a *unified account of vulnerability* (UV). I use unified here in the sense of explanatory unification, rather than seeking to specify a single account of vulnerability. Vulnerability is itself a difficult concept to analyze, as it is highly

⁴⁹ Wertheimer, *Exploitation*, 215

⁵⁰ Stephen Wilkinson, *Bodies for Sale: ethics and exploitation in the human body trade*. (London: Routledge, 2007), 16

contextual. In one sense, a person is vulnerable in virtue of a certain feature. Psychological vulnerabilities are specific and personal in this way. But there are also organic vulnerabilities, such as “Humans are highly vulnerable to radiation of that wavelength.” In medical ethics especially, references to vulnerable populations are common, where this refers to populations that are systematically disempowered, such as prisoners, or populations with particular needs or interests, such as pregnant people or members of the military. Whether a particular *sort* of vulnerability is necessary (or sufficient) for exploitation to occur is a central question of theorists. What a UV would capture is an explanation of what makes a person susceptible to exploitation that is not simply an analytic truth.

Using a functional definition of exploitation structures a theory of exploitation such that it is (1) robust in scope, (2) grounded in advantage seeking, (3) provides a unified account of vulnerability. These are criteria for meeting the functional definition, not necessary or sufficient conditions. I think that they are quite central to a useful account of exploitation, as fitting well with actual use is a virtue of an account. One difficult part of explaining exploitation is that real cases and use are messy and involve multiple overlapping normative concerns, like coercion, deception, and harm. The way forward is to define “pure” cases of exploitation for a theoretical purpose while always keeping in mind that purity does not override actual use. Ideally, a good account of exploitation will do well to clearly explain cases of pure exploitation and have the three virtues (RS, GA, UV) of a functional account that I have identified. In the next section I explain what might count as a pure case of exploitation, mutually advantageous consensual exploitation.

1.9 TOWARDS A THEORY OF EXPLOITATION

Exploitation may be coercive, non-consensual, and even harmful. Coercion, violations of consent, and harm are all well recognized *prima facie* wrongs. The most morally disturbing, cases of exploitation in the present day typically have one or more of these features. What about exploitation that is none of these things? Such a case would have to be (1) Mutually advantageous (i.e. advantageous to both A and B) and (2) consensual (neither coercion nor other defects in consent present), as well as a genuine case of exploitation. Following Wertheimer, I will call these cases Mutually Advantageous Consensual Exploitation (MACE).⁵¹ It is important to elaborate on MACE, because it is the “pure” case of exploitation. Harmful non-consensual cases of exploitation, like fraud, slavery, or expropriation are obvious wrongs. And the wrong of a case of fraud is very obviously the violation of another person’s consent. Whatever else is going on in such cases, the dominant wrong is fairly clear, and it is usually explained by reference to the wrong of coercion, harm, or as a violation of consent.

Earlier in the chapter, I made the following argument:

1. There is reasonable disagreement about the concept of exploitation.
2. If there is reasonable disagreement about the concept of exploitation, then there is no determinant meaning of exploitation to serve as a basis for theory-building.
3. The functional role of ‘exploitation’ may be plausibly described by analyzing the use of the term in ordinary language, and this analysis provides a real-world paradigm of exploitation’s meaning.
4. A theory of exploitation that is consistent with a real-world paradigm of exploitation is superior to a theory which is less consistent, other things being equal.
5. The Relational Account of exploitation that I will offer is both consistent with a real-world paradigm of exploitation and has reasonably equivalent theoretical virtues to other accounts.

⁵¹ Wertheimer, “Exploitation in Clinical Research”, 68.

6. Therefore, one virtue of the Relational Theory of exploitation *over alternatives* is that it is consistent with the real-world paradigm of exploitation.

In this chapter, I have argued for 1-3. Both (1) and (2) are relatively uncontroversial in the literature and are supported by disagreement regarding pre-theoretical intuitions. The main contention in this chapter is that the real-world paradigm of exploitation offers a way forward that is stronger than a simple intuition-based argument and also normatively plausible, given an initial analysis of the concept of exploitation.

In the coming chapter, I will examine various conceptions of exploitation, using the criteria that I have sketched out here. A theory that meets the requirements of the real-world paradigm for robustness, grounding in advantage seeking, and unified account of vulnerability would have virtues that are as robust as can be expected for a normatively contentious term like exploitation.

Chapter 2. A RELATIONAL ACCOUNT OF EXPLOITATION

2.1 THE STRUCTURE OF EXPLOITATION

Broadly defined, exploitation is wrongful advantage seeking by one party over another. I have argued that exploitation is consistently a pejorative and that exploitation need not contain harm, coercion, or a defect in consent. In cases where the interaction is exploitative but is not coercive or nonconsensual, *i.e.* mutually advantageous consensual exploitation (MACE), the wrong (or wrongs) of exploitation are not obvious. I have further argued that a theoretical account of exploitation best matches the functional definition of exploitation when it is (1) robust in scope, (2) grounded in advantage seeking, and (3) offers a unified account of vulnerability.

In the previous chapter, I made the following claim: a theory of exploitation that is consistent with a real-world paradigm of exploitations meaning is superior to a theory which is less consistent, other things being equal. Part of this claim is explained by my appeal to the importance of consistency with the real-world paradigm of exploitation, but another part of this claim is purely normative. It is my task in this chapter to give a normative analysis of exploitation, where the three aforementioned virtues are defended *qua* virtues. I think that the best evidence for the normative importance of these three virtues is that lacking any one of these virtues leads to conceptual problems. Accounts that focus too narrowly on one or another aspect of exploitation will lack robustness; this is what I see as Wertheimer's primary failing. Ruth Sample's *Exploitation as Degradation* is the most compelling respect-based account of exploitation, in my view, but Sample's account requires a technical correction to be grounded in advantage-seeking and requires a substantive reform to offer a consistent account of vulnerability. First, I consider Wertheimer.

As must be clear at this point, much of the theoretical debate around the concept of exploitation has been framed by Alan Wertheimer's *Exploitation*. Wertheimer's account of

exploitation, and in particular his analysis of MACE, remains a compelling non-Marxist account of exploitation. Subsequently, this chapter will focus on answering two questions that Wertheimer raises in *Exploitation*: Given that exploitation is both a wrong, and not clearly derivative of other wrongs, what is the unique wrong of exploitation? And secondly, under what circumstances does exploitation occur?

Defining the wrong of exploitation is contentious. Even more difficult, exploitation is a messy problem. I do think that these are distinct concerns: It is common for normative concepts to be the subject of intense theoretical disagreement, such as justice or goodness. But exploitation is not simply contested due to theoretical and intuitive disagreement; exploitation is a complex existing social phenomenon which raises many other normative concerns which, at least in my view, are not able to be disentangled from the theoretical questions that arise in analyzing exploitation. This is not a unique concern, as autonomy has a similar messy nature, but it does point to the limits of pre-theoretical intuitions in defining exploitation.

As an example of this messiness, I should note that even the concept of exploitation as unfair advantage seeking can lead to problems. “Unfair advantage seeking” can be taken to have many meanings, and these meanings profoundly change the normative core of accounts of exploitation. Unfair advantage seeking might mean that the advantage was unfair, i.e. that the transaction would result in an unfair outcome. Alternately the seeking itself might be unfair, i.e. the interaction is grounded in normatively inappropriate circumstances. This latter definition is a somewhat nonstandard use of unfairness, but works to explain a large number of accounts that both accept Wertheimer’s formulation of the concept of exploitation and define the wrongness of exploitation in terms of the context of the advantage seeking.⁵²

⁵² Sample, *Exploitation*, Chapter 1

The concept of exploitation shared by theorists of exploitation is that exploitation is wrongfully taking advantage.⁵³ Contemporary theorists of exploitation have divided on many questions, but there is one major division that is of primary of importance: what is the wrong of exploitation? It is worth reminding the reader that in this chapter, I am restricting the meaning of exploitation to MACE, as it is the clearest example of a simplified case where, if a wrong is present, that wrong would have to be directly the result of exploitation.

Before giving a more precise account of the contours of exploitation in my own view, I will address the accounts of Alan Wertheimer, Mikhail Valdman, Robert Goodin, Alan Wood and Ruth Sample. Recalling §1.8, Wertheimer and Valdman take exploitation to be explained by (1) unfair benefit. Goodin takes exploitation as purely wrong because of (6) the use of vulnerability, and Wood and Sample offer different interpretations of (2) wrongful use. My own view, to be presented in Chapter 3, is that exploitation is a case of wrongful use, because wrongful use is broad enough and flexible enough to explain unfair benefits and wrongful use of vulnerability without being overly broad.

There are, currently, two dominant views regarding the wrongness of exploitation. The first option is that the wrong of exploitation is unfairness; this is certainly Wertheimer's view. Each of these theorists support the view of exploitation as unfairness and locate the wrong of exploitation in an unfair *distributional* imbalance.⁵⁴ The other view is that the wrong of exploitation is *wrongfully using another*. Use might be activating a certain kind of vulnerability, as Goodin argues. Or, in Kantian terms, using another might involve disrespect, as Wood and Sample argue. In my view, the wrong of exploitation is not distributional, but rather a particular kind of *relational*

⁵³ Nicholas Vrousalis is, perhaps, the most prominent theorist to reject this conception of exploitation. His theory shares some similarities with mine structurally.

⁵⁴ They do not agree on other questions about exploitation, in particular its connection to systematic injustice, but for my purposes the common answer to the wrong of exploitation is what is at issue.

inequality between/among the parties involved. There is more to say about what precise sort of inequality is the source of wrongness, but the first task is to clarify what exploitation is and why it is wrong.

2.2 CASES

It has become something of a convention to use a series of cases to describe various examples of exploitation; there are actual reasons for this practice. Abstract discussions of exploitation are difficult, as intuitions about unfair benefit diverge. So, let us begin with some putative (not paradigmatic) examples of exploitation and I will build an account of wrongness for my analysis thereof.⁵⁵

1. **Heat Wave:** A owns a hardware store and knowing that a heat wave is forecast in the near future, A raises the prices on air conditioners by 10%. B, a customer of the store, pays the higher price for the air conditioner.⁵⁶
2. **Time Report:** Low-wage worker A discovers a flaw in the time reporting system at his job, and collects additional pay, while not actually working, from Owner B.
3. **Bankers:** A and B work for competing financial institutions. They arrange a complex sale of assets that both think will be mutually beneficial. However, A has a strong (and correct) suspicion that the assets B is selling are worth much more than B believes.

⁵⁵ Ruth Sample, *Exploitation*, 7-16

⁵⁶ *Ibid*, 7-8

4. **Hiker:** Hiker A has the \$10 antidote to a deadly snakebite. Hiker B gets bitten by the deadly snake and will die without the antidote. A knows that B owns at least \$1,000,000 of assets. A sells B the antidote on the condition that B pay the \$1,000,000.⁵⁷

5. **Scholarship** (modified from Ruth Macklin): Two students are competing with each other for a scholarship. Prior to the deciding interview, A insults B, knowing that B is sensitive to harsh comments. B does very poorly in the interview and A wins the scholarship.

6. **Missionary:** “A Catholic missionary [A] offers to help a hungry, sick man. However, she requires that, as a condition of receiving assistance, the needy man must attend mass each day. The needy man [B] is Hindu.”⁵⁸

In cases 1-6 it is certainly plausible to call each a case of exploitation, keeping in mind the broad sense of how the term is used. But speaking about my own normative intuitions, cases 1 through 3 do not strike me as exploitation. Heat Wave is simply a case of a person operating in the market to set prices. Time Report is a case of fraud via the use of a loophole in the system, but not a true case of exploitation in the normative sense. It is wrongful advantage seeking, but A is not taking advantage of any vulnerability of B so much as simply engaging in misconduct. And in Bankers, supposing that nothing wrongful is occurring and that A has broken no laws, we simply have two people engaged in a transaction with different relative valuations of the assets in question. If the trade goes through and A benefits much more than B, I do not see why B would have any reason to claim exploitation by A.⁵⁹

⁵⁷ Mikhail Valdman, “A Theory of Wrongful Exploitation” *Philosopher’s Imprint*. July 2009: 9(6):1-14, 3

⁵⁸ *Ibid.*

⁵⁹ Both Time Report and Bankers should be regarded as impersonal relationships in my mind, where A and B have no more than passing knowledge of each other. I do think that A and B having a more personal relationship would make these cases more marginal and difficult to evaluate.

Cases 4 and 5, Hiker and Scholarship, seem to me clear cases of exploitation. Hiker seems to be an obvious case of unfair benefit and Scholarship seems to be an obvious case of wrongful use/using a vulnerability. Case 6, Missionary, is more difficult for me, as it has many of the hallmarks of a case of wrongful exploitation, but it is not clear if it is *mutually* advantageous exploitation. How exploitation should be understood in terms of advantage is my first task.

Allen Wood defines the wrong of exploitation this way: “Most of us believe that when people are weak or vulnerable, others should not use their weakness or seek to benefit from it, but instead should seek to help them and rescue them from their bad situation.”⁶⁰ Again, there is disagreement about the particular sort of use that is wrongful on each account, but there is a distinction between exploitation as unfairness and exploitation as use that requires explication.

The stakes here are not merely semantic. While exploitation is a pejorative, whether the wrong of exploitation is a distributional or relational makes a tremendous difference in classifying exploitation, evaluating wrongness, and in responding to exploitation. There is no conceptual analysis that I can offer to decisively show that exploitation *is* relational rather than distributional. Both views (or some hybrid view) have theoretical strengths and weaknesses.

2.3 THE ADVANTAGE AND VULNERABILITY CLAUSES

Hallie Liberto categorizes exploitation as having two separate normative components. The first, what she calls the Advantage Clause, stipulates what is wrongful about the gain that A seeks/achieves when A exploits B. The second is the Vulnerability Clause, which explains the circumstances that make B exploitable.⁶¹ This distinction helps to separate questions about the

⁶⁰ Allen Wood, “Exploitation,” *Social Philosophy and Policy* 12 (1995): 136-158

⁶¹ Hallie Liberto. "Exploitation and the Vulnerability Clause." *Ethical Theory and Moral Practice* 17, no. 4 (2014): 619-29

wrongness of exploitation; inappropriate advantage seeking, *simpliciter*, can be independently evaluated apart from the question of vulnerability.

It is useful to categorize exploitation into two different parts, where the first part describes the circumstance (or motivation) of the exploiter and where the second part explains what conditions count as exploitation for the exploitee. This is a useful way of dividing up the concept for the purposes of clarity, as different theoretical accounts focus on each part to varying degrees. Such a division is not exhaustive, as the dynamics between the exploiter/exploitee are a significant portion of the theory. First, the *Advantage Clause* of a normative account of exploitation is used to describe the normative concerns surrounding the gain of the exploiter. Second, the *Vulnerability Clause* characterizes the circumstances of an exploited person, i.e. what is it that makes a person exploitable.⁶²

Contrary to Liberto, I don't think that the Advantage and Vulnerability clauses provide necessary and sufficient conditions for exploitation, but they certainly would provide necessary conditions. To specify a sufficient condition, there one must explain the connection between the Advantage and Vulnerability Clauses, namely whether the advantage seeking ought to be grounded in the vulnerability that is present (or not). The grounding condition for exploitation is relatively unexplored in theories of exploitation, but it does seem that a number of theorists have noticed the problem. Joel Feinberg, for one, bluntly states that exploitation need not require benefit. "Benefit cannot be a necessary condition for exploitation, as this would exclude cases where A exploits B in order to gain something that is harmful to A, of no benefit, or to benefit others (even at marginal cost to A)."⁶³ The simplest example of Feinberg's point is a case where one exploits *on behalf of another* without achieving any benefit (and perhaps experiencing harm).

