

Sweatshops: Economic Analysis and Exploitation as Unfairness

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Received: 11 July 2015 / Accepted: 8 February 2016
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Abstract The economic and moral defense of sweatshops given by Powell and Zwolinski (J Bus Ethics 107:449–472, 2012) has been criticized in two recent papers. Coakley and Kates (J Bus Ethics 117:553–558, 2013) focus on putative weaknesses in the logic of Powell’s and Zwolinski’s argument. Preiss (Bus Ethics Quart 24(1):55–82, 2014) argues that, even granting the validity of their economic argument, Powell’s and Zwolinski’s defense is without force when viewed from a Kantian republican viewpoint. We are concerned that sweatshop critics have misinterpreted the economic literature and overstated the conclusions that follow from their ethical premises. We show that the best understanding of the current economic literature supports Powell’s and Zwolinski’s conclusions about the negative effects of sweatshop wage regulation, and that it is unreasonable to reject economic analysis in moral argument against sweatshops even from a Kantian perspective. Additionally, we defend the theory of exploitation as unfairness given by Wertheimer (Exploitation, 1996), and show how economic analysis can be applied to that theory to identify cases of sweatshop exploitation.

Keywords Economic analysis · Exploitation · Fairness · Minimum wage · Sweatshops

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Abbreviations

OIC Ought implies can
PDDBE Perfect duty of beneficence to employees

Introduction

Maitland (1997) wrote of a great “non-debate” over sweatshops. Since Maitland’s paper, however, there have been a number of articles both attacking and defending the ethics of sweatshop labor. Arnold and Bowie (2003) provided a critique of sweatshops from a Kantian perspective, and sought to establish the economic feasibility of a “living wage” above existing market levels. Concerned that Arnold and Bowie had asked too much from Kant, and that they had misread the minimum-wage literature, Sollars and Englander (2007) offered a rebuttal, to which Arnold and Bowie (2007) replied.

Zwolinski (2007) continued questioning the ethical arguments made by sweatshop critics, and Powell and Zwolinski (2012) presented a sustained critique of the economic and ethical case against sweatshops. Recently, Coakley and Kates (2013) and Preiss (2014) have attempted to rebut Powell and Zwolinski, the first from an economic, and the second from an ethical, perspective. We are concerned that sweatshop critics have misinterpreted the economic literature and overstated the conclusions that follow from their ethical premises.

In this paper, we consider the criticisms of Powell and Zwolinski made by Coakley and Kates and by Preiss. In Section I, we briefly summarize Coakley’s and Kates’ argument. Although we find the argument problematic in some respects, we grant that they have identified a logical

possibility that workers might not be harmed by wage regulation of sweatshops. In Section II, we present a discussion of the best available evidence regarding such regulation, and conclude that this logical possibility has little empirical support. On the basis of the “economic case” made in Section II, we consider Preiss’s argument in Section III. Preiss generously accepts the economic case made by Powell and Zwolinski, and then tries to show the irrelevance of economic argument to some ethical objections to sweatshops. To the contrary, we find that economic analysis continues to provide important insights into these ethical objections to sweatshop labor. To further explore these insights, we present in Section IV a defense of Wertheimer’s (1996) theory of exploitation, and show how the theory might be used to determine when sweatshop exploitation exists. Thus, we believe that we have adopted a position intermediate between the blanket acceptance and rejection of the claim that sweatshops are exploitative.

Coakley and Kates Attempt a Rebuttal

Coakley and Kates reformulate Powell’s and Zwolinski’s argument as follows:

- (P1) Sweatshops are better for workers than the available alternatives.
- (P2) Regulating sweatshop labor will lead to a decrease in sweatshop employment.
- (C) Therefore, regulating sweatshop labor will be harmful to workers.¹

Coakley and Kates are concerned primarily with the logical validity of this argument. They claim that for the argument to be logically valid P2 must be replaced by a premise such as:

- (P2′) Regulating sweatshop labor will lead to greater overall harm to workers than not regulating sweatshops.

Coakley and Kates then proceed to adduce logical possibilities that contradict P2′.

Rather than engage in a discussion whether Powell’s and Zwolinski’s argument needs some different premise (or, indeed, if Coakley’s and Kate’s reformulation is correct), we prefer to focus on the question of the truth of the argument’s conclusion. Coakley and Kates in fact begin their attack on the argument, not with a discussion of validity, but with the claim that the evidence for P2 is

“mixed,” (Coakley and Kates 2013, p. 554). The use of the term “mixed” suggests that there is some rough balance in the evidence for and against the claim. As such, labeling of the evidence for P2 as “mixed” may lead to a potentially misleading conclusion. Mixtures occur in varying proportions, and understanding the proportion is important.

In addition, Coakley and Kates claim that P2 rests upon “contested economic” assumptions (p. 554). The only evidence they present for the contested nature of this premise, however, consists of citations to two papers, (Arnold and Hartman 2005; Pollin et al. 2004), one of which presents no original economic analysis. Although as a strict matter of logic only one counter-example is needed to disprove a general statement, such a criterion is far too strong to use in any empirical discipline. In economics, what is important for accepting a claim is the totality of the evidence. We present a review of the relevant literature below, and argue that the best view of the evidence is that those concerned with the welfare of sweatshop workers should accept that P2 is correct, and, even more importantly, that C is true.

The Economic Evidence for Harm from a Minimum Wage

Neumark and Wascher examined 102 studies of the impact of minimum wages. Among those 102 studies, Neumark and Washer selected 33 studies which they believed to be more credible as those studies met a higher standard of methodological rigor. They conclude:

“Although the wide range of estimates is striking, the oft-stated assertion that the new minimum wage research fails to support the traditional view that the minimum wage reduces the employment of low-wage workers is clearly incorrect. Indeed, in our view, the preponderance of the evidence points to disemployment effects... Of these (102 studies), by our reckoning nearly two-thirds give a relatively consistent (although by no means always statistically significant) indication of negative employment effects of minimum wages, while only eight give a relatively consistent indication of positive employment effects. In addition, we have highlighted in the tables (included in their survey of 102 studies) 33 studies... that we view as providing the most credible evidence; 28 (85 percent) of these point to negative employment effects. Moreover, when researchers focus on the least-skilled groups most likely to be adversely affected by minimum wages, the evidence for disemployment effects seems especially strong.” (Neumark and Wascher 2007, p. 121)

¹ (Coakley and Kates 2013, p. 554) We have relabeled the premises and conclusion.

Neumark and Wascher further concluded that among those studies which did find a zero or positive impact of minimum wages on employment, there was a clear pattern of the methods used in such studies not allowing sufficient time for employers to “adjust their the production process to economize on low-skilled labor” (Neumark and Wascher 2007, p. 122) as a result of the changes in minimum wages.