⁶² *Ibid*, 625

⁶³ Feinberg *Harmless Wrongdoing*, 193

One solution to the problem of defining an Advantage Clause comes from Alan Wertheimer “Although the paradigmatic exploitation claims involve cases in which A seeks to promote his or her *self*-interest, we need a more protean conception of what counts as a benefit to A, one that includes A’s purposes, goals, and values.”⁶⁴ Wertheimer’s protean account of benefit is that any action that includes purposes, goals, or values. Protean is perhaps too weak a word to describe what might count as benefit here. Any action which conforms with a person’s purposes, goals, or values is nearly indistinguishable in my mind from preference satisfaction. Perhaps a person could have a preference to act randomly in a circumstance without random action counting as a purpose, goal, or value, but such a maxim would be quite odd and idiosyncratic. I agree with Wertheimer that *some* sorts of wrongful acts are excluded even by his protean conception, for example, a “misguided altruist” who provides a benign but ineffective cancer treatment cannot exploit desperate patients “because it is seeking to promote the interests of the persons with whom it is interacting.”⁶⁵

Good motivations are not themselves an immunization against the charge of advantage seeking, as one might judge an ultimate good to override the good of the one being exploited, as when a lawyer rejects a favorable settlement to expose a client to a risky litigation with the hopes of a widely beneficial structural change. The lawyer’s motivations might be perfectly admirable, but they still are grounded in advantage seeking for the lawyer as opposed to the best interests of the client. Instrumentalizing the client for structural change might itself be an acceptable form of instrumentalization, considered in isolation, but it still might be grounds for the charge of

⁶⁴ Wertheimer, *Exploitation*, 210

⁶⁵ Wertheimer’s example is The Laetrile Society, which raises money to provide a (plausibly) benign substance to cancer patients without profit and (by hypothesis) only for the benefit of patients. Wertheimer *Exploitation*, 211

exploitation. This account of advantage seeking has not garnered much critical attention from exploitation theorists.

Many theorists seem to tacitly adopt the protean account of advantage seeking uncritically.

I think that this unrestricted account of benefit is too strong. Consider the following cases:

Cruelty: A is a cruel and sadistic person who gets pleasure out of seeing others degraded and humiliated. A expresses cruel and dehumanizing statements directed at B.

Ideological Demagogue: In order to achieve A's preferred political outcomes, A cruelly villainizes people of a socio-cultural group G as a threat to the soul of the nation and as deserving no respect. A uses this method to achieve A's ends, resulting in wrongs to members of G.

My intuition is that Cruelty is not a case of exploitation where Ideological Demagogue is. While I am unlikely to change my mind regarding the intuition, I am less confident that clear necessary and sufficient conditions that differentiate these cases are easily apprehended. I hope to explain why these cases are somewhat problematic with an explanation of my intuition. In Cruelty, A is clearly acting wrongly. A is culpable for treating B cruelly and is satisfying a preference. More strongly, A is a cruel person with a stable disposition towards cruelty. But the cruelty is *undirected*. It strikes me as cruelty for cruelty's sake, as opposed to cruelty *weaponized* for some other purpose. On the protean account, personal pleasure might be the point of the cruelty, and A would exploit B's vulnerability to abuse as a means to A's pleasure. This strikes me as an odd description; it seems like A's action lacks the instrumental step. In Jonathon Wolff's words, "exploits" as a moral criticism seems very close to "improperly uses", although there are some improper uses of people – for example as a punch bag – which would not normally be thought of

as forms of exploitation.”⁶⁶ A’s disposition to cruelty is a stable one, exploitation in this case seems like it would require an intention to use B for pleasure.

In Ideological Demagogue, A weaponizes cruel and dehumanizing political speech for some other purpose. And this, to me, seems to be the core case of exploitation. It involves *using* and wrongful instrumentalization for advantage rather than mere wrongs. The case that I find problematic is one where one the weaponization and the goal are intertwined such that the weaponization essentially *is* the goal. A sadist who gets enjoyment out of using people (in this or that way) is obviously both using people and getting something out of the process, namely pleasure. Whereas a cruel person just is cruel as a disposition, someone who uses others is using other people for a purpose.

How different is Cruelty from the case just described? The sadist or manipulator who uses others as a means to personal gratification seems to be weaponizing cruelty or other psychological means for some other goal, as in Ideological Demagogue, but also seems to have the same dispositional commitment to wrongful action as in Cruelty. Intention is one obvious distinction, at least as I have described the cases. In Cruelty, A’s cruelty is described as a character trait; it seems that if character traits are indicative (or reducible to) a particular set of dispositions, we have an action where A benefits in Wertheimer’s sense from these interactions. Where I differ from Wertheimer and Feinberg is in taking instrumentalization of another or weaponizing of a vulnerability as a necessary condition for exploitation. I distinguish my sense of *advantage seeking* in this sense as highlighting this precise difference between my account, compared to Wertheimer’s protean account or Feinberg’s benefit criterion.

⁶⁶ Harris, *The Value of Life*, 120

2.4 EXPLOITATION THEORY

As a brief guide to the accounts covered in this chapter, I have summarized the views that share a concept of exploitation as unfair advantage seeking below, divided by their respective Advantage and Vulnerability clauses.

Figure 2.1 Theories of Exploitation

Exploitation Theorist	Advantage Clause	Vulnerability Clause
Alan Wertheimer: Exploitation as Unfairness	Excessive benefit, defined with reference to an ideal fair market	Vulnerability is not itself normatively important
Allen Wood: Exploitation as Disrespect	Any benefit seeking grounded in vulnerability	Any vulnerability that could be instrumentalized
Robert Goodin: Exploitation as Vulnerability	Excessive benefit seeking	Atypical vulnerability which can be instrumentalized
Mikhail Valdman: Taking Unfair Advantage of Desperation	Excessive benefit, defined with reference to an ideal fair market	When one party has no other option or no reasonable option to refuse.
Ruth Sample: Exploitation as Degradation	Benefit seeking/Excessive Benefit seeking	When one fails to consider the basic interests of the other (degradation)
Richard Arneson: Consequentialist	Unfairly excessive profits, defined by appeal to consequentialist concern	Independent level of consequentialist concern
Relational Account	Advantage Seeking	Relational inequalities

There are some patterns that emerge from this figure. First, there is a range of ways in which Advantage and Vulnerability clauses might connect. For Wertheimer, the Advantage Clause does all of the moral work; interactions that lead to unfair distribution are exploitative. For Wood, the

Vulnerability Clause does all the work. Any use of vulnerability is exploitative. Valdman and Goodin have two-part theories, where the Advantage and Vulnerability Clauses are individually necessary and jointly sufficient.

Wertheimer and Valdman share an advantage clause, but Wertheimer's is unrestricted, whereas Valdman's is more restricted. Part of this is because Valdman shares the intuition that exploitation is a relatively serious moral wrong. Somewhat unexpectedly for the most prominent theory of exploitation, Alan Wertheimer's view of exploitation as unfairness does not find exploitation to be a morally serious wrong, in and of itself. Valdman, along with the rest of the theorist on the list, myself included, disagree with Wertheimer on this point.

Wood, Sample, Goodin, and Valdman share a Kantian approach to exploitation, in that the Vulnerability Clause and the idea of "using" another is the source of the unfairness. I place my own view in this category. My approach is to develop and make more precise how Sample's Exploitation as Degradation might benefit from abandoning an account of basic needs and instead grounding vulnerability in relational inequality. Arneson is an interesting case, as he does not really offer a theory of exploitation so much as an error theory of exploitation.

It is important to note that the Advantage and Vulnerability clauses of an account of exploitation are both necessary conditions, and various accounts of exploitation privilege one or the other component.⁶⁷ Wertheimer and Zwolinski take the inappropriate advantage-seeking to be the defining feature of exploitation, and find various forms of vulnerability to be merely *associated*

⁶⁷ The one account that seems to equally weigh, or perhaps fully integrate, each clause seems to be Nicholas Vrousalis's Neo-Marxist Domination-based account. See Nicholas Vrousalis. "Exploitation, Vulnerability, and Social Domination." *Philosophy & Public Affairs* 41, no. 2 (2013): 131-57. I will discuss Vrousalis in a later section, but integrating these clauses is a very complex task, and involves many substantive arguments about autonomy, social power, and domination that are beyond the scope of this project. I will discuss the difference between domination-based accounts and my own relational account in chapter 3.

with exploitation. Failures of consent, manipulation, or the exercise of power are morally important on this account, but are not really constitutive of exploitation. Goodin, on the other hand, sees exploitation as an instrumentalization of vulnerability, and doesn't clearly account for what kind of advantage seeking is necessary or sufficient for exploitation, apart from stating that it must be excessive.

2.5 WERTHEIMER'S ACCOUNT

I want to begin with a simple case of MACE, Alan Wertheimer's, a leading proponent of exploitation as unfairness, to illustrate how such accounts of exploitation function.⁶⁸ Consider the following case:

Snow*: B is stuck in the snow late at night, with no hope of aid coming for hours. A, a tow truck driver passing by offers to help B, but will only pull the car out of the snow for \$2000. B knows that there are no other options, and if she is to decline the offer she will be stuck for hours. B also knows that a towing company would never charge more than \$300 for the same service, even in terrible conditions. Nevertheless, B, not wanting to wait the additional hours agrees to A's offer.

In Snow*, the putative exploiter, A, makes an offer and the exploited accepts it. If B does not accept the offer, she will sit in a cold car for some unspecified amount of time – but is not at risk of imminent death. There is no obvious rights violation in the snow case. For Wertheimer, what is common among cases of exploitation is *an unfair distribution of benefits*.⁶⁹ Because A demands payment far outside the market range, Wertheimer declares Snow a paradigmatic case

⁶⁸ The following case is adapted from Alan Wertheimer by Sample in Sample, *Exploitation*, 16-28.

⁶⁹ Wertheimer, *Exploitation*, 236-246

of exploitation. Intuitively, there are many who would agree with Wertheimer on this point. I will disagree, but it is worthwhile to follow Wertheimer's reasoning on Snow*.

Wertheimer begins with this question about Snow*: Where, precisely, is the exploitation? Various accounts of exploitation offer a variety of responses here, coercion, harm, deception, use of vulnerability, etc. But there is no coercion present in Snow*, as A does not threaten or reduce B's ability to express her will. There is no plausible way to find harm in this transaction as well, as A is offering a clear benefit to B. Nor is there deception in A's offer. On Wertheimer's account, 'exploitation' is the name given to certain transactions, namely those where the distribution of benefits is unfair. Unfairness is a normative concept, but not a particularly important problem, in and of itself.⁷⁰

Unfair benefit might mean benefit grounded in coercion, harm, or a similar wrong, but such a possibility is excluded in MACE. There must be another source of unfairness in Snow*. Unfairness can simply be a sort of numerical imbalance, and this is precisely how Wertheimer defines an unfair distribution: it is a distribution that is outside of the margins, with reference to a hypothetical market where the transacting parties were operating within a competitive market. If the going rate for a tow is \$300, A's \$2000 offer is clearly well outside the bounds of the market. Thus, on Wertheimer's standard A exploits B.

But this exploitation is relatively morally innocuous. That means A's exploitation is *prima facie* wrong, but might easily be excused. A case of exploitation will only be wrong if some other form of moral injury is present. There is no inherent connection between a given moral concern and exploitation. In cases of exploitation, the questions are: (1) Is the exploitation criticizable? And (2) If it is criticizable, for what reason? On Wertheimer's minimal account of

⁷⁰ "A engages in mutually advantageous exploitation when, in relation to the same baseline, A gains unfairly or excessively by an action or transaction that is beneficial to B." Wertheimer, *Exploitation*, 207.

exploitation the disquiet felt upon cases of exploitation are derivative of other wrongs (or misplaced). Exploitation is at best a signal that some separate moral wrong has occurred. This minimal account of exploitation has a number of virtues. First, when exploitation itself is minimal, it is easy to deal with the possible plurality of wrongs that might come up in a given case. It seems like there are cases of exploitation that are wrong because of harm, deception, coercion, and injustice. But there are also cases of exploitation that seem to lack any or all of these features – at least on Wertheimer’s view. Alan Wertheimer offer an elegant solution to this problem: the common feature in MACE is unfairness, since unfairness is often a merely minimal wrong, other forms of wrong “swamp” our intuitions and lead to large-scale disagreements on case details.

The moral disquiet, outrage, or ambivalence that we feel at examining a putative case of exploitation is typically *derivative* of other issues. In Snow what makes the offer exploitative is the price. On Wertheimer’s standard, a price is exploitative when it is outside of normal market bounds, as determined by a functional hypothetical market. In the original case description, I indicated that the price was many times what B would expect to pay if she had the means to contact other towing services; because the price A offered is well outside the bounds of the market, we have a case of exploitation. Beyond the label of a case of exploitation, there is nothing further that can *itself* be explained from the mere fact that exploitation has occurred.

One way to argue with Wertheimer and Zwolinski would be to point out difficulties with establishing what counts as a “functional hypothetical market.” This is not the route that I wish to take. Rather, my criticisms of Wertheimer’s minimal account will focus on the lack of robustness in Wertheimer’s account and why exploitation ought to be thought of as a moralized concept, and how Wertheimer’s minimal account seeks to correct exploitation.

Ruth Sample argues that Wertheimer's distributional account of exploitation fails to account for how exploitation operates outside of distributional concerns.⁷¹ For Sample, and for me, the problem of exploitation *may* be distributional, but distributional inequality is only sometimes present in exploitation. Distributional unfairness is but one kind of concern, the salient feature of the case below is degradation.

Waiter: B, an African American waiter is offered a position at a club by A, where frequent racist comments and high pay are the norm. The pay is above market rate.

On Wertheimer's account one would ask whether Waiter involves a criticizable form of exploitation. Surely the racist attitudes that A exposes B to are degrading and dehumanizing, which is of clear normative concern, but the fact that pay is above market rate obviates the club from the charge of exploitation. On Wertheimer's account, the exploitation claim on behalf of B is excluded, because such an arrangement isn't exploitation due to the compensation above market rate. Even granting that exposure to racist comments is wrongful, the only way that an interaction may be exploitative is if the balance of burdens and benefits unfairly favors A.

There are two issues with Wertheimer's view that I want to raise. The first is fundamental in nature, and challenges the way that his account defines exploitation. The sort of work that most people want done when they claim "That's exploitation!" is not to simply point out that a distribution is unfair or unbalanced; they mean the claim of exploitation to be a morally serious charge. To say, "That's exploitation, and it is also morally wrong for reason X" seems redundant. However, this is exactly what Wertheimer would say is required to make the claim "That's

⁷¹ Sample, *Exploitation*, 92

exploitation” a normatively serious claim. Being made worse off, coerced, or lied to in an exploitative situation are what do the normative work in Wertheimer’s mind.⁷² This simply strikes me as wrong. In Sample’s words, we make claims about exploitation “[f]rom a moral point of view.” To sacrifice this fundamental normative stance in making an exploitation claim *per se* misses the point of the intuitive basis of the term ‘exploitation’. In Arneson’s words, this view is the agreed moral intuition (AMI) regarding exploitation.⁷³

For Wertheimer, A’s action is not exploitation, but is wrong because subjecting someone to racist abuse is (or at least might be) independently wrong.⁷⁴ Waiter is not a case of exploitation, but it is criticizable. Exploitation isn’t required to make the claim that A acted wrongly, and it would be redundant or unnecessary to cite exploitation as a reason for the wrongness of A’s action. But it is not difficult to make Waiter a case of exploitation on Wertheimer’s account, simply increase B’s pay to a non-standard rate. Then Wertheimer’s hypothetical market would certainly find exploitation in Waiter, but on the part of the target of racist abuse. This seems to me entirely backwards. Exploitation involves wrongful advantage-seeking. I simply do not see how the waiter might be the exploited, as opposed to those engaged in (or licensing) disrespectful and dehumanizing abuse. Yet, that is what Wertheimer’s distributive approach would demand.

Moreover, it still strikes me as implausible to say that calling something exploitative has minimal moral import. Such a claim is not simply a statement about the *mere fact* that an

⁷² Alan Wertheimer, *Rethinking the Ethics of Clinical Research: Widening the Lens*. (New York: Oxford University Press, 2011), 202-219.

⁷³ Richard Arneson, "Exploitation and Outcome." *Politics, Philosophy & Economics* 12, no. 4 (2013): 392-412, 394.

⁷⁴ One way that the treatment would be wrong would be for it to be harmful. Although, it is possible that the waiter might see such treatment as anachronistic, foolish, pathetic, or some combination thereof. In such a case there would not be no direct harm to B present, but racist treatment might still be wrong for other reasons.

unbalanced exchange is occurring, but that something wrong is at stake. So, I'm not relying simply on intuition here, but on the fact that the exploitation claim is better explained by **moralized accounts**. As an example, exploitation in personal relationships is central to the concept. It is easy to imagine a case like Waiter, where A's lack of respect for B is unrelated to employment. It seems entirely natural to think of A exploiting B's love or good nature to maintain social ties with people with objectionable attitudes or seek advantage socially. This sort of case is paradigmatically exploitative. The minimal account does not address core cases of exploitation and hypothetical markets are ill equipped to explain interpersonal conflicts. Interpersonal cases are not like market transactions; there is no hypothetical market for the proper respect one must show an intimate. A sense of reciprocity is something like an account of fairness in a relationship, but, as I shall discuss below, this is not a satisfactory response. Rather than deny that Waiter or interpersonal cases can be exploitation, it is preferable to use a more substantive account of exploitation.

The second criticism of Wertheimer's minimal account that I want to make concerns how the minimal account seeks to alleviate exploitation. Suppose we had a case like Waiter, but where the waiter subject to racist abuse was woefully underpaid as well as disrespected. Underpayment would in fact make for a case of exploitation on Wertheimer's standard. But it is again deeply implausible to think that more payment would alleviate the exploitation; exploitation is not fundamentally about the balance of exchange in a relationship (economic or interpersonal), it is about the nature of that relationship and how the parties involved are treated.

Distributional accounts of exploitation rely on a standard of fairness to explain the wrongness of exploitation in MACE. Wertheimer's idealized fair market is a market where the transacting parties are (1) consenting, (2) well-informed, and (3) under non-monopoly bargaining conditions.

What is left unstated is the assumption that these parties are actually in a relationship where consent, information, and non-monopoly bargaining conditions lead to a transaction that is meaningfully fair.⁷⁵ A hypothetical market is meaningfully fair if and only if the market establishes a fair price. But fairness is not generated *sui generis* by any market, and Wertheimer would certainly agree on this point. A market-price that is established by what is actually paid is not enough, for a price that is paid but did not actually win the consent of both parties because A coerced B into buying (or selling) would not establish anything meaningful. And so similarly for markets that are based on extreme informational asymmetries; such failings would violate Wertheimer's first and second conditions. But much more must be said about the third condition. It is not clear why non-monopoly conditions of bargaining contribute to establishing a meaningfully fair price. Wertheimer himself does not fully explicate how exactly these conditions fit together. There are two possibilities that I can see: competitiveness or relational sufficiency.

Wertheimer's view is that a hypothetical market that is consensual and where the parties are equally well informed would be meaningfully fair if it is also bargained under non-monopoly conditions because in this case the market is necessarily competitive, and a competitive market (supposing that the previous conditions are satisfied) is meaningfully fair. This argument is strongly intuitive in one sense: a hypothetical market where one party consistently exercises monopoly power is not so much a market but an exercise of power on the part of the monopoly. A monopoly does not *operate in a market*, rather a monopoly dominates the market. A sufficient level of competition is required to transform the interaction into a functional market rather than a site of monopolistic domination. Establishing a market price that might even plausibly establish a

⁷⁵ Wertheimer, *Exploitation*, 230-232

fair price in the sense that Wertheimer means requires both buyers and sellers, that is, it requires competition on both sides.

I am not entirely confident in this interpretation, as Wertheimer offers one model of a fair transaction that does not occur in a competitive market with multiple buyers and sellers: a transaction between two friends.⁷⁶ In a private transaction between two good faith people, there is no competitive pressure that creates a market. Wertheimer does not say much to explain this example, but seems to think that the norms of friendship (or perhaps reasonableness) are enough to generate a fair transaction. I find this example puzzling, as we do not know what the norms at play between the friends are *doing*. It may be that they are putting themselves in the other's position to come up with a price, or that they are taking an average (or reasonable average) of the range of prices that they perceive.

In either case, the norms seem to either create a hypothetically competitive market (by taking the role of buyer and seller) or guessing at one based on the context of the sale. I would agree with Wertheimer that this model seems to show why non-monopoly conditions are valuable and that such a situation is more "market like."

Specifying market conditions where bargaining could occur in principle is not the same as a market where a fair price actually is established through this process. The potential to arrive at a fair price in an environment is not actually arriving at a fair price. What is needed for a meaningfully fair price is that bargaining occurs as a matter of substance.⁷⁷

⁷⁶ Wertheimer, *Exploitation*, 235

⁷⁷ This is not to say that bargaining does not occur in relationships (for clearly it does). My point is more limited than that. For Wertheimer, the *hypothetically fair market* does the work of establishing fair terms. My point is that the proper sort of relationship, grounded in norms that govern the specific relationship at issue are ethically prior to the machinations of the hypothetical market. The moral work is done by the right sort of relationship, not by the market.

2.6 SAMPLE'S EXPLOITATION AS DEGRADATION

Now I turn Sample's account of exploitation as degradation. Recall the Inconvenient Snowstorm case, where A demands an exorbitant price from B to keep B from an evening in the cold, but B would prefer to save time (despite other live options) and pays the price. To me, Inconvenient Snowstorm is not exploitation. It is perhaps price-gouging, but not exploitation. I think that Wertheimer's account of exploitation is actually an extremely good account of price-gouging. If we consider Wertheimer's market-based moralized account of unfair transactions as a truly non-moralized account of non-standard payment, using hypothetical markets to define price-gouging seems apt. The normative issues in price-gouging are distinct from many of the issues of exploitation that I consider central.⁷⁸ People will commonly conflate exploitation and price gouging in common use, but that is no reason to do so in the philosophical context. It is unpleasant, frustrating, and financially burdensome to be price-gouged, but it is not *itself* a serious moral harm to have to pay more for gasoline or an air conditioner in a shortage. Price-gouging can *become* exploitative when the interaction furthers some relational equality. There are marginal cases to be dealt with, I do not want to minimize that. Suppose that water needed for survival is the commodity that is being over-priced. Here, it is a lack of consideration for someone's needs as a human being that counts as a serious moral injury, even though paying for over-priced water is still a clearly advantageous outcome.

In his review of Sample's *Exploitation: What it is and What is Wrong with it*, Wertheimer points out that Sample's account of exploitation as degradation has two problems. First, it seems

⁷⁸ Matt Zwolinski, "The Ethics of Price Gouging," *Business Ethics Quarterly* 18, no. 3 (2008): 347-78 and Robert Mayer, "Sweatshops, Exploitation, and Moral Responsibility," *Journal of Social Philosophy* 38, no. 4 (2007): 605-19

that Sample neglected to link the benefit of A to the degrading treatment of B, such that a case like the following would be exploitation on Sample's account. Consider the following case:

Degrading Customer: A is in B's checkout line at a store. A treats B in a degrading way, pays for the purchase and leaves. B, in keeping with typical retail practices, does not raise any serious complaint.

In Degrading Customer, it is obvious that A acts wrongly by degrading B. It may also be stipulated that A benefits from the exchange (by obtaining some amount of pleasure at the transaction, but not the degradation itself). So, A benefits from a transaction and degrades B. Such an exchange meets the conditions for Sample's definition of exploitation. But this seems wrong. The account is much too strong and applies overly broadly, as it just appears that the customer was disrespectful, but not exploitative. The degradation seems merely incidental to the transaction.

Sample's account seems worse when the problem is made more pervasive. Consider a society in which there is an underclass, such as a caste system. Such a hierarchy is surely a degrading condition for members of this underclass. According to Sample's Exploitation as Degradation, it seems that any interaction that superior members of the hierarchy have with members of the underclass would be exploitative, at least when that interaction results in benefit to members of the superior caste. This is so even if the benefit is benign, such as patronizing a business owned by lower caste. This seems entirely too broad an account of exploitation, and this is so because the conditions for exploitation are not grounded in advantage-seeking in the right

way. While there is surely good reason to be critical any system of social hierarchy that degrades, it does not follow that exploitation is everywhere in such a society.

Wertheimer's primary criticism of Exploitation as Degradation is that degradation is a more problematic concept than exploitation, and thereby unproductively shifts the normative issues from exploitation to degradation.

"I find degradation to be even more difficult and slippery [compared to exploitation], and it is not clear that analyzing a difficult concept in terms of an even more difficult concept is analytically useful. To see some of the difficulties, consider Sample's claim that degradation involves treating someone as having less value than that person has. Is degradation a function of the way in which A *treats* B or the effect of A's treatment of B *on* B? After all, A may treat B in a degrading or disrespectful manner without B feeling degraded or, more importantly, being degraded. Suppose that A seeks out the services of prostitute B, and that A regards B as someone with little value. At the same time, B regards A as pathetic, and while she knows how A regards her, she sees herself as a professional who is, in her own way, exploiting A's need for sexual services. Is B degraded by A?"⁷⁹

I see three questions about a degradation-based account of exploitation here. First, how is exploitation as degradation a useful *theory* of exploitation? Second, what is the nature of degradation? And third, how can degradation usefully explain cases of exploitation, especially when degradation might be present on the part of exploiter and exploitee? It would obviously be a problematic regress to explain the concept of exploitation in terms of degradation if degradation is more difficult to explain than exploitation; I take this to be Wertheimer's most direct objection to exploitation as degradation. At this point, I hope to have answered the first question in this way: Exploitation as Degradation is a useful theory of exploitation because it more accurately captures the reality of the phenomena and provides a normatively compelling

⁷⁹ Alan Wertheimer, "Ruth J. Sample, Exploitation: What It Is and Why It's Wrong," *Utilitas*, 19(2), 2007: 259-261, 260

answer as to how to address exploitation, i.e. to repair the degradation. I will answer Wertheimer's two remaining objections in turn.

One common view is that degradation is a *feeling* or a *belief*. Such a view of degradation would define degradation as the belief or feeling of being degraded. Whether a feeling or belief, the main point is that one must be either *aware of being degraded* or *in the empirical condition* of being degraded. I will call such views representational, as to be degraded is to have certain representational structure in the degraded party's mind.

For clarification, it is worth asking how either version of the representational views of degradation might work in practice. Consider the practice of prostitution, where one person, usually a woman, sells sexual access to her body for money. For Kant, prostitution is clearly wrong because it undermines the proper basis of humanity. "[H]uman beings are ... not entitled to offer themselves, for profit, as things for the use of others in the satisfaction of their sexual inclinations. In so doing, they would run the risk of having their person used by all and sundry as an instrument for the satisfaction of inclination"⁸⁰ Kant's views on sex are notoriously difficult to explain, but a number of contemporary feminists have found that Kant captured something important about degradation. The idea is that being a *thing* or an *object* for another's use is a particular condition that is debasing.

Catharine Mackinnon regards the practice of prostitution as contributing to the degradation of women.⁸¹ She sees this state of degradation as pervasive, given her memorable phrase that "women live in sexual objectification the way that fish live in water."⁸²

⁸⁰ Immanuel Kant, *Lectures on Ethics*, Louis Infield (trans.), (New York: Harper and Row, Publishers, 1963), 165

⁸¹ Catharine MacKinnon, *Feminism Unmodified*, (Cambridge, Massachusetts, and London, England: Harvard University Press, 1987)

⁸² Catharine MacKinnon, *Toward a Feminist Theory of the State*. (Cambridge, M.A.: Harvard University Press, 1989)

Objectification is wrong because, at its core, it involves treatment towards some subject that is both mistaken and morally wrong. One need not have any particular beliefs, at least beliefs about being degraded, to be in the condition of degradation. What is required is a subordinate standing in relation to others, when what is demanded is equality on the basis of shared value.

Debra Satz sees the difficulty in making broad statements about the morality of prostitution, based on a concern with degradation.

“I share the intuition that the failure to treat others as persons is morally significant; it is wrong to treat people as mere things. But I am skeptical as to whether this intuition supports the conclusion that prostitution is wrong. Consider the contrast between slavery and prostitution. Slavery was, in Orlando Patterson's memorable phrase, a form of "social death": it denied to enslaved individuals the ability to press claims, to be-in their own right-sources of value and interest. But the mere sale of the use of someone's capacities does not necessarily involve a failure of this kind, on the part of either the buyer or the seller.”⁸³

For Satz, and for me, there are paradigm cases of disrespect that would count as overwhelming evidence of degradation. Slavery is the clearest example. But slavery is an extremely high standard for explaining domination, especially Patterson's explanation of slavery as a social death or state of relational non-personhood. What can be said of cases where a person does not endorse the claim that they are degraded (as with at least some cases of prostitution)?

Martha Nussbaum, developing Adam Smith's analysis, points out that stigma about degradation and subordinate status may be out of reason or prejudice.⁸⁴ While sex work and other forms of selling one's body are stigmatized now, being a philosophy professor or opera singer is not at all seen to be degrading. Rather, both professor and opera singer are high-status jobs. But this was not always so. Adam Smith, in a very different time, argued that opera singers

⁸³ Debra Satz, "Markets in Women's Sexual Labor" *Ethics* Vol. 106, No. 1 (Oct., 1995): 63-85

⁸⁴ Martha Nussbaum, ""Whether from Reason or Prejudice": Taking Money for Bodily Services." *Journal of Legal Studies* 27, no. 2 (1998): 693-724.

ought to be paid exorbitant wages to compensate them for the degraded status that they would have to endure by shaming themselves in singing for money.⁸⁵ This is problematic for representational accounts of degradation, as it creates a dilemma: either degradation is a particular sort of feeling or one must provide an account of what is properly regarded as degrading. Martha Nussbaum identifies two features that mark degradation: widely held immorality and subservient status.