Arguably, not all of the minimum wage studies that Neumark and Wascher (2007) reviewed are equally relevant to the issue of whether higher minimum wages lead to lower levels of employment in developing countries. Perhaps particular attention should be paid to those studies which examine the effects of minimum wages in the types of labor market conditions found in such countries. Among the 102 studies of the minimum wage Neumark and Wascher (2007) analyzed, fifteen were focused on developing countries. Of those fifteen (reported in Table 4 of the Neumark and Wascher article), twelve studies found evidence of negative employment effects among at least some of the demographic groups considered. For the remaining three studies, there was no meaningful evidence of systematic changes in employment attributable to the minimum wage.

Of the twelve studies that did find negative employment effects, one study (Bell 1997) analyzed the impact of minimum wages in Mexico and Colombia. A negative statistical association between the minimum wage and employment was found in Colombia, but no systematic link was evident in Mexico. A second study (Feliciano 1998), found a negative employment effect for females, but no clear statistical pattern for males. A third study among the twelve (Montenegro and Pagés 2004) found negative employment effects for younger, unskilled workers but positive employment effects for female workers.

Neumark’s and Wascher’s 2007 paper represented the most comprehensive (including advanced and developing economies) review of the evidence regarding the impact of a minimum wage up to that time. Since 2007, there have been a continuing and significant number of research efforts to examine the impact of minimum wages on employment in developing countries. One such study (Dinkelman and Ranchhod 2012) did find no significant evidence of short run disemployment effects among domestic workers in South Africa. A second study, focused on South Africa (Bhorat et al. 2014), examined whether higher minimum wages were associated with changing employment levels in five sectors of the South African economy (retail, domestic labor, forestry, taxi services and private security). Among the labor in those sectors, there was no significant impact of higher minimum wages.

It is reasonable to observe, however, that since Neumark’s and Wascher’s 2007 research review, there have

been an impressive number of studies that have found negative employment effects in developing countries associated with higher minimum wages (Alaniz et al. 2011; Besma 2014; Bird and Manning 2008; Gindling and Terrell 2007, 2009; Harrison and Scorse 2010; Meer and West 2013; Pauw and Leibbrandt 2011; Viet Cuong 2014; Wang and Gunderson 2011). Of course, it would not be appropriate to assess the precise likelihood that higher minimum wages lead to disemployment effects in developing countries by simply adding up the number of studies finding results that are supportive versus inconsistent with that hypothesis. However, given the variety of developing countries studied among this list of articles and the strength of the results offered in these studies, we claim that the proposition that significant increases in the minimum wage reduce employment in the developing world is more likely to be true than false.

Moreover, the evidence supports the claim that it is the least advantaged that are most harmed by minimum wage regulation. Considering the scholarly literature on the possible effects of a higher minimum wage on less advantaged workers, the Neumark and Wascher 2007 review finds strong evidence that a higher minimum wage increases the risk that the least-skilled workers will be fired from existing jobs, or have greater difficulty in being hired for new jobs. Additionally, among the studies not considered by Neumark and Wascher (2007), a pattern of higher minimum wages leading to disproportionately adverse effects on less advantaged workers was observed in several studies that focused on the impact of higher minimum wages in developing countries (Addison et al. 2013; Alaniz et al. 2011; Besma 2014; Betcherman 2012; Gindling and Terrell 2007; Meer and West 2013; Pauw and Leibbrandt 2011; Wang and Gunderson 2011).

Much of Coakley’s and Kates’s argument turns on the notion that increased sweatshop wages will lead to increase in non-sweatshop employment, due to an “employment multiplier.” (Coakley and Kates 2013, p. 557) We are not aware of any economic literature which estimates actual aggregate changes in consumer spending in developing countries subsequent to an increase in the minimum wage. The closest thing that is relevant to this research question is an analysis done by Aaronson and French (2013) who, on the basis of a number of analytical assumptions, estimated the effect of a proposed increase in the minimum wage from \$7.25 to \$9.00 per hour included in President Obama’s 2013 State of the Union address. Aaronson and French (2013) estimated that such a contingency would lead to an increase in real GDP by up to 0.3 percentage points. However, their analysis indicates that “a minimum wage hike provides stimulus for a year or so, but serves as a drag on the economy beyond that.” (Aaronson and French 2013,4) Such a pattern of impacts of a higher

minimum wage on macroeconomic spending would not match up with the pattern that Coakley and Kates suggest.

An additional issue relating to macroeconomic multipliers relates to an understanding of their magnitude. A multiplier measures the change in the size of an overall economy (typically measured by GDP) compared to an initial change in spending (e.g., in government spending, private investment spending, or consumer spending). A ‘cumulative multiplier’ (as distinct from an ‘impact multiplier’) measures the effect on the overall economy after a sufficient time period for the full effect of the initial change to have been realized. Technically, the size of a multiplier measures the ratio of the change in overall economic activity relative to initial change in spending. Recent estimates for the magnitude of the cumulative multiplier for developing countries (Ilzetzi et al. 2013) indicate a value of 1.6. That is, if there was a sustained (but note Aaronson and French (2013) suggest that the impact may be transitory rather than sustained) increase in consumer spending in a developing country of \$1 M, then, over time, there would be a cumulative increase in total economic activity of \$1.6 M. Ilzetzi et al. (2013) discuss at length the different economic variables or conditions that would potentially impact the estimated measures of the multiplier (i.e., the degree of economic development, the degree of exchange rate flexibility, openness to trade, the national debt to GDP ratio, and the extent to which the increase in government spending which triggered the multiplier process comprises government investment relative to government consumption). Auerbach and Gorodnichenko (2012) also offer evidence that the size of the multiplier tends to be greater when an increase in overall spending is undertaken during a recession than during periods when there are fewer idle resources in the economy.

This cumulative multiplier estimate of 1.6 suggests that even if Coakley and Kates were correct about a higher minimum wage contributing to an increase in total consumer spending, the cumulative additional effect of that pattern would have only a modest additional impact on the overall level of economic activity. Thus, for example, in an economy with a GDP of \$100 M dollars, the result of a \$1 M increase in consumer spending would result in a GDP of \$101.6 M.

Although we are aware of only one estimate of the magnitude of the cumulative multiplier for the developing world (Ilzetzi et al. 2013), there is considerable literature concerning the larger issue of minimum wage regulation as a tool to accomplish meaningful progress in assisting low-income workers or the poor, more broadly. Ehrenberg and Smith (2015) and Borjas (2013), respectively, authors of two widely used textbooks in labor economics, in reviewing the literature relating to the impact of the minimum wage in fighting poverty (in admittedly developed

economies) find that the minimum wage is not a reliable poverty-fighting tool. These two sources find that negative employment effects of a higher minimum wage impede progress toward that goal. Also, many of the poor do not benefit from the higher minimum wage either because they are not employed or because their wage is already above the minimum wage threshold and many of the beneficiaries of the minimum wage are non-household heads from families that are not poor. Similarly, Neumark and Wascher (2002, p. 333) find that the distributional impacts of higher minimum wages “more closely resemble income redistribution among low-income families than income redistribution from high to low-income families.” The above perspectives are based on analysis of the minimum wage in the United States.

Sen, Rybczynski, and Waal study the impact of the minimum wage in Canada, and conclude, “The ‘negative’ effects of an increase in the minimum wage might not be restricted to higher teen unemployment. A higher minimum wage may paradoxically result in more poverty as the increase in teen unemployment results in a drop in household income among low-income families. Therefore, the negative spillovers of a higher minimum wage may be significant and mitigate the benefits of higher earnings to the working poor who remain employed.” (Sen et al. 2011, p. 46).

Gindling (2014) has studied the limitations and potential usefulness of the minimum wage in fighting poverty in a number of developing countries. He argued that although higher minimum wages might lead to some anti-poverty impact, the result is likely to be modest, unpredictable, and capricious—creating negative employment effects and winners and losers among poor households. He concluded that minimum wages “could be part of a comprehensive poverty-reduction package but should not be the only, or even the main, tool to reduce poverty.” (Gindling 2014, p. 1)

In their study of the impact of higher minimum wages in Indonesia, Bird and Manning also found tradeoffs resulting from such a policy. Some families enjoyed higher incomes and an escape from poverty. However, an analysis of the net benefits of higher minimum wages revealed, “only one in five poor households gain through higher incomes, while four out of five poor households lose through higher prices.” (Bird and Manning 2008, p. 930)

Similarly, Pauw and Leibbrandt’s study of the impact of higher minimum wages in South Africa found that the beneficiaries of higher minimum wages tended to be concentrated among the less poor or non-poor families. Their results showed that over two-thirds of the poor experienced decreases in their disposable income levels as a result of job losses and rising prices. (Pauw and Leibbrandt 2011) Neumark, Cunningham, and Siga examined the effect of

minimum wages in Brazil. They found, “The estimates provide no evidence that minimum wages in Brazil lift family incomes at the lower points of the income distribution; if anything some of the evidence points to adverse effects on lower-income families.” (Neumark et al. 2006, p. 136)

To be fair, Lustig and McLeod (1996) conclude that higher minimum wages were statistically associated with reductions in the degree of poverty among a cross section of twenty-two countries in Latin America and Asia. However, Lustig and McLeod conclude their paper by acknowledging that their results are based on a methodology designed to account for short run impacts of a higher minimum wage and state, “Even if raising the minimum wages can be shown to reduce poverty in the short-run, the long-run impact could be the opposite because minimum wages are likely to reduce employment opportunities in better quality jobs.” (Lustig and McLeod 1996, p. 15)

Similarly, Kapelyuk, in a study of the link between minimum wages and poverty/income distribution in Russia, reports, “The results indicate slight poverty-reducing effects of the minimum wage.” (Kapelyuk 2014, p. 2) However, he concludes his analysis by noting, “The lagged effects of minimum wage on poverty deserve special interest. Such effects could be poverty increasing, and in such an event they could diminish or even eliminate contemporaneous poverty-reducing effects.” (Kapelyuk 2014, p. 30)

Indeed, it has been argued that most of the research on the impacts of higher minimum wages on employment and on the least-advantaged groups within the labor force may offer an incomplete picture of the consequences of minimum wages in developing countries. For example, in their study of the impact of minimum wages in the United States, Neumark and Nizalova (2007) find clear evidence that the negative employment effects of higher minimum wages are greater in the long run than the short run. They explain that some of the possible negative effects of a higher minimum wage, resulting from decreased labor market experience, including (but not limited to) reduced levels of job training and therefore skill formation experienced, in particular, by younger workers, might take many years to be fully realized. The recognition that a substantial majority of studies that have examined the possible negative effects of higher minimum wages on employment (and, by extension, on poverty and other policy-related variables) have been based on methods which are inadequate to the task of measuring more sustained effects of higher minimum wages has been reinforced by Baker et al. (1999) and Sorokin (2015). Both studies find substantially stronger negative employment effects of minimum wages over a longer assessment period.

Delving more into some of the reasons that long-run impacts are important, the studies undertaken by Rohlin

(2011) and Meer and West (2013), which considered minimum wage impacts in the United States, both found that a higher minimum wage has a longer term impact on labor market behavior. For example, in a study of firm location decisions within the United States, Rohlin (2011) finds an adverse impact for minimum wages relating to the decisions of potential new firms being less likely to locate in an area characterized by higher minimum wages. Draca et al. (2011) also find evidence that higher minimum wages were associated with lower rates of entry of firms into their study area, the United Kingdom, over time. Similarly, Meer and West (2013) found that even though there is no significant evidence of higher minimum wages contributing to job destruction among the firms in a relevant area, it is still the case that “on net the minimum wage meaningfully affects employment via a reduction in the rate of long run job growth.” (Meer and West 2013, p. 26).

Another possible long-run impact of higher minimum wages may be to provide a greater incentive for producers, even in very low wage, developing countries to respond by altering the mix of inputs, substituting higher skilled workers or capital goods for low-skilled sweatshop workers. Indeed, Viet Cuong (2014) has found in his study of the impact of minimum wages on employment in Viet Nam, with its very low-wage labor force, that there is statistical evidence to support the hypothesis that higher minimum wages have prompted employers to substitute a greater stock of capital for labor.

Summarizing, then, beginning with Neumark’s and Wascher’s comprehensive 2007 review and continuing up to the present with the studies we cite since that time, the preponderance of studies, and especially the studies most relevant to the developing world, are highly favorable to Powell’s and Zwolinski’s conclusion C. Sweatshop critics might wish to dismiss the economic evidence for one reason or another, or, with Preiss, argue that it is not relevant. Whatever the logical validity of Powell’s and Zwolinski’s argument, however, the truth of their conclusion, that regulating sweatshop labor will be harmful to workers, is well supported by economic analysis.

Sweatshop Arguments Must be Sensitive to Economic Analysis

Preiss disputes what he calls the “economic case”² for sweatshops, arguing from a “pluralist understanding of value” (Preiss 2014, p. 59) and a “Kantian, republican

² We use quotation marks to highlight that Preiss is presenting his view of what neoclassical economic analysis says about the arguments of sweatshop critics. On our view, the case for or against sweatshops is always an ethical one, hopefully one aided by careful economic analysis.

understanding of freedom in markets.” (Preiss 2014, p. 75) From this perspective, he claims that, even if the economic case is empirically correct, “agents possess good reason to advocate for better wages and working conditions for sweatshop workers, and to prefer less exploitative or coercive relationships.” (Preiss 2014, p. 56). These are not especially strong claims as stated. We are not aware of anyone in the debate over sweatshops who advocates for more coercive relationships, and the exact contours of “exploitative” relationships are much contested. Those who might be thought to advocate for more exploitation could do so because, e.g., they think, on balance, sweatshop “exploitation” should be excused because it improves the situation of the least-advantaged workers by increasing their employment opportunities at wages that exceed alternative job opportunities. Further, one might grant that there are good reasons for the advocacy of better wages for sweatshop workers, and, at the same time, hold that there are good reasons for not doing so. Thus, “good reasons” are not enough; critics of sweatshops should have “conclusive reasons” or “good reasons, all things considered.”