“Prostitution, we now see, has many features that link it with other forms of bodily service. It differs from these other activities in many subtle ways: but the biggest difference consists in the fact that it is, today, more widely stigmatized. Professors no longer get told that selling their teaching is a *turpis quaestus*. Opera singers no longer get told that they are unacceptable in polite society. Even the masseuse has won respect as a skilled professional. What is different about prostitution? Two factors stand out as sources of stigma. One is that prostitution is widely held to be immoral; the other is that prostitution (frequently at least) is bound up with gender hierarchy, with ideas that women and their sexuality are in need of male domination and control, and the related idea that women should be available to men to provide an outlet for their sexual desires.”⁸⁶

These factors, moral stigma and subservience are not unrelated. It isn't obvious if one precedes the other, causally, or if these features emerge out of another more common occurrence. What matters more, in my view is how these features affect status.

There are also non-representational accounts of degradation. In these cases, a person might resist (or even flat out reject) any particular belief or feeling regarding their own position. Avishai Margalit, one such theorist, describes his account in this way. “[Degradation is any] sort of behavior or condition that constitutes a sound reason for a person to consider his or her self-respect injured.”⁸⁷ This is a somewhat difficult view to understand. It is at least a little bit paradoxical that a person might explicitly make an error about their own status as degraded.

⁸⁵ Nussbaum, “Whether from Reason or Prejudice,” 694

⁸⁶ *Ibid.*, 707

⁸⁷ Avishai Margalit, *The Decent Society*. (Cambridge, Mass: Harvard University Press, 1996)

There are certainly plausible cases, such as false-consciousness, where a person in the midst of psychological pathology might fail to see or be in denial about their own degradation. Such pathology would easily resolve the paradox, but what of more pedestrian cases of degradation.

Recall the case of Degrading Customer, where a customer treats a retail worker in a degrading way. For the purposes of clarity, assume that the customer says something insulting and dehumanizing to the employee. How can it be that the employee could hear something degrading directed towards them and not have a reaction of feeling degraded? Or, supposing that the employee shrugs off the comment, why should we regard the comment as degrading in the first place?

To resolve these questions, the first point is that it is perfect consistent for a person to hear something degrading and feel degraded. The non-representational view is neutral with regards to how an action affects the listener. When psychological degradation aligns with normative degradation there is no problem with non-representational accounts. The much harder problem is to justify why we ought to regard some actions as degrading without a psychological harm on the part of the degraded party.

I see at least two responses here. The first is that it is worth noticing the normative dynamics of a degrading comment. Such an interaction has (at least) two parties. And the effect on the one doing the degrading acts is of clear normative importance. Not only is acting in a degrading way wrongful on its face, the downstream effects of degradation are extremely problematic. Primo Levi analyzes SS officer Franz Stangl's justification of the treatment of prisoners in Solibor and Treblinka by considering why humiliation, cruelty, and dehumanization were a routine part of his command:

“Considering that you were going to kill them all . . . what was the point of the humiliation, the cruelties?” the writer asks Stangl, imprisoned for life in the

Dusseldorf gaol, and he replies: “To condition those who were to be the material executors of the operations. To make it possible for them to do what they were doing.” In other words: before dying the victim must be degraded, so that the murderer will be less burdened by guilt. This is an explanation not devoid of logic but which shouts to heaven: it is the sole usefulness of useless violence.”⁸⁸

Not only is degradation wrongful, it is self-reinforcing. Degradation breeds more degradation and it habituates further wrongs, Treblinka being the terrifying endpoint of this logic.⁸⁹ This feedback problem is corrosive to the degrading agent in deeply troublesome ways. The second response is connected to the first, but has a different focus. Those who degrade have effects on others in the world, and normalizing such treatment is clearly morally wrong.

Recalling Wertheimer’s concern, A might degrade B while B also degrades A, and one, both, or neither may feel degraded by the exchange. If A pays B for sex and has a degrading view of women and their role in satisfying men’s sexual desires, it is plausible to say that A is acting in a degrading way. If B finds A pathetic and is happy to take his money, it is also plausible to say that B is degrading A. So, both seem to be satisfying a preference and degrading the other. How then, Wertheimer asks, can exploitation as degradation sort out this seemingly straightforward case? One answer is that Wertheimer conflates psychological and normative degradation in this case. The feeling of degradation is not sufficient to actually be in the condition of being degraded. The other response is to treat degradation as a local, rather than global, phenomenon. One can be degraded in a limited way without counting as fully degraded and subservient to the one doing the degrading. I do not think that this answer affords a simple

⁸⁸ Primo Levi, *The Drowned and the Saved*. (London: Abacus. 1989), 111

⁸⁹ The relationship between our embodied nature and the practices of dehumanization and degradation are discussed in Sophie Oliver, “Dehumanization: Perceiving the Body as (In)Human” in Eds. Paulus Kaufman, Hannes Kuch, Christian Neuhäser, and Elaine Webster. *Humiliation, Degradation, Dehumanization: Human Dignity Violated*. (New York: Springer. 2011), 85-97.

response, as Wertheimer's criticism cuts deeper than expected. If one can be locally degraded, then we have another more difficult problem of figuring out how exactly this new layer of complex dynamics might be clarified. And an even more difficult objection is a case where A and B both reciprocally normatively degrade each other in different ways.

§2.8 What Makes Exploitation Wrong?

If exploitation were simply a matter of maldistribution it would be a straightforward but difficult problem to address, since all that is required is a redistribution of resources. Whether sweatshops, which plausibly are an all-things-considered benefit to both individual workers and to the prospects of development in LICs, are exploitative would be less interesting than whether they are *good*. What a relational account of exploitation can do is explain why exploitation is both morally problematic and *interesting*.

Exploitation is interesting because it is *insidious*. It is not just that exploitative relationships *seem* beneficial, but that they *are* beneficial. Yet, relational inequality leads to durable inequalities, the corrosion of equality, and degradation. Exploitation poisons the ability of oppressed groups to relate on terms of equality. And it does this *while* benefitting those individuals.⁹⁰

But taking a relational account of exploitation comes at a cost. Distributional inequality is a direct sort of inequality, where A and B are unequal in X precisely to the degree that A and B differ with respect to X.⁹¹ Neither degradation nor the corrosion of the social bases of self-respect are easily explained on a single dimension. Competing relational accounts locate the wrong of degradation in disrespect, or in a cognitive attitude of degradation. But an injury to

⁹⁰ I will return to the concept of durable inequalities in the next chapter, when I discuss exploitation and its connection to injustice.

⁹¹ This sort of inequality is not to be confused with more complex distributional inequities, where equity is defined with respect to a separate normative standard.

status may be obvious or unknown, intentional or unintentional. Relational inequality may be realized in multiple ways. Elizabeth Anderson argues that there are three distinct modes of inequality: those of standing, command, or esteem.

“Relational inequality has several modes, including hierarchies of *standing* (where a group is denied standing to make complaints against another group, or to hold it accountable for its conduct), of *command* (where members of one group monopolize positions of authority, which they exercise over members of other groups), and of *esteem* (based on publicly dominant invidious comparisons of some groups with others). It is propagated through various unjust practices of social interaction between dominant and subordinate groups, including violence, exploitation, segregation, discrimination, and stigmatizing speech.”⁹²

Hierarchies of command are most clearly connected to the notion of domination, where one group has the arbitrary authority to interfere with another, merely on the basis of will. Feudal privileges work this way, as does the authority of a master over a slave.⁹³

A hierarchy of standing would be demonstrated by a hostility or failure to *take seriously* the reasons and responses of one group to another, as when common farmers complained to the French aristocracy pre-revolution. Or, to take a more modern example, the activist group Black Lives Matter is opposed to a systematic devaluing of complaints about police violence and harassment on the basis of racial hierarchy and hostility.

Standing and esteem may be distinguished by focusing on how particular members of various groups are recognized in society, as opposed to how their various arguments and recognized. The “rituals of self-abasement” that one group may demand from another are themselves a mode of inequality even when no contentful disagreement is present. A black person in the Jim Crow era United States would be expected to avert their eyes, cross the street, use formal

⁹² Elizabeth Anderson, “Toward a Non-Ideal, Relational Methodology for Political Philosophy: Comments on Schwartzman’s Challenging Liberalism” *Hypatia*, vol. 24, no. 4 (Fall, 2009): 130-145, 132

⁹³ Philip Pettit, *Republicanism: A Theory of Freedom and Government*, (Oxford: Oxford University Press, 2010), 66

titles with whites without any expectation of reciprocity, relegate themselves to separate (and worse) public facilities, and participate fully in segregation to visibly demonstrate their inequality.

Within a liberal political philosophy, such inequalities are unacceptable.

Chapter 3. EXPLOITATION AND INJUSTICE

“It’s been written, Curt, that you’re a man who makes \$90,000 a year, which isn’t exactly slave wages,” he said. “What’s your retort to that?”

“A well-paid slave is nonetheless a slave,” Flood retorted.⁹⁴

3.1 INTRODUCTION

I have already argued that there is good reason to regard exploitation as a wrong. The vexing question that has consumed so much of the philosophical literature is identifying what, precisely, makes exploitation wrong. In the previous chapters, I have criticized the distributive accounts of exploitation which regard exploitation as a problem of maldistribution, i.e. as a failure of outcome. My approach in criticizing accounts that regard exploitation as a form of distributive unfairness is that such an approach will fail to be robust over the scope of cases of exploitation.

In this chapter I want to argue for a relational approach to exploitation, where instrumentalizing relational inequality for the sake of advantage defines exploitation. That is the first task of this chapter. I will begin by explaining the conceptual components of exploitation and then applying the Relational Account of Exploitation (RAE) to applied cases. In the context of the entire dissertation, this section will establish that the Relational Account of Exploitation is both consistent with a real-world paradigm of exploitation and has reasonably equivalent theoretical virtues to other accounts. The main theoretical virtue that I see in the RAE is how the RAE explains the connection between exploitation and injustice.

⁹⁴ Brad Snyder, *A Well-paid Slave: Curt Flood’s Fight for Free Agency in Professional Sports*, (New York, N.Y.: Plume, 2007), 104

3.2 THE STRUCTURE OF EXPLOITATION

In my view, exploitation is made up of four separate components. I also know that the concept of exploitation is contentious, and no theory of exploitation could explain every purported case of exploitation without being impossibly broad or *ad hoc*. Nevertheless, I will maintain and defend this account of exploitation, knowing that this definition will be contentious. This definition is intended to help clearly explain the intuitive wrong at the center of purported cases of exploitation, not to account for every conflicting intuition and difficult case. Exploitation is *interaction for the sake of advantage, where the seeking of advantage instrumentalizes relational inequality*.

In the simplest construction, A exploits B when A's advantage seeking interaction with B uses B in such a way that B is relationally unequal. My view has four conditions: (1) an interaction, (2) advantage seeking, (3) use of the interaction, and, finally, (4) relational inequality. I will expand upon each in turn:

First, Interaction: In order for something to be a case of exploitation, there must be an interaction of some kind. Very often, this interaction will be a direct transaction of the sort where A offers a *quid pro quo* to B, such as payment for a good or service. What would make this transaction exploitative is how A's use of the interaction affected B. A could offer to rescue B from a sinking ship but only under terms dictated by A. This is a simple two-party interaction. Additionally, some third party might be involved in an exploitative transaction. A offers B an exchange, but only if B provides something of value to use against C. The simple point is that the exploiter-exploitee relationship may be mediated through another party or parties; exploitation need not be a one-on-one interaction.

I have thus far spoken primarily in terms of transactions, but exploitation need not solely involve transactions; A might exploit B simply through a case of voluntary action on B's part. For instance, B might volunteer herself to a medical experiment conducted by A. Supposing B's zeal for participating in research is a psychologically powerful motivator. A has B in a position of serious vulnerability, and can dictate terms that would be potentially harmful and exploitative of B, even though no transaction between the two has occurred. The voluntary medical experiment is an impersonal relationship, where the parties are not especially connected at an intimate level. Interpersonal sorts of exploitation, where A and B are in a close or intimate relationship are a final sort of interaction. Interactions may be transactions, impersonal relationships, or interpersonal relationships.

Second, Advantage Seeking: Exploitation is characterized by the exploiter seeking advantage, e.g. benefit or positional advantage. Without this condition, it would be difficult to distinguish between cases of exploitation and cases where a person is simply wronged during an interaction. As an example, consider this case:

Rude Customer: B is in selling her wares at a market. A purchases something from B, but also degrades and verbally attacks B, seemingly for no reason. B makes a profit on the exchange.

It would be odd to describe this interaction as exploitation, supposing that A verbally abused B. While A gets something out of the exchange, there is nothing exploitative about the interaction, despite it being wrongful. If the condition for advantage seeking is met by A's goal to satisfy a preference, difficulties with this account emerge. And since some cases of exploitation do seem to fit this criterion, it is worth engaging with this difficulty. Suppose that A's simply prefers to see other people degraded; A consequently seeks out B in order to degrade her, and does so. Many people will see this as a case of cruelty, disrespect, or simply degradation *simpliciter*. But exploitation will not immediately jump to mind. Supposing that I grant that

seeking the satisfaction of a preference is sufficient to count as a benefit. If we return to B selling wares at the market, but suppose that A degrades B because of a desire to do so, it seems that I must admit that we have a case of exploitation, as this case fits the 1st and 2nd conditions. However, degradation *while* benefiting fails to meet the 3rd condition, as the advantage seeking is not connected to the interaction.⁹⁵

Third, Use of the Interaction: Closely related to the first two conditions is the condition that exploitation must consist in the *use* of the interaction for advantage. This is not a condition purely about the intention of the exploiting party, i.e. A, intending to advantage herself, interacts with B for that express purpose. Rather, I see this condition as defined counterfactually: but for the achievement of advantage, would this interaction have occurred? This is only meant to tie the interaction, degradation, and advantage seeking together – to avoid cases where A degrades and interacts with B, but in too disconnected a way. Marginal cases will exist. Does the Nazi true-believer who degrades a Jewish person in order to satisfy a twisted preference exploit the other? I think that the answer is yes, provided that my conditions are met. What the third condition seeks to elucidate is “the difference between considering a person’s emotional or psychological vulnerability and using that same vulnerability.”⁹⁶ *Awareness* of being degrading is not the same as grounding an action in being degrading, nor is *lack of awareness* of being degrading a guarantee that an action is not grounded in being degraded. Grounding conditions are difficult (if not impossible) to definitively explain, and I will return to this problem when I consider objections to my view later in this chapter.

⁹⁵ This is the major departure between my account and Sample’s.

⁹⁶ Elizabeth Anderson, *Value in Ethics and Economics*. (Cambridge, M.A.: Harvard University Press, 1993), §8.3

And finally, Relational Inequality: This is perhaps the most controversial component, as it identifies the primary wrong of exploitation. I see using a relational inequality as the specification of what sort of vulnerability is required in order to be exploited. The instrumentalization of relational inequality is the core wrong of exploitation.

Relational inequality, in Elizabeth Anderson's sense, is kind of standing in relation to others. That is, relational inequality is interpersonal. People make others equal, not anything else. Exploitation does not necessarily contribute to relational inequality in itself, but it does weaponize relational inequality, and that sort of advantage taking is wrong. I think it clear that exploitation is a feature of a relationship, and the best account of how wrong in a relationship is explained by reference to the forces Anderson identifies: hierarchies of standing, command, and esteem.⁹⁷

3.3 CASES RECONSIDERED

Using the RAE, I can now more fully explain the normative dynamics of exploitation. Let us recall the five cases from earlier in the dissertation:

1. **Heat Wave:** A owns a hardware store and knowing that a heat wave is forecast in the near future, A raises the prices on air conditioners by 10%. B, a customer of the store, pays the higher price for the air conditioner.⁹⁸
2. **Time Report:** Low-wage worker A discovers a flaw in the time reporting system at his job, and collects additional pay, while not actually working, from Owner B.

⁹⁷ Beyond my obvious debt to Sample's insights, one other contemporary account that is very close to mine is Nicholas Vrousalis's domination-based account of exploitation. Our accounts are largely consistent, but Vrousalis's main interest is in how distributional inequalities caused by the economic order might be understood in terms of dominance. See Vrousalis, Nicholas. "Exploitation: A Primer." *Philosophy Compass* 13, no. 2 (2018)

⁹⁸ Ruth Sample, *Exploitation*, 7-8

3. **Bankers:** A and B work for competing financial institutions. They arrange a complex sale of assets that both think will be mutually beneficial. However, A has a strong (and correct) suspicion that the assets B is selling are worth much more than B believes.
4. **Scholarship** (modified from Ruth Macklin): Two students are competing with each other for a scholarship. Prior to the deciding interview, A insults B, knowing that B is sensitive to harsh comments. B does very poorly in the interview and A wins the scholarship.
5. **Missionary:** “A Catholic missionary [A] offers to help a hungry, sick man. However, she requires that, as a condition of receiving assistance, the needy man must attend mass each day. The needy man [B] is Hindu.”⁹⁹

Heat Wave and Time Report could only be exploitative on the RAE if there were some indication that a relational inequality were present. Heat Wave is a *mild* case of price gouging, and so it is worth spelling out in more detail how mild price gouging, which I described as an inconvenience and annoying might turn into something more serious. When concessioners price gouge spectators at a sports stadium or a concert, normative claims about exploitation are overstated, despite the sentiment remaining perfectly cogent. However, cutting off free water and charging for it when people have small children, medications to take, or the risk of ill health effects is a more significant intrusion. Is this a relational inequality? That depends.

Sample’s strategy is to identify a basic need that the exploiter denies in order to gain benefit; this would certainly apply to rent-seeking water for someone who was ill and in need. Denying basic needs is a form of disrespect, but it does not seem intentionally hierarchical or constitutive of some sort of systematic inequality. My impression of such cases is to look not whether the inequality is systematic in nature, but rather if the (putatively) exploited party has the ability to speak back, respond on an equal basis, and has a reasonable expectation to be

⁹⁹ *Ibid.*

confidence in their own ability to confront their exploiters. When this ability is lost, a relational inequality is present. Time Report, on this standard, is more exploitative than my intuitions first imagined because deceptive fraud eliminates the possibility of the employer to consider the arrangement. While the deception plausibly swamps other normative features of Time Report, it does seem to fit the RAE and count as a genuine case of exploitation.

Bankers is another case where the RAE will say that whether exploitation occurs depends on further details. If A and B are operating on a basis of equality, then there is no exploitation. Is A's superior knowledge about the future value of the assets enough to generate a relational inequality? I think not. A having a different, or even a better, understanding of the financial realities of the world in no way undermines B's ability to evaluate A's offer, consider the options, and look at the relevant information. We routinely tolerate asymmetries on matters like knowledge, skill, or experience, and I think that this is perfectly justifiable because operating on a basis of shared equality is about standing and status relative to the other, not about every substantive difference that might exist.

Scholarship is a case where exploitation is present and where a form of personal knowledge, namely A's understanding of B's sensitivity to insults, does undermine B's ability to operate on the basis of equality. Since A uses this vulnerability of B's to seek advantage, I think we would rightly consider this a case of exploitation.

Missionary, on the RAE, has the resources to explain what is wrong with such a "strings attached" offer. The missionary seeks advantage, i.e. the satisfaction of a religious mission, and instrumentalizes the impoverished man's desire for better material conditions in life for these purposes. There are at least two things to be said here. Note that merely trying to convert someone is not sufficient to demonstrate some sort of hierarchical inequality. The Pope trying to

win over the Archbishop of Canterbury to Roman Catholicism is not at all objectionable. The second point is that the degree of impoverishment and the details of the case do all of the work here. And that is as it should be; the RAE makes a compelling case regarding what sorts of details matter. When a relationship is more hierarchical, dominating, or undermining of esteem, we have more reason to worry. These contextual factors are a crucial part of a theory of exploitation, and one that distributive accounts have little to say about.

The robustness of the RAE is demonstrated by how well my account addresses core and obvious cases of exploitation, both harmful, coercive, MACE, impersonal and personal. Unjustified coercion fits easily into the RAE, as when A coerces B, A fails to respect B as a fellow person worthy of expressing their autonomy.¹⁰⁰ Unconscionably exploitative practices like slavery have an obvious relational inequality, as do hierarchies of feudal privilege, or grossly sexist, racist, or other unequal hierarchies. When these inequalities are instrumentalized for the benefit of the power, we have obvious and intuitively clear cases of exploitation. Similarly, harmful interactions would undermine relational inequality to the degree to which it caused harm, and the party that instrumentalizes that harm would be exploiting. But can the RAE explain exploitation in cases of MACE?

3.4 THE RELATIONAL ACCOUNT OF EXPLOITATION AND MUTUALLY ADVANTAGEOUS CONSENSUAL EXPLOITATION

In this section, I want to delve deeper into the dynamics of how the RAE may address the “pure” form of exploitation, MACE. There are three cases that most clearly raise conceptual

¹⁰⁰ Additionally, coercion that is justified would avoid the relational inequalities that would ground exploitation

issues for the RAE, and my aim is to show how the RAE has resources available to deal with seemingly problematic cases. I will begin with a potential counterexample for the RAE, then address an incontrovertible instance of MACE, and then

Cancer Treatment: I live in an isolated rural region, in a region in which health care insurance is unavailable. There is only one qualified surgeon in the territory. After a routine check-up she informs me that I have a cancer that will swiftly kill me unless surgery is done. Only she can do the surgery. I'd be willing to give everything I own in exchange for the needed surgery, but the actual price she charges is modest, better than fair. This is business as usual for the surgeon. She makes her living by striking bargains like this with people in conditions like mine. She makes a good living.¹⁰¹

There are very few (if any) people who would find the doctor in Cancer Treatment to be acting exploitatively. Certainly, the doctor gains advantage in the form of compensation, and does so because her patients are ill and vulnerable.

There are macro-level critiques regarding whether access to care is a matter of justice, but these critiques are not of the physician. While the patient has a case to make regarding the injustice of the situation, it is not a problem of exploitation on the part of the physician. But this case certainly involves an interaction where advantage seeking grounded in a critical vulnerability occurs. If Cancer Treatment the benefit the doctor accrues is grounded in a relational inequality, it seems that the RAE would have to regard this case as exploitative. And surely, that is not correct.

Whether there is a relational inequality between the doctor and the patient depends upon the context under which the interaction occurs. Patients are by their nature vulnerable in a number of different ways. Patients rely on the skill, expertise, and judgment of physicians to treat them. Codes of conduct, licensing requirements, and other laws impose requirements on

¹⁰¹ Richard Arneson, 'Exploitation, Domination, Competitive Markets, and Unfair Division', *Southern Journal of Philosophy*, 54 (supplement), 2016: 9-30, 10

physicians that aims to create norms around the doctor-patient relationship. The point is simply that vulnerability is not necessarily a relational inequality. A doctor may exploit and abuse a relationship, but the mere fact of vulnerability is insufficient to establish that the vulnerability of patients is tantamount to a relational inequality. Much more can be said about what the precise contours of the doctor-patient relationship are, but that is far outside my scope. As a brief comment, the scandals involving violations of trust and public trust are a strong example of how a deformed relationship can become a stage for abuse.¹⁰²

In *Cancer Treatment* I sketched an account of what a relational inequality is not; in the following example, I want to sketch the work that is done by relational inequality in the account. For relational equality has to be something more than merely contextual without some substantive limitations on what sorts of relationships matter. My previous descriptions refer to equal standing, but in what respect? A student and teacher are equal in some forms of standing (as voting citizens, for instance) but unequal in respect to a who should be speaking in class. Anderson's idea of democratic equality focuses on the dynamics of citizenship and the conception of a person that underlies such a relationship. Citizens in a democracy are expected to relate to each other as beings whose thoughts and concerns matter, who have self-respect, and who can participate in the society as equals, rather than as higher or lower order beings.

Given this vagueness around relational equality, the RAE has to specify what *sort* of relational inequality matters. Consider this case of exploitation created by Mikhail Valdman, which is also a case of MACE.

Hiker: Hiker A has the \$10 antidote to a deadly snakebite. Hiker B gets bitten by the deadly snake and will die without the antidote. A knows that B owns at least \$1,000,000 of assets. A sells B the antidote on the condition that B pay the \$1,000,000.¹⁰³

¹⁰² The unconscionably terrible case of Larry Nassar is one that springs immediately to mind.

¹⁰³ Mikhail Valdman, "A Theory of Wrongful Exploitation" *Philosopher's Imprint*. July 2009: 9(6) pp. 1-14, 3

Hiker is a case of MACE. Clearly, B prefers not to die, and A prefers the substantial payoff. Yet, this is a striking case of exploitation. Is any amount of profiting exploitative here, as B is in such a desperate situation that A has an obligation to aid? I think so. The amount seems inconsequential relative to the making of an offer that, by its nature, puts B in a position of clear subordination. Even if A wanted to give B's money to charity, or save a child in a distant land, etc. This might be the optimal outcome from an act consequentialist perspective, but that does not remove the wrongful exploitation from the interaction.

A takes B's position of need as an opportunity to set terms from a dominant position. B's position is one of subservient inequality, i.e. the threat of death. Though B would (enthusiastically) consent to paying the price for the antidote, this is a case of exploitation. What is valuable about Hiker is the reason why it is exploitative on the RAE. One explanation of the source of the exploitation, and the explanation that Valdman favors is that B has *no reasonable option* but to accept A's offer. I, on the other hand, think that the exploitation originates in using a relational inequality for advantage.

The reason why I disagree with Valdman is twofold: first, some cases where people have no reasonable option are not exploitative, even if one party benefits excessively. I think Cancer Patient is certainly an example of a false positive for Valdman's view. The second reason is a point made by Hallie Liberto. While there are many cases of exploitation where people are essentially "forced" by circumstances to accept exploitative offers, there are also more subtle and systematic reasons why one might find one's self accepting an exploitative offer. In Liberto's words:

"On my view, a necessary condition of being wrongfully exploited is that one is, in part, caged, and one's exploiter contributes a systematically related bar to that cage. The cage can be

comprised of bars, each representing a bad option determined by physical/natural constraints (like the predicament that Hiker B faces in the [**Hiker**] Case), or the bars can represent bad options that are the product of oppressive social institutions or practices.”¹⁰⁴

In the last chapter I described exploitation as insidious. It is a wrong that complicates the normative dynamics of interactions that are genuinely wrongful. Being “caged” and not more obviously forced is an illustrative example of the sort of relational inequality that I imagine.¹⁰⁵

Finally, I want to return to the case that I found so compelling against proponents of distributional accounts of exploitation:

Waiter: Country club owner A hires B as a waiter, both knowing that B will be made to endure racist insults and comments. B is paid above market price.

I find the Waiter case to be a paradigmatic example of exploitation. Having to work as a subordinate and endure racist insults is a degrading position; the owner’s willingness to profit off of the debasement of another person (even a consenting party) is wrongful. I think that the RAE captures why exactly Waiter is disquieting: the instrumentalizing of a racist hierarchy for profit. The RAE also points to the source of the problem, not a maldistribution in payment, but in an oppressive relationship. But consider this variant:

Waiter*: Country club owner A hires B as a waiter, both knowing that B will be made to endure racist insults and comments. B is paid above market price. B finds the treatment humorous and antiquated.

¹⁰⁴ Hallie Liberto, “Exploitation and the Vulnerability Clause” *Ethical Theory and Moral Practice* 17, no. 4 (2014): 619-29, 624

¹⁰⁵ Marilyn Frye makes this analogy more alive than I could hope to: “Consider a birdcage. If you look very closely at just one wire in the cage, you cannot see the other wires. If your conception of what is before you is determined by this myopic focus, you could look at that one wire, up and down the length of it, and be unable to see why a bird would not just fly around the wire any time it wanted to go somewhere... It is only when you step back, stop looking at the wires one by one, microscopically, and take a macroscopic view of the whole cage, that you can see why the bird does not go anywhere; and then you will see it in a moment. It will require no great subtlety of mental powers. It is perfectly obvious that the bird is surrounded by a network of systematically related barriers, no one of which would be the least hindrance to its flight, but which, by their relations to each other, are as confining as the solid walls of a dungeon.” Marilyn Frye, *The Politics of Reality: Essays in Feminist Theory*, (Crossing Press Feminist Series, Trumansburg, N.Y.: Crossing Press, 1983), 5-6

In Waiter*, B might actually enjoy cashing the checks paid for by people he finds pathetic and loathsome. If we asked B about the job, he might say “It’s actually pretty amazing. I get to hear the best racist jokes that terrible people remember from 1970. Then I do a reasonably easy job and enjoy my life. I live well.”

This certainly does not sound like someone who is degraded or in a position of inferiority. If that is so, does Waiter* fail to be a case of exploitation? I think not. Degradation does not have to “land” in order to be degrading, i.e. one does not need to feel and be aware of degradation for it to actually wrong. Paraphrasing Sample, the condition of being degraded is distinct from an individual’s perception. Whether or not B feels degraded, the relationship is still faulty and the advantage seeking from the club is grounded in using this substantive inequality for profit. Such a relationship, whether it has effects on B or not, is still wrongful due to its reifying racial hierarchy.

There is one more point to be made about the normative dynamics of relational inequalities. Wertheimer found it paradoxical (if not a contradiction) to identify cases of mutual exploitation.¹⁰⁶ Consider the following case:

Dominatrix: A, a man, hires B, a professional dominatrix, for sexual gratification. A pays B well and B accepts the arrangement. B plays the role of control and punishing A for A’s gratification.