In addition to the economic case generally, however, Preiss, as with Coakley and Kates, takes specific aim at the arguments of Powell and Zwolinski. (Powell and Zwolinski 2012; Zwolinski 2007, 2009). Here Preiss’s claim is more specific. He argues that there are “no good reasons” for accepting the validity of arguments made by Powell and Zwolinski that individuals should oppose “legal mandates for higher wages or working conditions, or to purchase sweatshop goods” or that campaigns for “sweat-free” goods actually harm sweatshop workers. (Preiss 2014, p. 56) Because we largely endorse Powell’s and Zwolinski’s position, in this section, we turn our attention to Preiss’s attempt to undercut or show the irrelevancy of the “economic case” for sweatshops, with special attention to the issues raised by Powell and Zwolinski.

Preiss critiques Powell’s and Zwolinski’s support for the “economic case” under four topic headings: respect for persons, human rights and the rule of law, the ethics of consumers and political actors, and exploitation and background injustice.³ Given our analysis in the previous section, the issues raised by Preiss under the first three headings can be dealt with rather briefly. Exploitation and background injustice will, however, require us to augment our analysis with a brief description of the theory of exploitation given by Wertheimer (1996), as well as with some discussion of the Kantian theory of exploitation given by Snyder (2008).

Preiss first examines the relationship between the economic case and Kantian respect for persons, focusing on the arguments of Arnold and Bowie (2003) and Arnold and

Hartman (2003, 2005, 2006). Arnold and Bowie claim that “respecting the dignity of workers requires that Multi-National Enterprises (MNEs) and their contractors adhere to local labor laws, refrain from coercion, meet minimum safety standards, and provide a living wage for employees.” (Arnold and Bowie 2003, p. 222). Although Arnold and Bowie claim that their arguments are not undercut by economic considerations, Preiss grants that they “appear to trade on a series of claims regarding the economic facts (or counterfactuals) of sweatshop wages and working conditions.” (Preiss 2014, p. 60) One or more of these sweatshop critics claim that sweatshop wages and conditions could be improved without increasing unemployment; that efficiency wages “will frequently be higher” than sweatshop market wages; that wages and working conditions can be independently determined; and that there are many situations where workplace safety could be improved with no increase in unemployment (Preiss 2014, p. 60).

Powell and Zwolinski refute these claims, and, as we argued in the previous section, properly so. Preiss does nothing to try to rehabilitate the claims of the sweatshop critics above, but, in fairness, that is not his goal. For Preiss holds that even if the economic case is sound, the philosophical positions of these critics are not affected. Preiss claims that it “is not clear that their understanding of respect for persons depends upon” contesting the economic case. Yet, Preiss then goes on to quote Arnold and Bowie who claimed “at a minimum, respect for employees entails that MNEs and their suppliers have a moral obligation to ensure that employees do not live under conditions of overall poverty by providing adequate wages for a 48 h work week.” (Preiss 2014, p. 61)

Given that Arnold’s and Bowie’s “adequate wage” is assumed by them to be higher than the market wage, Preiss’s claim of the irrelevance of the economic case simply cannot be maintained. A widely recognized Kantian moral principle is that “ought implies can” (OIC) (Kant 1929, p. 473). Thus, the existence of Arnold’s and Bowie’s putative moral obligation depends on whether firms can pay this “adequate wage” and sustain their sweatshop production facilities, for Arnold’s and Bowie’s “respect” cannot properly demand what cannot be given. The best answer that can be provided to the question of what firms can afford to pay, in advance of an actual regime of global sweatshop regulation, would be given by an economic analysis. Thus, an economic case is relevant, regardless of the answer to the question.

Further, even if some firms could sustain their sweatshop operations while paying the “adequate wage,” as we demonstrated in the previous section, the economic case tells us that above market wages are likely to increase unemployment, and do so by the unemployment of the least-advantaged sweatshop workers. Just as the economic

³ Preiss takes these headings in a different order in his paper.

case has a bearing on the moral argument concerning obligations via the OIC principle, the case also has a bearing on the positions on sweatshops that would be taken by utilitarians, prioritarrians, and sufficientarians, as Powell and Zwolinski note. (Powell and Zwolinski 2012, p. 451) Preiss admits that, “If the economic case for sweatshops is correct, however, we must grant that avoiding coercive relationships can produce negative consequences for those who might otherwise accept lower wages and worse safety conditions.” (Preiss 2014, p. 61)

Putting aside the issue whether firms would be able to sustain operations if an “adequate wage” was required, Preiss may be correct that Kantians such as Arnold and Bowie can properly maintain their notion of respect in the face of the economic case, while standing apart from a concern of other moral theories, both consequentialist and deontological, for the least advantaged. We find it incongruous, however, if not grotesque, that a theory presumably motivated by a concern for sweatshop workers would hold the least advantaged among them hostage to its notion of respect. Indeed, we note that sweatshop critics, e.g., Arnold and Bowie (2003) and Coakley and Kates (2013), routinely dispute the economic case for sweatshops. The question arises whether their views would change if these critics accepted the case we make in the previous section. Preiss seems to stand alone among the critics in his willingness retain his favored “Kantian, republican” perspective while explicitly acknowledging that the economic case may be correct. (Preiss 2014, p. 71) Failing to accept an argument, however, is not the same as the argument’s being irrelevant.

Turning to the second topic, human rights and the rule of law, Preiss highlights Arnold’s and Bowie’s claim that MNEs have an obligation to ensure that they and their subcontractors comply with host country law. (Preiss 2014, p. 66) He then uses this introduction as a springboard to criticize Powell’s and Zwolinski’s claim that employees may properly allow employers to waive their moral obligations. Powell’s and Zwolinski’s actual argument concerning the permissibility of violating labor laws is not addressed.

Powell and Zwolinski argue that, under certain circumstances, violating labor laws is morally justifiable. That the law may fail to perfectly track morality should not be a surprising idea. Mahatma Gandhi and Martin Luther King deliberately broke the law, and, on widely shared moral views, it was proper for them to do so. Arnold’s and Bowie’s claim about the MNEs’ obligations to obey local labor laws is simply a restatement of their view that these laws reflect valid moral rights. On the other hand, the economic case for sweatshops holds that these laws may harm the welfare of workers and impermissibly restrict the freedom of contract between employee and employer. The

moral views behind such a case may be incorrect, but nothing is added by the claim that MNEs should uphold human rights. So should we all. But what rights, exactly?

Similarly, invoking the phrase “rule of law” adds nothing here, and, in fact, arguably misunderstands its meaning. Traditionally, the phrase has referred to the program of constraining government actions by abstract rules, not a person’s duty to obey the law. (Hayek 1960) As for the moral duty to obey the law, Powell and Zwolinski point out that this idea is fraught with difficulty among political philosophers (Powell and Zwolinski 2012, pp. 461–462). We would add that there is no evidence that the arguments of sweatshop critics have done anything to resolve the issues involved. Upon examination, the sonorous phrases “human rights” and “rule of law” add nothing of substance to the sweatshop debate.

Notwithstanding the problematic topic heading, Preiss raises an important issue about the understanding of autonomy with regard to the economic case, which he discusses more fully under the “ethical consumers and political actors” heading.⁴ Powell and Zwolinski do not provide any sustained discussion of the concept of autonomy, writing that they will focus on welfarist arguments because “[m]ost of what we say in the following regarding violations justified by appeals to welfare, however, will also apply to violations justified by appeals to autonomy.” (Powell and Zwolinski 2012, p. 462n73) On the other hand, Zwolinski (2007) discusses the difference between what he calls “preference-evincing” choice and “autonomy-exercising” choice. Preference-evincing choice “signal[s] information about an agent’s preferences” and does so “even when the choice is made under conditions of less than full autonomy.” (Zwolinski 2007, p. 693) Zwolinski argues that such choice is “morally transformative,” since:

To attempt to directly remove the option of sweatshop labor (or to act in ways which are likely to indirectly remove that option), while knowing that sweatshop labor is the most preferred option of many workers, is to knowingly act in a way which is likely to cause workers harm. Indeed, given that many potential sweatshop workers seem to express a strong preference for sweatshop labor over the alternatives, acting to remove that option is likely to cause them great harm. This is, *ceteris paribus*, wrong. [Zwolinski 2007, p. 694 (text footnote omitted)].

Although Preiss does not address this argument, it is clear that he rejects the conclusion that preference-evincing choice is “morally transformative.” Preiss apparently

⁴ Preiss also discusses the concept of autonomy under the “exploitation and background injustice” heading. For expository convenience we treat all of Preiss’s autonomy discussions in one place.

identifies Zwolinski's preference-evincing choice with the idea of "rational choice," wherein the actor chooses the best action from an available set. (Preiss 2014, p. 57) Although economic theory uses this notion of choice, Preiss contends that such use does not advance the economic case beyond the welfarism and consequentialism that Kantians and republicans reasonably reject. Yet, Zwolinski's conclusion is not simply that there is harm, but that harming to a great degree is wrong. Such a position could well be endorsed by moral theories that are deontological in structure. Thus, Rawls tells us, "All ethical doctrines worth our attention take consequences into account in judging rightness. One which did not would simply be irrational, crazy." (Rawls 1971, p. 30) Preiss needs to say more if he is to demonstrate that the economic case does not play an important role by virtue of its assumptions about choice.

Regarding autonomy-evincing choice, the situation is much more complicated, and we decline to enter a detailed discussion of either Zwolinski's or Preiss's view of autonomy. We are not sure that Preiss's understanding of Zwolinski's view of autonomy is correct; but, neither has Zwolinski provided enough detail on his view of autonomy for us to be sure that Preiss is not correct.⁵ What does seem clear is that neither Powell nor Zwolinski have provided an argument, economic, or otherwise, that refutes the Kantian and republican idea of autonomy sketched by Preiss.

As a result, Preiss claims that even if the economic case demonstrates that the actions of consumers or political actors concerned with regulating sweatshops serve to remove a valued choice from sweatshop workers, this does not reduce the workers' autonomy in the Kantian or republican senses. Thus, the truth of the economic case for sweatshops need not touch the concerns of these consumers and political actors. Our reply is much like the one we give above regarding respect. We think that the motivation of the concerns of most consumers and political actors over sweatshops is their understanding of the welfare of sweatshop workers and potential workers. If they were to accept the economic case—and we have argued in the previous section that they should—they would understand that their own motivations are incompatible with a moral theory that finds no wrong in harming these workers, and, in particular, harming the least advantaged among them. We must grant, however, that to the extent consumers and political actors value philosophical purity over not undercutting opportunities that make extremely poor people better off, Preiss is

correct concerning the irrelevance of the economic case in this one regard.

Finally, there is the relationship between the economic case and exploitation, with an emphasis on the role played by "background" injustice. Preiss writes:

A central flaw for the economic case for sweatshops is that it ignores the relevance of conditions of background justice to the ethics of sweatshop relationships, including worker exploitation. Background conditions entail the structural, historical, or institutional backdrop in which workers accept so-called sweatshop wages and working conditions. Defenders of sweatshops must address the following sort of claim: though sweatshop exchanges are mutually beneficial in the status quo, they are exploitative if they take advantage of structural or historical injustice. (Preiss 2014, pp. 61–62)

Although economists evince an "interest in the ex post distributive effects of a given policy" and some now even "take a greater interest in normative theory," many economists do not think a focus on background injustice is within the "proper scope of economic science." (Preiss 2014, p. 62) Thus, Preiss quotes John Hicks as stating, "Whether or not compensation should be given in any particular case is a question of distribution, upon which there cannot be any generally accepted principle.... If measures for efficiency are to have a fair chance, it is extremely desirable that they should be freed from distributive complications." (Preiss 2014, p. 62) As such, Preiss describes the economic case as "willfully obtuse" (Preiss 2014, p. 62) regarding background injustice.

We think that Hicks, writing in 1937, should not be faulted for having failed to anticipate the broad consensus on distributional principles that would emerge among moral philosophers during the following three-quarters of a century.⁶ Hicks' concern is clearly with efficiencies that will make the welfare "pie" larger, a topic on which he believed he might add value. This does not imply that Hicks (or, by extension, other economists) thought that distributional issues were unimportant; we think he was merely displaying the respect for the division of labor that one should expect of an economist. Nor are members of the economics profession the only ones concerned with the potential interplay between efficiency and distributional considerations. Rawls was concerned over the effect his principle of distribution would have on the wealth of the "first generation" of a society (Rawls 1971, pp. 284–293), and Murphy and Nagel (2002) endorse the

⁵ Zwolinski is explicit that, for the purposes of his paper, he is attempting to rely only on the "general *concept* of autonomy." (Zwolinski 2007, p. 716n7 (italics in the original))

⁶ We hope this bit of irony makes clear that economists need not be "willfully obtuse" over matters of distribution, even if the "economic case" itself were so.

idea of a negative income tax, famously proposed by Friedman (1962), a policy that is aimed at redressing distributional issues in a manner that minimizes the threats to the overall efficiencies of a market economy. Nevertheless, Preiss is correct that an economic case that denies any charge of exploitation simply because the transactions are beneficial to both parties does not take the issue of exploitation seriously.

Preiss notes that work by Powell and Zwolinski has been an exception to the lack of concern the economic case has for background injustice. Powell and Zwolinski explicitly address the issue of exploitation. After noting that the nature of exploitation is philosophically disputed, Powell and Zwolinski claim that most accounts of wrongful exploitation agree that it is “taking advantage of another person in a way that is either unfair or that fails to manifest sufficient respect for that person’s dignity.” (Powell and Zwolinski 2012, p. 466). Powell and Zwolinski defend the “unfair” disjunct by arguing that it is unclear that the exchange between sweatshop workers and MNEs is unfair, and that sweatshop critics have not managed to provide a criterion for fairness.⁷

Preiss does not contest this part of their argument; his concern is with the second disjunct: advantage gained through disrespect to dignity. Preiss aligns himself with theories of exploitation given by Sample (2003) and Snyder (2008), which are broadly Kantian in their concern for respect and dignity.⁸ For these theories, “taking advantage of background injustice is a central mode of exploitation.” (Preiss 2014, p. 63) Preiss agrees with Sample that, “If we gain advantage from an interaction with another, and that advantage is due in part to an injustice he has suffered, we have failed to give him appropriate respect.” (Sample 2003, p. 74) Snyder (2008), for his part, constructs an argument that by establishing a relationship with sweatshop workers, MNEs acquire a perfect duty of beneficence in addition to the imperfect duty held by every person.