On the surface, B seems to be the more plausible exploiter in this scenario, as B seems to be the one engaging in degrading treatment. However, there is a distinction between humiliation and degradation. Humiliation for sexual gratification might appear to be degradation, but this is play-acting. It is still clear who is paying whom for what, and it is still clear who the customer is.

¹⁰⁶ Wertheimer, “Exploitation: What it is,” 260-261

Furthermore, the gender dynamics and power dynamics of a dominant-submissive relationship are not simple. Sex work is practice that exists in messy non-ideal world. There are undoubtedly cases of consenting adults making an exchange for mutual benefit. While there may be moralistic objections to this sort of arrangement, there is no concern about violations of consent. But there are also significantly harmful cases of sex-work, including rape and obviously problematic forms of sexual domination and dehumanizing treatment.

What about Dominatrix*, where A demands to be treated not just in a sexually humiliating way, but in a genuinely degrading way? That would be exploitation. Treating a person as having less dignity than one has is degrading (and an example of a relational inequality) and would be exploitative if the other features were present.

3.5 THE RELATIONAL ACCOUNT AND VULNERABILITY

In the RAE I defined a unified account of vulnerability as being in a relational inequality. There is a serious conceptual challenge with understanding exploitation and vulnerability.¹⁰⁷ It is not clear what sort of vulnerability makes one subject to being exploited.

“Such an account would not only trivialize the notion of vulnerability, but would also utterly fail to illuminate the problem of exploitation: if everything, including wants and desires, can constitute a relevant vulnerability, then we seem to be arguing for a tautological definition of vulnerability according to which anything that makes you vulnerable to exploitation consists a relevant vulnerability. The phrase “to be vulnerable to exploitation” then simply means the same as “to be susceptible to exploitation”— and it is obvious (and analytically true) that one cannot be exploited if one is not susceptible to it. Clearly, such a tautological definition then doesn’t add anything to the analysis of exploitation by emphasizing that “taking advantage of vulnerabilities” is essential to the phenomenon.”

¹⁰⁷ Tea Logar, "Exploitation as Wrongful Use: Beyond Taking Advantage of Vulnerabilities," *Acta Analytica* 25, no. 3 (2010): 329-46

What kind of vulnerability matters? If it is anything it must surely be more than an analytic truth. For Logar, an account of vulnerability should be distinct from the overly restrictive use of a person's needs and more restrictive than the utilization of desires.

I agree with Logar to some degree in that I do not find arguments that using a *need* for gain is a necessary condition for exploitation compelling. Denial of a need is too fraught a criterion for exploitation. Sample addresses this problem by considering a marriage where one spouse has a genuine emotional need for the approval of their spouse.¹⁰⁸ Sample rejects the idea that emotional needs count in the same way as needs which are "prerequisites or constitutive of human flourishing."¹⁰⁹ This response is, to me, in the wrong direction. The power to dominate, set terms, or subsume another's interest in favor of one's own is not strictly limited to the denial of human flourishing.

Using someone's desires to achieve a goal is too weak a criterion for exploitation, according to Logar. More properly, it isn't that desire is too weak a criterion, but more that instrumentalizing a desire is not helpful in explaining what vulnerability is.

The mistake in this thinking is that vulnerability is not a predicate that is clearly separable from the context of the interaction; vulnerability, in this context is always vulnerability to exploitation. Logar argues that any account of vulnerability not based on need will be too vague. I think that the problem is that Logar is trying to garner resources for a theory of exploitation out of a theory of vulnerability, when the direction of explanation runs opposite. If an account of vulnerability is a substantive source of what makes a person exploitable, Logar's critique is quite problematic, **but the RAE has resources available that other approaches do not.**

¹⁰⁸ Sample, *Exploitation*, 84

¹⁰⁹ *Ibid.*, 84

The Relational account of Exploitation (RAE) is (1) robust in scope, i.e. able to cover a wide variety of cases, (2) Grounded in Advantage-Seeking, i.e. it narrowly applies to cases where advantage grounds the interaction, and (3) it provides a unified account of vulnerability.

Thinking structurally, the RAE covers a wide range of plausible cases of exploitation, narrows its conditions around relational inequalities, rather than purely distributive differences, and takes seriously the challenges involved in defining vulnerability. It is for this reason that I think the RAE is a superior account of exploitation to distributive accounts, such as Wertheimer and Zwolinski, and improves on the Kantian accounts of Sample and Wood. Perhaps the greatest strength of the RAE is that it explains why exploitation is unjust. From a moral point of view, interactions that occur between a relationally superior and inferior, such a feudal lord and a serf, are *prima facie* suspicious, due to the difference in status.

3.6 EXPLOITATION AND JUSTICE IN BIOMEDICAL RESEARCH

Not every case of exploitation is unjust, just as not every wrong is harmful. To see this more clearly, consider cases of personal exploitation, as in an intimate relationship or a parent-child relationship. A parent who narcissistically manipulates an emotionally vulnerable child into giving up her dreams of a career in music performance for the parent's own social gain may be an exploiter, but they are not acting unjustly.

For Wertheimer, the exploitation and justice exist on different normative levels:

“As I understand it, the obligation to *correct injustice* principally concerns macro-level issues and will be mostly fulfilled through research that targets the diseases of impoverished people. By contrast, the obligation to *avoid exploitation* principally concerns micro-level issues of justice and will be mostly fulfilled

through proper treatment of research subjects and, perhaps, their communities—
setting aside for the moment precisely what that involves.”¹¹⁰

Are injustice and exploitation distinct in the way that Wertheimer describes? I have to agree that the obligation to *correct* injustice does primarily concern macro-level issues, and exploitation is typically a matter of micro-level issues, such as how personal and impersonal relationships are conducted. My main contention is that exploitation is corrosive, even if it is not itself an injustice. Relational egalitarian norms, such as the ability to relate to others as an equal, have deep implications for justice. But exploitation has a propensity to make injustice worse: when exploiters have the power to dominate, benefit from existing hierarchies, or undermine the social bases of self-respect, the effects of exploitation are corrosive of justice.

A full accounting of the connection between exploitation and justice is outside the scope of this project, because I have one particular limited point that I want to make. Biomedical Research is the clearest example of how exploitation has implications for justice. My argument is as follows:

1. A critical feature of a just society is the elimination of relational inequalities.
2. Exploitative research practices have a propensity to reinforce subordinating power, rely on unequal status, or confuse participants ability to speak back to power.
3. Such practices in (2) corrode participants’ ability to respond to their unequal status, i.e. it creates/preserves relational inequalities.
4. Research that directly or indirectly produce/preserve status hierarchy is unjust.

Premise 1 is an assumption that any relational egalitarian would make, and serves to limit the application of my claim to those who accept it, apart from a specification of which relational inequalities matter. Premise 2 makes what I call the *propensity claim* about exploitative research; The scope here is narrowly focused on research. Premise 3 is an empirical claim about what

¹¹⁰ Alan Wertheimer “The Obligations of Researchers Amidst Injustice” in Joseph Millum and Ezekiel Emanuel, eds. *Global Justice and Bioethics*. (Oxford: Oxford University Press, 2012): 279-304, 280.

exploitation and how the practice of research is implemented, and I will adduce an empirical case in its favor.

Chapter 4. EXPLOITATION IN INTERNATIONAL CLINICAL RESEARCH

“Ethical principles, like other practical principles, state abstract requirements. They therefore invariably underdetermine policies and action. In embedding these principles in institutions and in practice, and in choosing policies and ways of acting, agents and institutions have to find ways of resolving that indeterminacy. Some choices are made in the process of building institutions, practices or professional standards; others are made in choosing among policies and lines of action.”¹¹¹

4.1 INTRODUCTION

I begin by quoting Onora O’Neill’s on the theoretical limits of applied bioethics not only because I agree with her claim that principles will always underdetermine choices, but also because O’Neill’s practical approach to mid-level theory is exactly the approach that I would like to model here.¹¹² The global changes in where research happens has made research ethics an absolutely critical area of study. In this space, practical problems about scientific methodology intersect with central questions of global justice in political philosophy, the scope of professional responsibility, cultural diversity and heterogeneity, and exploitation. In this chapter, I want to draw out how my Relational Account of Exploitation might inform the field moving forward.

Suppose we were able to generally agree on necessary and sufficient conditions for what counted as exploitation, regardless of the content. This would merely scratch the surface of the

¹¹¹ Onora O’Neill *Autonomy and Trust in Bioethics*, (Cambridge; New York: Cambridge University Press, 2002), 123

¹¹² John Arras, "Theory and Bioethics", *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/win2016/entries/theory-bioethics/>>.

normative issues that motivate this project. Simply being able to call a transaction exploitative does not say much. Expressing moral opprobrium generally has no specific import on the truly important questions surrounding exploitation. Should exploitative arrangements be banned? If so, under what circumstances? Can people rationally consent to be exploited? If so, how does this consent matter morally and practically? All of these questions point to a concern about the *moral force* of exploitation claims, not just whether a genuine case of exploitation has been identified. To quote Alan Wertheimer: “The important task is to identify the way in which transactions can be wrong and what we should do about them, not what words we should use.”¹¹³

Now, I do not want to discount that I think that the RAE actually is a superior account of exploitation. It has important virtues that other accounts lack, and offers a compelling explanation of the connection between exploitation and injustice. But the applied issues regarding exploitation are truly difficult applied problems.

In this chapter I want to argue for two related claims. The first is that biomedical research, and research ethics in general, ought to take exploitation to be a central problem of the field, because of the corrosive effects that exploitation has. The second is more directly related to how bioethicists, theorists, and scientists can better integrate the amorphous concerns about exploitation, writ large, into more concrete policies that that would promote ethical conduct of research by adopting the Relational Account of Exploitation.

4.2 THE LIBERAL VIEW OF EXPLOITATION

There is a distinction between the moral weight and the moral force of exploitation. The moral weight of exploitation is a judgment about the wrongness of the exploitation itself. The

¹¹³ Wertheimer, “Exploitation: What It Is and Why It’s Wrong”, 260

moral force of exploitation refers to what ought to be done in response to exploitation occurring.¹¹⁴ A morally weight case of exploitation might not be justifiably prevented. For example, it might be fundamentally oppressive to allow the state to act to prevent interpersonal exploitation within an intimate relationship. Similarly, one who gives primacy to the transformative effects of consent would not find justification to intervene in consensual acts.¹¹⁵

The distinction between moral weight and moral force is important because we can accept that exploitation is wrong without demanding that any prohibition or intervention with the transaction is justified. It is against this background that the liberal view about exploitation is rooted. Danielle Wenner argues that “liberals about exploitation” maintain two beliefs which serve to justify a fairly skeptical view of the moral force of MACE.¹¹⁶ The liberals that Wenner has in mind are most clearly Alan Wertheimer and Matt Zwolinski, whose arguments I will turn to shortly. As a general outline of the liberal view, liberals about exploitation find the normative value of consent to provide a strong *prima facie* reason to not interfere in exploitative interactions, even admitting that exploitation is harmful. This judgment is buttressed when the interaction is mutually beneficial as well. Second, liberals about exploitation argue that the benefits accrued by participants in genuinely beneficial MACE are an important source of benefits. The health access, compensation, and health infrastructure that research provides would be taken as justification for non-intervention.

The liberal view of moral force is certainly different than considering moral weight in isolation. In cases of MACE, exploiter and exploitee both benefit. If we accept that MACE is

¹¹⁴ Wertheimer, *Exploitation*. 279

¹¹⁵ Alan Wertheimer, *Consent to Sexual Relations*, (Princeton, N.J., Princeton University Press, 2003), 119-127

¹¹⁶ Danielle Wenner, "Against Permitted Exploitation in Developing World Research Agreements," *Developing World Bioethics* 16, no. 1 (2016): 36-44, 37

even a minor moral wrong, it seems we have at least a prima facie reason to prevent or interfere with exploitative transactions. But this is exactly what liberals about exploitation deny. Two of the most prominent liberals about exploitation are Alan Wertheimer and Matt Zwolinski. It is to their arguments that I now turn.

4.3 THE NON-WORSENESS CLAIM AND PERMISSIBLE EXPLOITATION PRINCIPLE

Liberals argue that interference with MACE is unjustified because preventing a mutually beneficial transaction is worse than not transacting at all. And benefitting no persons at all is certainly worse than benefitting someone. Zwolinski calls this the non-worseness claim (NWC).

NWC: Interaction between A and B cannot be worse than non-interaction when A has a right not to interact with B at all, and when the interaction is mutually advantageous, consensual, and free from negative externalities¹¹⁷

If we accept NWC, then A's exploitation of B, given B's consent and mutual advantage is not worse than non-interaction, i.e. A's exploitation is no worse than A walking away from the transaction.

So, it seems that those who think exploitation is problematic are endorsing not benefitting over benefitting. Liberals about exploitation see their opponents as endorsing the status quo over benefit. Zwolinski asks which is worse: Offering consenting people a low wage job at a sweatshop that benefits them or ignoring them? If there is no moral difference between ignoring the global poor and exploiting them, there would be little reason to see one as worse than the other. So, it must be the case that exploitation is actually worse than non-interaction if one is to argue that liberals about exploitation are wrong about the moral strength of exploitation claims.

¹¹⁷ Matt Zwolinski, "Sweatshops, Choice, and Exploitation," *Business Ethics Quarterly* 17 (2007): 689–727

For Wertheimer and Zwolinski, the payoff matrix of a particular interaction does the work here. If non-interaction is worse than interaction on exploitative terms, it is perfectly rational (even though wrongful) to be exploited. There are reasons to be careful in understanding the line of thought in this argument. First of all, it must be that non-interaction is not necessarily neglect. That person B could benefit from an interaction with person A is in no way sufficient to show that A has an obligation to interact. But what distinguishes permissible non-interaction from neglect in this context? There are reasons to think that justice and morality demand much from those with resources in addressing the plight of the global poor, it is not central to my discussion to sort out the nature of global justice. There are no clear obligations for *researchers* to engage in a research project as a matter of justice based solely on potential for benefit. One might construct a case where research is a requirement, such as victims of an unexplained illness demanding an investigation as a matter of health response, but this is a very narrow circumstance grounded in standing public health obligations. Such requirements will be rare. International clinical research is quite different, barring further argument.¹¹⁸

The challenge in opposing the liberal view is to explain why exploitation might be worse than non-interaction in cases of mutual benefit. One could appeal to the wider consequences of exploitation. This is a promising response, but is highly context-sensitive and empirical. Exploitative labor practices might be harmful, while medical research overall beneficial, and certain subcategories of labor and research might have divergent results.¹¹⁹ Regardless of the empirical result, there is a clear normative response that liberals about exploitation might adduce: The consent of the exploited in these cases matters more than the empirical results. When people give morally transformative consent, fundamental respect for the autonomy of those persons is

¹¹⁸ Danielle Wenner will expand on this point below.

¹¹⁹ Matt Zwolinski, "Structural Exploitation," *Social Philosophy and Policy* 29, no. 1 (2011): 154-79

too important. The empirical case against MACE would have to be much stronger, to the point of explaining how an exploitative arrangement harms to a greater degree than it benefits such that overriding consent is justified. Given the Liberals initial framework, we can look more closely at the context of research.