In this regard, Powell and Zwolinski argue, given that the exchange between sweatshop workers and MNEs is mutually beneficial, that although these workers’ amount of payment may be morally objectionable, MNEs bear no special responsibility for this deficiency. (Powell and Zwolinski 2012, pp. 467–468) Thus, contra Snyder, MNEs at most have the same imperfect duty to aid that applies to all. Powell and Zwolinski note that their argument draws upon the “Nonworseness Claim” (NWC) (Wertheimer

1996; Wertheimer and Zwolinski 2013).⁹ The most recent version of the claim states:

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 externalities. (Wertheimer and Zwolinski 2013)

Since an MNE has the right not to hire any workers, the MNE may make wage offers that benefit workers even if these offers are only at market levels, which workers may or may not choose to accept, without engaging in exploitation. Thus, even if entering into an employment relation can create a new obligation, such as paying a higher than market wage, Powell and Zwolinski argue that the MNE may properly require workers to waive any such obligation as a precondition to forming the relation. (Powell and Zwolinski 2012, pp. 469–470) By the NWC, the interaction at market wages cannot be worse than no interaction at all.

Preiss rejects the NWC,¹⁰ and, although we find the NWC plausible, we will not try to defend it here. Rather, we defend an even more contentious claim, intending for it to show the relevance of the “economic case,” or, at any rate, of economic analysis, to the issue of sweatshop exploitation. The claim is that the core notion of exploitation is unfairness, and thus Kantian theories of exploitation, such as Sample’s and Snyder’s, are simply wrong. Of course, we cannot examine and refute every such theory. We believe, however, that an examination of Snyder’s “Needs Exploitation” account will highlight a general problem with such theories in the next section. In order to do so, we must take the digression alluded to above by providing a brief description of the fairness-based account of exploitation given by Wertheimer (1996). We then turn to an analysis of claims by one of the two Kantian theories of exploitation that Preiss broadly supports, Snyder’s “needs exploitation.”

Exploitation: What It Is and How to Find it

Wertheimer states:

An exploitative transaction is one in which *A* takes unfair advantage of *B*. *A* engages in *harmful exploitation* when *A* gains by an action or transaction that is *harmful* to *B* where we define harm in relation

⁷ We will stake out a different position below.

⁸ Preiss also cites the exploitation theory of Steiner (1984). This theory of exploitation draws to some degree upon Steiner’s theory that all rights are property rights, a seemingly incompatible foundation from the other two, Kantian, theories. Because Preiss expresses Kantian sympathies, for reasons of space we restrict our attention to that framework.

⁹ However, more recently (Zwolinski 2012) argues against “structural exploitation” accounts without explicitly invoking the NWC.

¹⁰ As do Snyder (2008) and Bailey (2011). Preiss also argues that Powell and Zwolinski are wrong to think that considerations of autonomy support the NWC. Because we do not defend the NWC here, we skip over that portion of Preiss’s argument.

to some appropriate baseline. 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.¹¹ (Wertheimer 1996, p. 207, italics in the original)

Thus, according to this account, the case of sweatshop labor is mutually advantageous, since both sides receive something. Nevertheless, it would be exploitative, if MNEs were to gain “unfairly or excessively.”

Wertheimer recognizes that to use his definition, a fairness criterion is needed. He proceeds to consider three possibilities: rational bargaining theory, equal division, and hypothetical markets. Wertheimer discusses the difficulties with these criteria before tentatively settling upon the idea of a hypothetical market. He recognizes that a skeptic might claim that there is no defensible principle of fair division, but argues that it is “too early” to tell, given that so “little philosophical work has been done.” (Wertheimer 1996, p. 236) Alternatively, we suggest that different situations might call for the use of different principles of fair division, such that no one principle would need to be proof against any objection.

To illustrate a situation relevant to wages, we will use the concept of a reservation price. (Hirshleifer et al. 2005, p. 319) The idea is that in any exchange, say of labor for money, the seller has an amount below which he/she will not make the exchange, the *seller's reservation price*, which we will label R_S . Similarly, the buyer has an amount above which he/she will also not make the exchange, the *buyer's reservation price*, which we will label R_B . When $R_S > R_B$, there is no “room” for an exchange to take place; the most that the buyer will pay is less than the least the seller will accept. When $R_S \leq R_B$, however, an exchange can take place; the trade is advantageous to both parties. But where in the range of $R_B - R_S$ (called the “surplus”) should the exchange take place? That is where a principle of fair division is needed.

Each of the principles considered by Wertheimer will pick some point in the range of $R_B - R_S$. Indeed, as Wertheimer points out, within rational bargaining theory itself, arguments have been made for different criteria for finding this point, including minmax relative concession (Gauthier 1986) and the Nash bargaining solution (Nash 1950). For our purposes in this paper, and without any claim to have determined the correct principle of fair division for this situation, we will use the equal dollar division, $(R_B - R_S)/2$. If pressed for a justification, we would stress the simplicity of this criterion as compared with the others. The more complex the criterion, the more

likely that, when actually applied, the parties will find they disagree over some parameter necessary to the determination of the division. Further, an equal division of the surplus may well be a Schelling (1960) point that would spark agreement. As a first approximation, then, we would say that an MNE is exploiting sweatshop workers if those workers are getting less than half of the surplus. At the same time, we are committed to saying that, should the workers be getting more than half of the surplus, then they would be exploiting the MNE. No doubt, some will find this direction of the argument more difficult to accept. Perhaps, then, the equal dollar division is not the proper criterion for fair division in the case of sweatshop labor. But, again, we stress that we choose this criterion mainly for the ease of exposition. We believe that the selection of the best criteria for dividing the surplus within the context of sweatshops is a matter for future research.

Wertheimer's theory has been criticized by both Sample (2003) and Snyder (2008). We will focus here on Snyder's critique,¹² because, unlike other Kantian critics of sweatshops, Snyder recognizes that morality does not necessarily require that employers pay sweatshop workers a “living wage.” Thus, Snyder contrasts the business of Little Debbie, “a manufacturer of low-end widgets” in a market where “there is a great deal of downward pressure on the wages that... employees can demand,” (Snyder 2008, p. 40) with that of Billionaire Bill,¹³ who lives in opulence from the profits of his widget company in the Developing World (Snyder 2008, p. 396). Snyder allows that “practical limitations” may stand in the way of Debbie paying a “living wage,” so that Debbie is forced to choose between the “solvency [of her business] and moral innocence.” (Snyder 2008, p. 400).