It seems permissible to conduct research in most countries, regardless of income levels. So long as basic safety is present, there is a reasonable expectation of stability, and rights are respected, there are no *obvious* objections to conducting research in a state. A sponsor could choose a high-income country (HIC) or a low/middle-income country (LMIC) without running afoul of any widely-regarded moral restriction.¹²⁰ In Eric Malmqvist's apt summation:

“If it is permissible not to make people in poor countries better off at all, by running trials at home instead, how can it be seriously wrong to make them somewhat better off, by running beneficial but exploitative trials? How can it be worse to exploit the global poor than to ignore their plight?¹²¹”

But there is a tension here. A trial run in an academic medical center in the USA costs much more than a trial conducted in a LMIC. The regulatory and ethical limitations are typically much less stringent (or at least widely vary) across the range of LMICs. It seems as though sponsors of research can “shop” for participant populations who would consent to exploitation, given that much of the world lacks access to the medical resources that accompany research studies and the compensation that comes from participation in certain trials.

¹²⁰ Absent a compelling reason and significant protections for participants, it would be wrong to conduct research in North Korea, which did not provide basic rights or protections to subjects.

¹²¹ Erik Malmqvist, "Better to Exploit than to Neglect? International Clinical Research and the Non-Worseness Claim." *Journal of Applied Philosophy* 34, no. 4 (2017): 474-488, 475

The second principle at issue is what Wertheimer calls the Permitted Exploitation Principle (PEP).¹²² This principle states that there is no justification for interfering with an exploitative transaction if six conditions are met:

1. A is under no obligation to transact with B on any terms
2. A proposes to transact with B on fair terms
3. A's transaction to B on unfair terms is to A's benefit (*ex ante*) and also serves B's interests (*ex ante*), all things considered (setting aside paternalistic arguments).
4. A's transacting with B on unfair terms will not harm other persons (setting aside externalities).
5. B makes a voluntary, informed, and rational decision to transact with A on unfair terms and we can reliably determine that this is so (setting aside epistemological arguments).
6. If A is not allowed to transact with B on unfair terms, A will *not* choose to interact with B on fair terms than are more favorable to B (setting aside strategic arguments).¹²³

In Wenner's description:

“Rather, he is making the more limited claim that regardless of the (im)morality of exploitation, ‘it is wrong to prevent Pareto superior or win-win transactions on the grounds that the terms of such transactions are unfair. The PEP refers to the *morality of regulating transactions*, and not the *morality of transactions* themselves”¹²⁴

¹²² Alan Wertheimer, *Rethinking the Ethics of Clinical Research: Widening the Lens*. (New York: Oxford University Press, 2011), 218-219

¹²³ *Ibid.*

¹²⁴ Wenner, "Against Permitted Exploitation in Developing World Research Agreements," 37

Taken together, the Non-Worseness Claim and Permitted Exploitation Principle challenges much of the anti-exploitation stance present in bioethics and international research ethics policy.¹²⁵ The only grounds for interfering in a transaction would be lack of consent, coercion, negative externalities, or an impermissible degree of harm. Let us consider a troubling case where none of these defects are present.

4.4 CASE STUDY: SURFACTANT

Surfactant: “Respiratory distress syndrome (RDS) is a breathing disorder commonly affecting premature infants. It is caused by insufficient surfactant in the lungs and is potentially fatal. Surfactant replacement therapy greatly reduces RDS mortality and is standard of care in developed countries. Such therapy is, however, too expensive to be widely available in many developing countries. A pharmaceutical firm wants to test a new synthetic surfactant in a randomised phase III trial. To obtain the best results at the lowest cost the firm prefers to use a placebo control. Aware that a placebo-controlled trial would not pass ethical review in countries where surfactant therapy is widely used, they decide to conduct the trial in Bolivia, where few infants have access to therapy. All participants will receive antibiotics and ventilator support. In addition, half of them will be randomly assigned to receive air infused with the surfactant through an endotracheal tube; the other half will receive untreated air. Parents of infants with RDS are carefully informed about the study and asked to give consent for their babies to participate. Many eagerly embrace the offer.”¹²⁶

The Surfaxin Trial was proposed (but never carried out) as a placebo-controlled randomized control trial (PCRCT) to be conducted in Bolivia by Discovery Laboratories, a private firm. Surfaxin is a surfactant that increases lung pliability in premature infants experiencing respiratory distress syndrome (RDS). Lung surfactants, like Surfaxin, are fluids containing proteins that increase lung functioning. It is notable that RDS is the fourth leading cause of infant mortality in the U.S.A. and is probably responsible for half of the neonatal mortality in resource-

¹²⁵ Alan Wertheimer “The Obligations of Researchers Amidst Injustice or Deprivation” in Millum, Joseph, and Ezekiel J. Emanuel. *Global Justice and Bioethics*. Oxford: Oxford University Press, 2012.

¹²⁶ Malmqvist “Better to Exploit than Neglect,” 475

poor environments, where surfactants and ventilators are not widely available.¹²⁷ The private drug company who developed Surfaxin, Discovery Labs, negotiated with the FDA to conduct a PCRCT rather than a superiority or noninferiority trial comparing the newly developed drug against one of the already approved surfactants because the company was not confident that Surfaxin would succeed in a superiority trial and the results of a noninferiority trial were thought to be too inconclusive according to the FDA. Discovery Labs proposed to study 650 infants divided into two arms. Half the infants would receive Surfaxin and ventilator treatment, the other half would receive ventilator treatment alone. Ventilator treatment is superior to the expected standard of care in Bolivia, but would not be an acceptable level of care in the U.S.A. or Europe.¹²⁸

Public Citizen, the non-profit organization, sent a stinging rebuke of the Surfaxin trial to the Department of Health and Human Services, which likely resulted in the radical redesign of the trial. The letter reads in part:

Particularly because the FDA approved another surfactant (Infasurf) in 1998 on the basis of studies performed between 1991 and 1993 in which all infants were treated with a presumably effective drug and none were given placebo, we call on you to immediately put a stop to plans for this unethical and exploitive study in its present design. The study is unethical because it violates the principle that placebos not be employed when there exists a standard treatment that may reduce or prevent harm, improve health or prolong life. If the study produces findings that are beneficial to patients in wealthier countries but the drug is not widely available in the countries in which it was tested, an additional dimension of unethical behavior will have been added. For the study to take place ethically, all infants must be provided with a treatment either known or expected to be effective; a comparison of the new surfactant to an already approved one would therefore be acceptable.¹²⁹

¹²⁷ Jennifer Hawkins and Ezekiel Emmanuel, *Exploitation and Developing Countries: The ethics of clinical research*. (Princeton: Princeton University Press, 2008), pp 58-60.

¹²⁸ *Ibid.*, 58-62.

¹²⁹ P. Lurie, S. Wolfe, M. Klaus, Public Citizen, "Letter Requesting that HHS Halt Plans for Unethical Placebo-Controlled Study of Drug for Respiratory Distress Syndrome",

Lurie and Wolf are right to raise a number of objections about the Surfaxin trial. But it is unclear what exactly the criticism is. They refer to illegitimate use of placebo, lack of benefit to the trial participants, lack of benefit to the trial participant's nation, burdensomeness of the trial, and lack of connection to established standards. These are all plausible normative considerations, but it is difficult to evaluate what the reasoning behind the claim is. Is it that each individual complaint is a compelling reason to not allow the trial to proceed? Or is it that, taken together, these considerations make a strong case?¹³⁰

According to the RAE, the Surfaxin trial would be exploitative based on Discovery Labs various relational inequalities with its subject population, particularly the lack of bargaining among the parties to be involved in the trial, in order to gain a license to sell Surfaxin and other corporate benefits. The lack of standing to negotiate given the extreme power and wealth differential is not itself the problem, it is the instrumentalization of that inequality that makes the Surfaxin trial exploitative.

Another central point is that the Surfaxin case would meet each of Wertheimer's six conditions in the PEP. Discovery Labs was not under obligation to conduct a trial in Bolivia, enrollees in the trial would clearly benefit compared to non-interaction, the terms of the trial

<<https://www.citizen.org/article/letter-requesting-that-hhs-halt-plans-for-unethical-placebo-controlled-study-of-drug-for-respiratory-distress-syndrome/>>. Published 2/12/2001, Accessed 7/16/2019

¹³⁰ On a policy level, it seems like two of these complaints line up with potential violations of the Declaration of Helsinki. "20. Medical research with a vulnerable group is only justified if the research is responsive to the health needs or priorities of this group and the research cannot be carried out in a non-vulnerable group. In addition, this group should stand to benefit from the knowledge, practices or interventions that result from the research." And "34. In advance of a clinical trial, sponsors, researchers and host country governments should make provisions for post-trial access for all participants who still need an intervention identified as beneficial in the trial. This information must also be disclosed to participants during the informed consent process." 64th WMA General Assembly, "WMA - The World Medical Association-WMA Declaration of Helsinki – Ethical Principles for Medical Research Involving Human Subjects." The World Medical Association, July 9, 2008. <<https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/>>. Published 7/9/2008, Accessed 10/10/2019

were exploitative, and that Discovery Labs would not have interacted with the proposed subject population on non-exploitative terms. For Wertheimer and Zwolinski, the Surfaxin case would be wrongfully exploitative, though not *worse* than *permissible non-interaction*. And given the requirements with the PEP, the liberal conclusion on Surfaxin is that it would not be justifiable to interfere with the trial moving forward.

Public Citizen's concern certainly expresses some serious disquiet in the Surfaxin trial, but the Liberal argument here is not obviously wrong. I want to look at two philosophically complex responses to the trial which share Public Citizens' disquiet. It is against my judgment that exploitative trials like Surfaxin should be allowed to go forward based on the Liberal view. I will consider two replies to the Liberal view before arguing that the RAE adds important normative and practical solutions to this dialectic.

4.5 MALMQVIST'S COMPLICITY REPLY

Eric Malmqvist starts with the assumption that health disparities in the world are unjust, and that it is exploitative to take advantage of that injustice for benefit.¹³¹ This is in opposition to the Liberal view, and takes injustice to be a sufficient (if not necessary) condition for exploitation when combined with advantage seeking. But let us focus on the practical argument for criticizing and intervening in a case like Surfaxin.

Surfaxin occurs *because* the world is unjust on Malmqvist's account.¹³² He continues with the claim that if not but for the structural injustice and deprivation in the world, no one

¹³¹ Malmqvist "Better to Exploit Than Neglect?" 480-482

¹³² *Ibid.*, 482

would enroll in the Surfaxin Trial. This counterfactual test is supposed to show that only because of the existence of injustice is the exploitative trial a live possibility.

In Eric Malmqvist's analysis, the problem with the Liberal view on exploitation is that it allows complicity in wrongs to be ignored. Contributing to wrongs is a *pro tanto* wrong for Malmqvist, and there exist a number of features that would make different sorts of contribution more or less wrong. Since the Surfaxin trial is an exploitative interaction that only exists because of injustice, those who contribute to this situation are (to greater or lesser degrees) complicit in this wrong. Such complicity is itself wrong.

Contribution is causal for Malmqvist, and such a standard has to be prospective (as opposed to retrospective) in order to be action guiding, following Lepora and Goodin.¹³³ The prospective stance is not only normative but also technical, for it is incredibly difficult to sort out causal responsibility in the case of structural injustice. This point does not escape Malmqvist. Structural injustice is a difficult thing *not* to be complicit in, and it is not clear how one would sort out the degrees of causation in any plausible way.

So, the *expected* amount of contribution to structural injustice is the source of wrong in Surfactant. In Malmqvist's words:

More generally, the upshot of my argument is this. When preying on structural injustice, exploiters should not be assumed to leave the world outside the individual exchange unaltered. They potentially contribute to the unjust circumstances they take advantage of, and are thus guilty of a distinct wrong: complicity. Because it potentially affects third parties negatively, exploitation that arises from structural injustice can be worse than neglect even when it is better for its victims and proceeds with their consent. Here the non-worseness claim, whether true or not, fails to apply.¹³⁴

¹³³ Chiara Lepora and Robert E. Goodin, , *On Complicity and Compromise*. (Oxford: Oxford University Press, 2013)

¹³⁴ Malmqvist "Better to Exploit Than Neglect?" 485

Complicity is certainly wrong, but this response leaves me puzzled. In one sense, complicity seems too strong a claim. Consider a variation on Cancer Treatment:

Cancer Treatment*: I live in an isolated rural region, in a region in which health care insurance is unavailable, *due to structural injustice*. *If insurance were available, there would be more options for care, but as it stands, there is only one qualified surgeon in the territory*. After a routine check-up she informs me that I have a cancer that will swiftly kill me unless surgery is done. Only she can do the surgery. I'd be willing to give everything I own in exchange for the needed surgery, but the actual price she charges is modest, better than fair. This is business as usual for the surgeon. She makes her living by striking bargains like this with people in conditions like mine. She makes a good living.

In this case, the surgeon is taking advantage of structural injustice. This makes Malmqvist's account problematic. The surgeon does not use the injustice to egregiously exploit, but she does take advantage of injustice for her own benefit.¹³⁵ The surgeon is complicit in injustice to the degree to which her actions have a potential to perpetuate injustice. The surgeon potentially perpetuates this system *even more* by keeping the region stably served with a surgeon. Perversely, egregious exploitation on the part of the surgeon would make her *less* complicit, as exploitation makes people (rightfully) angry. Exploitation has the potential to undermine the stability of the unjust arrangement, whereas charging a "better than fair" rate just makes the structural injustice another part of the *status quo*.

In another sense, the complicity argument is too weak. The idea that the wrong of surfactant is that it is wrong to *potentially* make structural injustice worse seems a half-measure. When a problem is systematic, there is no fault in blaming the further degradation of the system. But there is a reason that Malmqvist does not adopt this approach: the causal approach makes sorting out the empirical reality of such claims inscrutable. The problem here is that structural

¹³⁵ I am not certain whether this would be an example of exploitation on Malmqvist's account, because I cannot tell if benefitting from injustice counts as exploitation or if only more restricted cases of advantage seeking, such as "excessive benefitting" count as exploitation. This point does not affect the large argument here.

injustice is the wrong source of concern. Injustice is too general and nonspecific to connect to particular complaints about Surfactant. I think that there is a more fundamental reply available against the Liberal view. It is to that reply I now turn.

4.6 WENNER'S BASIC STRUCTURE REPLY AND THE DEMOCRATIC MODEL

Danielle Wenner and I have very similar views of exploitation and the structural problems inherent in research ethics, but there is one crucial difference. Her view of exploitation is grounded in exploitation as a form of domination, whereas my view is relational. This is a subtle difference, that I hope to explore more in later projects, but the matter at issue is research ethics.

Wenner's concern with Surfactant is both empirical and theoretical. On the empirical question, she is surely right that subjects in LMICs are typically in a much worse bargaining position than they could be. Participants are limited because the ability to coordinate to demand different terms is highly limited, as is the ability to enforce whatever terms are agreed to.¹³⁶ Resources do not only buy medical care, resources buy communication ability, education, political influence and lawyers. A participant who feels wronged in the US (and has the means to do so) has a number of resources to push back on perceived exploitation. This just simply is not the case for many people in LMICs.¹³⁷ Individual *ad hoc* responses will fail to address a collective action problem. Unions and an explicit attempt to solve the collective action problem is the preferred

¹³⁶ Wenner "Against Permitted Exploitation," 40

¹³⁷ This is also not the case for many professional participants in the USA. See Robert Helms, *Guinea Pig Zero: An Anthology of the Journal for Human Research Subjects*, (New Orleans, LA: Garrett County Press, 2002)

solution, but there are empirical constraints on coordination in a case like Surfactant that are difficult to overcome.

The theoretical criticism is quite deep. Consider a revised version of PEP, which maintains Wertheimer's conditions, but adds two empirical claims:

PEP*: Given that cost is a limiting feature on research, and that research is a general good. In order to increase the amount of good in the world, research should be conducted at the most cost-effective price.

Taking PEP* seriously, the Liberal about exploitation has to bite an awfully big bullet. If a little bit of exploitative research makes participants better compared to baseline, and plausibly improves the world, then more is better. In Wenner's words:

“PEP*: If an otherwise exploitative potential transaction between A and C would serve C's interests, all things considered, if the transaction will not harm anyone external to the transaction, and if C would make a voluntary, informed, and rational decision to transact with A, then we have an obligation to maximize opportunities for As to so exploit Cs. But surely we do not want to accept PEP*, as it commits us to a moral obligation to promote what we have already conceded are immoral interactions.”¹³⁸

The Liberal position seems to me to endorse PEP*, which is incredibly implausible given the sheer volume of wrong that would be perpetuated in the name of improved outcome. It would be a strange thing if morality demanded a race to increase the amount of exploitation in the world. Only scientific quality and stability concerns would stop downward pressure to move more research to a LMIC.

The main point where I disagree with Wenner is that Wenner argues that the entire system of health delivery ought to be regarded as a basic structure, in the Rawlsian sense.¹³⁹

¹³⁸ Wenner “Against Permitted Exploitation,” 42

¹³⁹ Danielle M. Wenner, "The Social Value Requirement in Research: From the Transactional to the Basic Structure Model of Stakeholder Obligations." *The Hastings Center Report* 48, no. 6 (2018): 25-32

One might take Wenner's argument to be in line with Thomas Pogge's responsibility argument about ill-health.¹⁴⁰ But she takes the widespread effects that clinical research has on health outcomes to be sufficient to make the enterprise of research a site of political justice. One reason for this is to capture the systematic nature of inequality and explain how domination might obtain in a more politically salient way, as opposed to

There is much I favor in Wenner's reply to the liberal view, and I find myself agreeing with many of her claims, and Malmqvist's structural approach resonates as well. But the complicity claim understates the wrongfulness of exploitation, and focuses too much normative attention on the individual actors who are only tangentially connected to wrongful conduct, as opposed to responding to the inequality of those wronged by exploitation. Wenner's Basic Structure reply avoids this problem and gets to the heart of the matter: the transactional model of fairness that undergirds the Liberal approach to exploitation is inadequate to respond to the challenge that exploitation presents. But her account takes impact on life chances itself to justify a Rawlsian basic structure. This is too strong, for political communities are not constituted by impact alone. Though I do not wish to belabor the point too much, impact on life outcomes alone is insufficient to generate the political order associated with a basic structure.

The parts of domestic political systems stand in relations of super- and subordination. Some are entitled to command; others are required to obey. Domestic systems are centralized and hierarchic. The parts of the international-political systems stand in relations of cooperation. Formally, each is the equal of all the others. None is entitled to command; none is required to obey. International structures are decentralized and anarchic.¹⁴¹

¹⁴⁰ Thomas W. Pogge, "Responsibilities for Poverty-Related Ill Health." *Ethics & International Affairs* 16, no. 2 (2002): 71-79.

¹⁴¹ Kenneth Waltz, *A Theory of International Politics*, (New York, NY: McGraw-Hill, 1979), 88

At the very least, Wenner owes a more significant argument as to why impact on health outcomes makes the entire research enterprise a basic structure. It is also my view that the REA addresses this worry without the need to establish a controversial claim about shared political community.

I also think that there are other grounds available for making a similar point. It is wrong for an egalitarian society to tolerate, license, or cause a corrosion of relational equality within another society. This view complicates the picture of research ethics presented by Wenner, but I think these are important and valuable complications to have. What grounds relational equality across societies is not simple to determine (nor is it within a society). The practical effect of such a conflict is to widen the scope of conversation, not just to compensation, but to how research is structured, what rights participants have, and what sorts of regulatory, safety and

The global context of research ethics is the most significant change in the normative landscape since the emergence of the field. What was a matter of national law and University policy is now a mixture of international policy statements, overlapping multi-country contract research organizations, academic research, government research, and profoundly different material conditions for subject populations.

4.7 INDIVIDUAL EXPLOITATION AND JUSTICE SENSITIVE EXPLOITATION

While the RAE is broadly applicable to cases of exploitation, there is a tension that has to be acknowledged in how the account distinguishes among cases of exploitation, cases of non-exploitation, and injustice-connected corrosive effects. I have called cases like Hiker and Scholarship exploitation, and I will not change my mind here. But the main response that I have to the problems of clinical research that I adduce in this chapter are grounded in group-based justice sensitive accounts of exploitation's effects. The tension is this: it appears woefully

underdetermined to claim that a case like Hiker leads to downstream effects on justice and relational inequality; in fact, we can imagine an opportunistic humanitarian who exploits only the exploiters of the world and gives the proceeds of that exploitation to improve the lot of those who are subordinated in society. However, if the justice-sensitive effects only activate some of the time, there is a gap in how the RAE operates that needs to be filled out. How and why does *some* exploitation lead to justice concerns that other exploitation does not?

As way of a response, I want to discuss what relational equality means for the RAE. It is not possible to determine if a relationship is equal or unequal, full stop. Equality in a relationship must be further explained in terms of some set of criteria; essentially equality is a two-place predicate. Relational equality refers to equality *in terms of* social relations among people. The “modes” of inequality that I have referred to, i.e. inequalities of standing, command, and esteem define these social relations and serve as the definition of vulnerability in the RAE.¹⁴² But a case like Hiker, Scholarship, or other interpersonal cases of exploitation require careful analysis to avoid falling into intuition-based mystery.

In cases of interpersonal exploitation, the core sources of relational inequalities might be present, such as in a case of an overly deferential wife in a patriarchal society whose husband exploits this inequality. But a case like Hiker does not obviously fit this model. In Hiker, there is no social-group based dynamic described, and if anything, the social groups that A or B might be in and whether one is higher or lower seems disconnected from whether A’s offer to sell the antidote at an exorbitant price is exploitative. The reason why Hiker is exploitative is the inequality of command, i.e. dominant power that A has over B due to B’s perilous state. Treating a fellow

¹⁴² Elizabeth Anderson, "Toward a Non-Ideal, Relational Methodology for Political Philosophy: Comments on Schwartzman's "Challenging Liberalism"." *Hypatia* 24, no. 4 (2009): 130-45, 132

person in desperate need as an opportunity to extract resources is a clear inequality in status *qua* basic responsiveness.

A case like Scholarship is also instructive.¹⁴³ What exactly is the relational inequality at issue? Part of the problem is that the case is under-described, and thus remains ambiguous. Rather than just stipulate an answer to solve this ambiguity, I want to describe the possible dynamics that would make a difference to the RAE without deepening the mystery. First, there are some types of competitive “gamesmanship” that are unobjectionable and near ubiquitous in competitive scenarios like athletics, politics, job-seeking, and academic awards.¹⁴⁴ There are also examples of gamesmanship that are regarded as beyond the pale, such as Ben Chapman’s repeated use of racial slurs against Jackie Robinson during an at-bat.¹⁴⁵ Chapman’s claim that he was simply acting for competitive advantage (even if genuine) does not mitigate the relational harm. Furthermore, supposing that the action were taken simply out of a desire for competitive advantage, I think Chapman’s actions become exploitative due to this advantage-seeking, rather than merely abusive. What makes Scholarship difficult is a lack of detail on the motivations, knowledge, and nature of the act involved. The hard case is one where we suppose that A knows that B is particularly vulnerable to a certain kind of comment that B would regard as causing a relational inequality, but would fail to qualify as putting B in the condition of inequality. There are some cases where I do

¹⁴³ As a reminder: **Scholarship** (modified from Ruth Macklin): Two students are competing with each other for a scholarship. Prior to the deciding interview, A insults B, knowing that B is sensitive to harsh comments. B does very poorly in the interview and A wins the scholarship. I take “harsh comments” to mean something beyond the pale, but this could also be interpreted as something that B perceives to be beyond the pale, but that B is simply thin-skinned or easily rattled. I would like to credit Sara Goering and Michael Blake for pushing me on this point.

¹⁴⁴ One competitor saying to another “Good luck. You’re going to need it” is clearly not degrading under any scenario absent some very compelling contextual meaning.

¹⁴⁵ Marc Tracy, “69 Years Later, an Apology for Robinson.” *The New York Times*, April 15, 2016: B14

see a relational equality that would derive from what we might call *idiosyncratic vulnerabilities to exploitation*.

In a case like Scholarship or Hiker, I do not see an idiosyncratic vulnerability to exploitation. Rather, in Scholarship (in my interpretation) something disrespectful and beyond the pale has happened and in Hiker there is a failure of responsiveness. Idiosyncratic vulnerabilities to exploitation are most common in intimate relationships where one's ends are bound up in the ends of another. Being deferential because of systematic reasons makes one exploitable and so does being deferential because one's intimate relation instrumentalizes the connection that exists.¹⁴⁶

So to return to the main tension, how do cases of exploitation like Hiker and Scholarship connect with the justice-sensitive effects of exploitation that are central to this chapter? The first part of my answer is that there is an empirical component here. Conceptually, justice is ill-suited to addressing cases that are less systemic and broad and more idiosyncratic and narrow. If there were a rash of exploited and snake-bitten Hikers losing significant resources to antivenom sellers, there would be more reason to think that the justice sensitive concerns activate. To make the subtle analogy obvious, drug prices for insulin, the availability of insurance and emergency health infrastructure, and how policy is made on the distribution of resources that might address these problems are frequently cited as both exploitative and a justice concern.¹⁴⁷ Here the same type of relational inequality, a failure of responsiveness to the suffering of persons is, quite plausibly, the

¹⁴⁶ Sample discusses a similar problem for respect-based accounts in Sample *Exploitation* 2003, 92-95, without drawing many conclusions about how the normative dynamics of intimate relationships connect to exploitation. Part of the underlying issue is that a clear analysis seems to require disentangling what is the responsibility of the agents involved from the systematic issue at a very high level of specificity, and that simply seems impossible given the empirical challenges of understanding psychological causes at both a population and individual level. I take a different track in the rest of my response here.

¹⁴⁷ This case is meant as an analogy and not as a description of how insulin pricing and health policy in the US came to be; surely that story is significantly more complex and I could not offer a complete historical analysis here. My purpose is just to show how the RAE would respond.

same type of inequality involved in Hiker, but with some aggravating features regarding the causes of the inequality and degree of advantage seeking. If, in Hiker, we learned that A was breeding and releasing poisonous snakes near hiking areas popular with well-off hikers, the RAE would treat the cases similarly, the corrosive effect that contributing to the problem causes would give rise to a justice concern.

I do not think that the tension is so easily solved, as the distribution of intentions and responsibility in the real world makes it very difficult to sort out what causes a group to become, remain, or escape oppressive inequalities. If the problem to be solved is how and why some kinds of exploitation raises justice concerns and some does not, there is no way to avoid talking about causes in the world. This complicates the analysis and means that the RAE cannot guide action *absent significant empirical knowledge* about what does and does not work. I am willing to accept this point, unabashedly. There is good evidence to think that the modes of relational inequality that I have cited: hierarchies of standing, command, and esteem are strongly connected with the corrosion of relational equality, and that is why these sorts of inequalities lead to injustices. This is not an analytic truth, where I have simply defined relational inequalities as hierarchies pretheoretically. Being seen as a self-authenticating source of reasons, a being deserving of response when basic needs are threatened, and a being with dignity and not mere price is how egalitarians describe the state of equality. The reality of subordination undermines egalitarian relationships in the real world. If a capability imbalance between A and B did not undermine the legitimacy of either *qua* self-authenticating source of reasons, etc. then that imbalance is not an inequity, but a mere descriptive inequality.

My final response is that there is one more thing that the RAE does say as a matter of achieving egalitarian ends. Suppose that a little exploitation went a long way towards achieving

relational equality. It is not surprising that the RAE would condemn this as wrongful. But does this demand a prohibition? We can make a distinction between the moral right to exploit and the fact of exploitation occurring, or the use of exploitation to achieve some other good. The RAE precludes a moral right to exploit. Exploitation is a wrong, and where it occurs it is wrongful. It is also true that enforcing a prohibition might be unwieldy, lead to unintended effects, or breed resistance and be self-undermining. Bargaining with exploitation is unacceptable under the RAE, and in my mind, but that is not the only reason why policymaking might tolerate exploitative arrangements. When this happens, we should be clear what a legitimate reason for toleration is. Under the RAE, achieving a further good is never going to be a sufficient reason to tolerate exploitation.

4.8 CONCLUSION

In this chapter, I have argued that the Liberal approach to the NWC and PEP are deeply problematic, for both empirical and theoretical reasons. I located the primary wrong of the Liberal approach to insufficient attention to how relational inequality deforms the social context in which research occurs.

I began this dissertation with the claim that exploitation is a difficult concept, and I remain committed to this point; exploitation drives intuitions in many different directions, and there are good theoretical reasons to be cautious about how a complex social phenomenon can be clearly apprehended and described with theory alone.

I do not think that research ethics is poised for (or in need of) a revolution, at least in terms of the tools available to address exploitation, prevent exploitation, and build a more democratic model of research ethics. The problem is the insidiousness of exploitation. The tools

to address this exist, but, by and large, the existing normative frameworks do not take exploitation and its corrosive effects on justice seriously enough. While I admit that it is counterintuitive to deem transactions that are consensual and mutually beneficial to be wrongful, this intuition does not survive scrutiny.

Ensuring transactional fairness by eliminating coercion, deception, and manipulation are surely positive policy goals, and are near universal goals among every stakeholder in research. But without addressing the deeper structural problems that make exploitation possible, the likelihood is that egalitarian norms will degrade further. The autonomy-centric individualistic model of research ethics is limited, especially in dealing with complex problems like the corrosive power of exploitation in a globalized world. These limitations are well-documented, but such an approach has tremendous inertia.¹⁴⁸

Ceding the argument over exploitation to be a calculation over relative shares and positive outcomes misses the critical point that the normative constraints on the enterprise of research are substantive. My hope is that this project contributes to the growing movement of scholars, subjects, practitioners, and policymakers who want research to be something we do together for the benefit of humanity.

¹⁴⁸Ezekiel Emanuel, David Wendler, Jack Killen, and Christine Grady, "What Makes Clinical Research in Developing Countries Ethical? The Benchmarks of Ethical Research." *Journal of Infectious Diseases* 189, no. 5 (2004): 930-937.

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