Snyder states:

The trouble with [Wertheimer's] version of exploitation, for present purposes, is that even extremely low wages will very often be non-exploitative by its standards... [I]n many cases, wage levels may be affected by a range of background or historical injustices, from trade laws that favor the Developed World to a history of colonialism to aggressive wars... Whatever the cause, that an exchange is fair in the eyes of the market in no way

¹¹ Those most concerned with exploitative *relationships* might object to Wertheimer's focus on exploitative *transactions*. Any relation, however, requires some form of interaction. We think that nothing is lost if “transaction” is understood as “interaction”.

¹² Wertheimer (2011) contains a critical discussion of Sample's theory. For our part, we fail to see how Sample has shown that “appropriate respect” for sweatshop workers requires more than a voluntary agreement between employee and employer at market wages. We recognize that the concept of “voluntariness” is itself hotly contested, but limitations of space preclude any comment beyond what we say here regarding Preiss's discussion of the term.

¹³ Snyder simply names his protagonist “Debbie,” and his billionaire villain “Bill” but we want to make the contrast as stark as possible. We will also be adding another “Debbie” to the example.

guarantees that the resulting distribution of benefits will not leave one party without a decent minimum of well-being. Wertheimer's fairness standard will miss these background factors and, more importantly, will miss the intuition that wage levels that fall below a decent minimum—whether “fair” or not—are morally problematic.¹⁴ (Snyder 2008, p. 392)

The “trouble” Snyder identifies with Wertheimer's theory of exploitation is a problem only on the assumption that “extremely low wages” must be exploitative. Snyder has tacked a wage-level requirement onto what he will consider as a valid theory of exploitation. Snyder concedes, however, in his example of widget-maker Little Debbie, that she cannot pay a “living wage,” is not morally required to do so, and is not required to exit her business. Snyder must say that even if Little Debbie and Billionaire Bill pay the same extremely low wage, Billionaire Bill is exploiting, while Little Debbie is not. However, the employment relationships and background conditions of justice are the same in the two hypotheticals. Snyder is correct that Wertheimer's theory “misses” an intuition that failure to receive a living wage is “morally problematic,” but that is because Wertheimer is giving a theory of exploitation, not of the wrongfulness of the failure to receive a “decent minimum.”

Snyder's claim of trouble would have more force if Wertheimer's theory were unable to identify a case of sweatshop exploitation. The theory, as we interpret it here, however, will identify as exploitative those cases where sweatshop workers do not receive one-half of the reservation price surplus. The question of how many such cases exist is an empirical one. Whether a wage is *exploitative* is, however, conceptually a different matter from whether it is a “living wage,” since even a “living wage” could be exploitative. The failure to receive a sufficient income on which to live may be a serious moral wrong, but simply that it is a wrong does not make it a wrong of exploitation.

All we are claiming to this point is that the failure to pay a “living wage” is not per se an example of exploitation; but, given the rhetorical force of the word “exploitation” and its frequent use by sweatshop critics, we think the claim is well worth making. Snyder is still free to argue, however, that he has identified a moral wrong on the part of Billionaire Bill. Snyder argues that by virtue of the employment relationship, employers have a perfect duty of beneficence to their employees (PDBE). (Snyder 2008, pp. 395–396) Billionaire Bill, who lives in luxury while his employees do not receive a decent wage, violates that duty. Little Debbie does not.

¹⁴ Snyder's description of Wertheimer's theory naturally focuses on Wertheimer's hypothetical market criterion of division, rather than our equal dollar division. This does not affect our argument.

Although Snyder does not explicitly mention the OIC principle, we presume this principle is the reason that Little Debbie does not have a PDBE. Little Debbie, by hypothesis, cannot pay a “living wage.” Now consider Big Deborah. Big Deborah is just like Little Debbie, except that Big Deborah has, unrelated to her widget business, a vast personal fortune. Indeed, she is as wealthy as Billionaire Bill. Does Big Deborah have a PDBE?

We cannot be sure what Snyder would say. We can, however, look at the precise way in which he sets up his hypothetical billionaire Bill:

He runs a company manufacturing widgets in the Developing World. Bill's relationship with his workers allows him to earn profits sufficient to support a life of great luxury for himself. Furthermore, Bill pays his employees very little, consistently using the bargaining advantage created by a high local labor supply to keep his employees' wages very low. In this case, Bill responds inappropriately to the desperation of these particular persons, treating them as mere instruments of profitability. While the global poor may depend on many for general aid, Bill gains from the labor of these persons in a way that privileges the attainment of additional riches over the alleviation of their misery. Bill, in short, seems to elevate his own desire for luxuries over the basic needs of his employees. (Snyder 2008, p. 396)

Whatever Snyder contemplates that Billionaire Bill should pay his workers, Big Deborah can do the same. If it is the employer/employee relationship that creates a PDBE, then it seems that Big Deborah has the same duty as Billionaire Bill. Snyder assumes that Billionaire Bill can pay workers more than he does, but so can Big Deborah. The OIC principle that excuses Little Debbie is unavailable to Big Deborah.

We find a claim that Big Deborah has a PDBE implausible. If Snyder were to assert that Big Deborah had a PDBE in this instance, we would ask why virtually any relationship that a wealthy person has with a poor person does not create a perfect duty. The original Kantian idea is that the duty of benevolence is an imperfect one.

If Billionaire Bill were to have a PDBE and Big Deborah not, however, the difference cannot come from differences in wealth or in the employer/employee relationship. The only candidate we see is that Billionaire Bill's sweatshop business has a much larger residual after ordinary expenses are subtracted from sales than do the businesses of Little Debbie and Big Deborah. What Snyder (and we claim other sweatshop critics) is really asserting is that the present division of such a residual between the workers and Billionaire Bill is unfair. Thus, we claim, Wertheimer's fairness-based theory of exploitation is the

proper one to use to analyze the situation. If the moral claim to a larger share of the residual is not based on fairness, but rather on the poverty of sweatshop workers, the duty involved from a Kantian perspective is an imperfect one.

The addition of Big Deborah illustrates the strength of Wertheimer's definition of exploitation. We claim that, if Billionaire Bill is able to run his business in a way that provides him with "riches," while somehow the two Deborahs cannot, this must be the result of Billionaire Bill's business judgment or of his taking most of the surplus $R_B - R_S$ (or some degree of both). To the degree that it is the former, we claim that Billionaire Bill deserves his "riches," at least to the degree necessary to compensate him for his risk.¹⁵ To the degree that it is the latter, some fairness criterion combined with Wertheimer's definition will explain the extent of the exploitation.

We think that the addition of Big Deborah to Snyder's example demonstrates the implausibility of a PDBE, but we cannot claim that there is no reconducive Kantian reasoning capable of establishing it. What would follow, then, if we were, for the sake of argument, to grant the existence of a PDBE? The moral background would still include the OIC principle. Snyder provides a discussion of the "practical limitations" faced by Little Debbie, which we have claimed are implicit recognitions of OIC. Snyder is also explicitly aware that, in the actual world, the places of factory owners Little Debbie and Billionaire Bill are most notably taken by corporations with internal organizational structures that Debbie and Bill lack. These structures result in an "organizational complexity" that "will dilute the moral force of relationships." (Snyder 2008, p. 399) We would add that it is not only the "moral force" that is diluted, but also the control over the situation that each component of a complex organization has. Thus, these various components, including individual decision makers, may have their potential duties circumscribed by the OIC principle because of what each has the ability to decide within the organizational structure.

With these caveats in mind, we will briefly consider Snyder's detailed specification of his "exploitation" criterion. This includes the condition that

The relevant baseline in these cases for what A owes to B is that A cede to B: (1) as much as is reasonably possible of the zero-sum gain from the interaction up until B reaches a threshold in some dimension of well-being X. (Snyder 2008, pp. 401–402)

¹⁵ Financial theory gives little, if any, insight into determining an appropriate risk/return ratio for a sole proprietor such as Billionaire Bill. The situation is different for the publically traded corporation, which more typically holds the place given to Billionaire Bill. See Sollars and Tuluca (2014).

Snyder does not explain what he means by the economic language of "zero-sum gain," but we think it is likely that he is referring to the reservation price surplus we discussed above. If so, then, at least in the context of sweatshops, Snyder's view can be accommodated within Wertheimer's theory of exploitation as a claim that the appropriate fairness criterion is for the entire surplus to be given to sweatshop workers. The idea that it is fair for one party to receive all the surplus of the gain from an exchange seems strained to us, but, then, even Wertheimer is not certain that his criterion is correct, and, for our part, we have suggested that different criteria might be appropriate in different situations. In particular, perhaps Snyder's criterion is appropriate to the extent that there is background injustice.

Second, although Snyder goes on to gloss "reasonably possible" in Kantian terms, the OIC principle has a vital role to play. Recall that the buyer's reservation price, R_B , is the greatest amount that the buyer is willing to pay and still make the exchange that continues the employer/employee relationship. Although Snyder, along with Preiss, rejects the NWC, he does not claim that Billionaire Bill or MNEs have a duty to employ sweatshop workers *ab initio*. Once the relationship is in place, however, Snyder contends that, "A may retain levels of well-being between the limits of deficiency and luxury." (Snyder 2008, p. 402) We cannot be sure whether Snyder imagines the variable "A" to range over natural persons only, or persons and corporations.¹⁶ We will focus on the corporation, since that is the usual concern outside of the hypothetical world of Debbie and Bill.

For a corporation, "deficiency" could plausibly be understood to mean "bankruptcy, or conditions expected to lead to bankruptcy." The term "luxury" is harder to define in the context of the corporation. Comments about "obscene" profits are commonplace; but we need more than Justice Stewart's definition of obscenity if we aspire to anything like a systematic moral theory. Economic theory, in the form of modern portfolio theory, is helpful here. The capital asset pricing model may be interpreted as determining the lower bound of the return on equity capital needed to compensate shareholders for the risk they take relative to the market for other investments.¹⁷ Corporations that do not provide this level of risk-adjusted return on equity cannot reasonably be expected to attract and retain investors. As such, levels of profit needed to meet and sustain a corporation's cost of equity cannot reasonably be called a "luxury." Thus, for a corporation, the upper limit

¹⁶ There is a problem for Kantian theories to regard corporations as persons in that, at least when publically traded, corporations have a price not a dignity. See Sollars and Englander (2007, pp. 120–121) We will focus on the publicly traded corporation

¹⁷ For an explanation of the capital asset pricing model, see Elton et al. (2010).

of its R_B may properly be set by all of its other costs plus this needed return on equity. Corporations that pay wages equal to their R_B have not violated Snyder's baseline, and so cannot be exploiting. Moreover, since there is presumably some distance between "deficiency" and "luxury," a corporation could lower its R_B wages below what is needed to simply cover its other costs without exploiting under Snyder's definition.

Snyder's theory seems unable, however, to give any guidance as to where that point might be. Our approach, as a normative matter, would be to set the corporation's R_B wages at a point where the required return on equity is just being met.¹⁸ Exploitation would then occur if sweatshop workers were receiving less than half of the $R_B - R_S$ surplus.¹⁹ As an empirical matter, then, perhaps some sweatshop workers are exploited by our definition here, in that they do not get half of the surplus. But is there such a surplus in the first place? And, if so, how big is it? These are empirical questions, but it is at least possible to imagine studies that might provide a measure of the surplus in various industries and countries. A criterion of fair division, ours or a different one, could then be applied to determine if exploitation was present. Thus, even if the existence of a PDBE is granted, our conclusion regarding the appropriate way to understand exploitation is unaffected.

In summary, then, the "economic case" is relevant via the OIC principle to the implications of applying the idea of Kantian respect for persons held by some sweatshop critics. The economic case should also be relevant to those whose motivation for criticizing sweatshops stems from a concern for sweatshop workers, especially the least advantaged of them. Finally, economic analysis is needed to determine the extent of exploitation properly defined.

Conclusions

Based upon the best evidence currently available, sweatshop critics should grant that regulation of sweatshop wages is likely to be harmful to workers, and, in particular, to the least-advantaged workers. Although this evidence has been characterized as "mixed," suggesting some rough parity between the pro and con, the review we present in Section II shows that the mixture contains very little to nourish the critics. A large majority of the relevant studies indicate that wage regulation will be harmful. Furthermore,

¹⁸ In any given period, of course, a corporation might provide a return on equity below or above its risk-adjusted value; some smoothing would need to be allowed.

¹⁹ We ignore for now that a company's reservation price might vary by worker, and that reservation prices may vary among workers considering the same employment.

authors of some contrary results grant that their studies potentially suffer from an important methodological weakness, one that has been clearly identified in other research. Additionally, the logical possibility that a "multiplier effect" from higher minimum wages would mitigate the losses to the least-advantaged workers remains merely a logical possibility without empirical support. Putative logical gaps in an argument for the conclusion that sweatshop workers and potential workers will be harmed by wage regulation are intellectually interesting, but not at all dispositive given the current state of empirical evidence.

Second, economic analysis is relevant even to moral theories that eschew pure welfarism and take a Kantian approach. No moral theory can reasonably avoid some consideration of consequences; on the subject matter of sweatshops such consideration involves careful economic analysis of the effect of wage regulation. As we show, such an analysis supports the claim that sweatshop wage regulation will harm workers, particularly the least-advantaged workers. Although it might be possible for a Kantian sweatshop critic to consistently ignore this harm, doing so seems at odds with the motivations of most sweatshop critics. In any event, economic analysis is relevant to a Kantian position through the OIC principle, since, at least prospectively, such analysis is needed to determine if corporation can pay higher wages and remain in competition.

Finally, we argue that Wertheimer's theory of exploitation, where the question of exploitation turns on the division of the surplus between the buyer's and seller's reservation prices, is especially appropriate for analyzing the question of sweatshop exploitation. First, the conceptual distinction between an exploitative wage and a "living wage" is maintained. Second, the theory can respect the OIC principle: the reservation price of the buyer of labor can be set at the maximum that still allows for an adequate risk-adjusted turn to equity. Finally, sweatshop critics are free to advance arguments, such as the existence of background injustice, for weighting the division of the surplus toward the sweatshop worker.

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